

5123:2-1-08

**Waiting lists, service substitution lists , and long-term service planning registries.**

(A) General provisions

(1) Purposes

The purposes of this rule are:

- (a) To set forth the requirements a county board must meet in establishing and maintaining waiting lists, service substitution lists, and a long-term service planning registry;
- (b) To establish a process of communication regarding waiting lists, service substitution lists, and the long-term service planning registry between a county board and an individual, the individual's guardian, and the individual's family, as applicable, that complies with paragraph (C)(13) of this rule;
- (c) To establish procedures for due process in accordance with paragraph (M) of this rule.

(2) Definitions

- (a) "Alternative services" means the various programs, services, and supports, regardless of funding source, that exist as part of the MRDD service system and other service systems including, but not limited to:
  - (i) Services provided directly by the county board;
  - (ii) Services funded by the county board through providers;
  - (iii) Services provided and funded outside the MRDD system; or
  - (iv) Services provided at the state level.
- (b) "Applicable law" means those federal and state laws and regulations that apply to any service or conditions for providing any service covered by this rule.
- (c) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code or a regional council of government formed under section 5126.13 of the Revised Code by two or more county boards.
- (d) "Current need" means the individual needs and would use the service within twelve months if it were offered to the individual.

- (e) "Date of request" means the date and time of any written or other documented request for service. The request, including the date and time of request, shall be included in the individual's record maintained by the county board. "Date of request" is the controlling date for placement on a waiting list or service substitution list and shall be documented at the time of any such request. Documentation of the date of request shall also include the ODJFS 02399 "Home and Community-Based Services Waiver Referral" signature date as described in rule 5101:1-39-94 of the Administrative Code.
- (f) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (g) "Emergency status" means any situation that creates for an individual a risk of substantial self-harm or substantial harm to others if action is not taken within thirty days. An "emergency" may include one or more of the following:
- (i) Loss of present residence for any reason, including legal action;
  - (ii) Loss of present caretaker for any reason, including serious illness of the caretaker, change in the caretaker's status, or inability of the caretaker to perform effectively for the individual;
  - (iii) Abuse, neglect, or exploitation of the individual;
  - (iv) Health and safety conditions that pose a serious risk to the individual or others of immediate harm or death;
  - (v) Change in emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.
- (h) "Guardian" means a guardian appointed by the probate court under Chapter 2111. of the Revised Code. If the individual is a minor for whom no guardian has been appointed under that chapter, "guardian" means the individual's parent. If no guardian has been appointed for a minor and the minor is in the legal or permanent custody of a government agency or person other than the minor's natural or adoptive parent, "guardian" means that government agency or person.
- (i) "Home and community-based services" means medicaid-funded home and community-based services provided under a medicaid component the department administers pursuant to section 5111.871 of the Revised Code.

(j) "ICF/MR" means intermediate care facility for the mentally retarded.

(k) "Individual" means a person with mental retardation or other developmental disability.

(l) "ISP" means an individual service plan.

(m) "Medicaid case management services" means medicaid-covered case management services under Ohio's state medicaid plan.

(B) The following individuals shall not be subject to waiting lists or service substitution lists for the following specified services:

(1) The following medicaid eligible individuals shall receive services within ninety days of the date that the need for such services has been documented on the individual's ISP in accordance with applicable law, which determination shall be included in the individual's record maintained by the county board:

(a) Individuals who are assessed and who are determined to have a need for medicaid state plan services, including habilitation center services and medicaid case management services;

(b) Individuals enrolled in a home and community-based services waiver for persons with an ICF/MR level of care who are assessed and who are determined to have a need for the services covered by the waiver.

(2) Individuals enrolled in residential facility, home care transition, or individual options waivers who are being transferred to a different home and community-based services waiver for persons with an ICF/MR level of care. Such individuals may be transferred in accordance with rules of the department and other applicable law to another ICF/MR level of care waiver for which the individuals are eligible.

(3) Children who are subject to a determination under section 121.38 of the Revised Code.

(a) Such children who require the home and community-based services provided through the medicaid component that the department administers under section 5111.871 of the Revised Code shall receive services through that medicaid component.

(b) For all other services, such children shall be treated by the county board as having emergency status.

(C) General waiting list requirements

(1) Waiting lists for medicaid services

(a) A county board shall establish and maintain waiting lists, in accordance with this rule, for each home and community-based services waiver administered by the county board. Such lists shall be subject to paragraphs (B)(1) and (B)(2) of this rule. When an application is made for a waiver, the individual shall be placed on the list for the waiver appropriate to the individual's need based on the individual's assessment. The original date of request shall be the date for placement on the waiting list.

(b) Medicaid eligible individuals who need medicaid-covered services included in the following categories shall receive those services within the time periods specified in paragraphs (B)(1) and (B)(2) of this rule and shall not be placed on a waiting list or service substitution list for those services:

(i) Early childhood services;

(ii) Educational programs for preschool and school age children;

(iii) Adult services;

(iv) Service and support administration;

(v) Residential services and supported living;

(vi) Transportation services;

(vii) Family support services provided under section 5126.11 of the Revised Code.

(2) A county board shall establish a separate waiting list, in accordance with this rule, for at least each of the following categories of non-medicaid services for which available resources are inadequate to meet the needs of all individuals who have a current need for the services:

(a) Early childhood services;

(b) Educational programs for preschool and school age children;

(c) Adult services;

(d) Service and support administration;

(e) Residential services and supported living;

(f) Transportation services:

(g) Family support services provided under section 5126.11 of the Revised Code.

(3) A county board may establish additional waiting lists for other categories of services, which are determined to be necessary and appropriate for individuals according to their ISP.

(4) Procedures on requests for services

(a) When services are requested, a county board shall inform the individual, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, of the alternative services.

(b) When a request is made for a service, the individual shall be placed on the list for the service appropriate to the individual's need based on the individual's assessment.

(c) The original date of request shall be the date for placement on the waiting list.

(d) A county board shall place individuals with a current need for a category of service and individuals who meet the criteria in paragraph (D) of this rule for a category of service on the waiting list for that category of service.

(e) The county board shall inform the individual, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, of the individual's place on the waiting list.

(f) Where there is a dispute regarding the date of request, an individual or person with legal authority to act on behalf of the individual, may appeal under procedures set forth in paragraph (M) of this rule.

(5) The county board may place an individual on more than one waiting list.

(6) The county board may establish priorities for making placements on its waiting lists according to an individual's emergency status and shall establish priorities in accordance paragraph (D) of this rule.

(7) If it is determined an individual needs a different category of service other than the one for which the individual is waiting, the county board shall provide the category of service, or place the individual's name on the waiting list for the category of service based on the new date of request. The county board shall

inform the individual, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, of the individual's place on the waiting list based on the new date of request.

- (8) Each county board shall develop policies and procedures regarding the county board's waiting lists, service substitution lists, and long-term service planning registry that comply with section 5126.042 of the Revised Code and this rule. The policies and procedures shall address consistent methods of providing information about the alternative services. On an annual basis, the county board shall review the policies and procedures. The county board shall notify individuals on the waiting list, service substitution list, or long-term planning registry, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, of any change in the policies and procedures. The county board shall document that notice was given and the content of such notice.
- (9) If an individual determined eligible in one county after July 1, 1991 seeks placement in another county, the individual shall be presumed to be eligible for county board services in the receiving county. If the receiving county deems it necessary to conduct a separate evaluation, the receiving county may do so, but the individual shall receive services or be placed on the waiting list during the period of reevaluation.
- (10) When an individual relocates or expresses a desire to relocate from one county to another county, any waiting list or service substitution list for a home and community-based services waiver shall be reordered in the new county based on the individual's original date of request for such waiver.
- (11) When an individual relocates or expresses a desire to relocate from one county to another county, the individual's name and date of request for any non-medicare category of service will be added to any waiting list or service substitution list using the new date of request made to that county board.
- (12) Upon the department's request, each county board shall submit in a format specified by the department documentation related to its waiting lists, service substitution lists, and long-term service planning registry including, but not limited to, information regarding individuals who requested services or were removed from the waiting list.
- (13) A county board shall maintain the confidentiality of information related to individuals on the waiting lists in accordance with section 5126.044 of the Revised Code. Except as provided in division (D) of section 5126.044 of the Revised Code, when disclosure of the identity of an individual is needed to ascertain that the county board's waiting lists are being maintained in accordance with section 5126.042 and this rule, a county board shall release only the individual's name, the category of services requested by the

individual, the individual's rank on the waiting list, the individual's date of request for services and any circumstances under which the individual was given priority when placed on the waiting list pursuant to paragraph (D) of this rule.

- (14) When a category of service for which there is a waiting list becomes available, the county board shall reassess the service needs of the individual next scheduled on the waiting list to receive the category of service. If the reassessment demonstrates that the individual continues to need the category of service, the board shall offer the service to the individual. If the individual refuses the service, the individual may remain on the waiting list in the individual's current position based on the individual's current need.
- (15) County boards shall review the current status, reassess the service needs, and inform the individual, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, of the individual's current position on all waiting lists and service substitution lists on at least an annual basis. The individual planning process shall address findings of this reassessment and shall include any process or plan for helping the individual prepare for the requested service.
- (16) The county board shall inform each individual on a waiting list, service substitution list, or long-term service planning registry, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, of the alternative services on at least an annual basis.
- (17) If it is determined the individual is not eligible for a category of service, the county board shall remove the individual's name from the list for that service and shall assist the individual with contacting other agencies/programs for which the individual may be eligible. Individuals removed from the list have a right to due process as set forth in paragraph (M) of this rule.
- (D) Except as provided in paragraph (F) of this rule, a county board shall do, as priorities, all of the following in accordance with the assessment component approved under section 5123.046 of the Revised Code of the county board's plan developed under section 5126.054 of the Revised Code:
- (1) For the purpose of obtaining additional federal medicaid funds for home and community-based services, medicaid case management services, and habilitation center services, do both of the following:
- (a) Refinancing of supported living and family support services.
- Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under paragraph (C) of this

rule for home and community-based services that include supported living, residential services, or family support services:

(i) Is twenty-two years of age or older;

(ii) Receives supported living or family support services.

(b) Refinancing of adult services.

Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under paragraph (C) of this rule for home and community-based services that include adult services:

(i) Resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services;

(ii) Receives adult services from the county board.

(2) As federal medicaid funds become available pursuant to paragraph (D)(1) of this rule, give an individual who is eligible for home and community-based services and meets any of the following requirements priority for such services over any other individual on a waiting list established under paragraph (C) of this rule:

(a) Does not receive residential services or supported living, either needs services in the individual's current living arrangement or will need services in a new living arrangement, and has a primary caregiver who is sixty years of age or older;

(b) Is less than twenty-two years of age and has at least one of the following service needs that are unusual in scope or intensity:

(i) Severe behavior problems for which a behavior support plan is needed;

(ii) An emotional disorder for which anti-psychotic medication is needed;

(iii) A medical condition that leaves the individual dependent on life-support medical technology;

(iv) A condition affecting multiple body systems for which a combination of specialized medical, psychological, educational,

or habilitation services are needed:

(v) A condition the county board determines to be comparable in severity to any condition described in paragraphs (D)(2)(b)(i) to (D)(2)(b)(iv) of this rule and places the individual at significant risk of institutionalization.

(c) Is twenty-two years of age or older, does not receive residential services or supported living, and is determined by the county board based upon the criteria set forth in paragraphs (D)(2)(b)(i) to (D)(2)(b)(v) of this rule to have intensive needs for home and community-based services on an in-home or out-of-home basis.

(3) Individuals seeking to leave ICFs/MR or nursing facilities.

In state fiscal years 2002 and 2003, the county board shall give an individual who is eligible for home and community-based services, resides in an ICF/MR or nursing facility, chooses to move to another setting with the help of home and community-based services, and has been determined by the department to be capable of residing in the other setting, priority over any other individual on a waiting list established under paragraph (C) of this rule for home and community-based services who does not meet these criteria. The department shall identify the individuals to receive priority under paragraph (D)(3) of this rule, assess the needs of the individuals, and notify the county boards that are to provide the individuals priority under paragraph (D)(3) of this rule of the individuals identified by the department and the individuals' assessed needs.

(E) Notification

A county board shall, in accordance with a protocol developed by the department, develop and implement a procedure for the timely notification of each individual currently on the county board's waiting list, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, of the priorities in section 5126.042 of the Revised Code and this rule and the individual's due process and appeal rights. The county board shall document that notice was given and the content of such notice.

(F) Emergency status

An individual with emergency status shall receive first priority for services. No individual may receive priority for services pursuant to paragraph (D) of this rule over an individual placed on a waiting list with an emergency status.

(G) Order for offering services to individuals with priority

(1) If two or more individuals on a waiting list established under paragraph (C) of

this rule for home and community-based services have priority for the services pursuant to paragraph (D)(1) or (D)(2) of this rule, a county board may, until December 31, 2003, offer the services to the individuals with priority under paragraph (D)(1) or (D)(2) of this rule in a manner that, to the greatest extent possible, achieves the following objectives:

(a) The maximization of federal funding;

(b) A mix between the number of individuals with priority under paragraph (D)(1) this rule and the number of individuals with priority under paragraph (D)(2) of this rule;

(c) A reasonable contribution by the county board to increase the enrollment into home and community-based services during each state fiscal year of at least five hundred individuals who did not receive residential services, supported living, or home and community-based services in the prior state fiscal year, in accordance with section 5123.046 of the Revised Code;

(d) In dealing with living arrangements, the following objectives:

(i) The promoting of individuals' ability to choose other individuals with priority under paragraph (D)(1) or (D)(2) of this rule with whom to live if the individuals have an existing relationship;

(ii) The filling of vacancies in living arrangements with individuals who have priority under paragraph (D)(1) or (D)(2) of this rule.

(2) Until December 31, 2003, when there is no individual with priority for home and community-based services pursuant to paragraph (D)(1) or (D)(2) of this rule available and appropriate for the services, a county board may offer the services to an individual not given such priority for the services who is on a waiting list for the services pursuant to paragraph (C) of this rule in order to fill a vacancy in a living arrangement or in other circumstances where the services are appropriate for the individual. Individuals offered services pursuant to this paragraph shall be selected in the order they are placed on the waiting list based on the date and time of their request for services.

(3) When individuals are offered services in accordance with the process set forth in paragraph (G)(1) of this rule and two or more individuals have equal rank, the county board shall offer the home and community-based services to such individuals in the order they are placed on the waiting list based on the date and time of their request for services.

(H) After December 31, 2003 or if the county board chooses not to use the process specified in paragraph (G) of this rule, the county board shall offer the home and community-based services to such individuals in the order they are placed on the

waiting list based on the date and time of their request for services with such exceptions as may be permitted or required under applicable law.

(I) The plan submitted by the county board pursuant to section 5126.054 of the Revised Code shall be consistent with policies adopted by the board that implement paragraph (G) or (H) of this rule.

(J) Service substitution list

(1) An individual who currently receives a service but would like to change to a service in the same category established by a county board under paragraph (C) of this rule, shall not be placed on a waiting list but shall be placed on a service substitution list. The county board shall work with the individual, service providers, and all appropriate entities to facilitate the transfer as expeditiously as possible.

(2) Individuals shall be placed on the service substitution list ranked in an order based on the date and time of their request to change to another type of service within a category.

(3) A county board may establish priorities for making placements on its service substitution lists according to an individual's emergency status.

(4) No individual who is within the group described in paragraph (D)(3) of this rule shall be placed on a service substitution list.

(K) Limitations on priority categories

(1) No more than four hundred individuals in the state may receive priority for services during the state 2002 and 2003 biennium pursuant to paragraph (D)(2)(b) of this rule.

(2) No more than a total of seventy-five individuals in the state may receive priority for services during state fiscal years 2002 and 2003 pursuant to paragraph (D)(3) of this rule.

(L) Long-term service planning registry

(1) A county board shall maintain a long-term service planning registry to record an individual's intent to request services in the future. At the time an individual's name is placed on the registry, a county board shall inform the individual, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, that the registry is not a waiting list.

(2) The county board may not place an individual on the long-term service planning registry who meets the conditions for receipt of services on an emergency basis.

- (3) The county board shall notify at least on an annual basis each individual on the long-term service planning registry, the individual's guardian, and in accordance with paragraph (C)(13) of this rule, the individual's family, as applicable, of the following:
- (a) That the registry is not a waiting list;
  - (b) The process to follow to notify the county board of a request for services and placement on the waiting list.
- (4) When an individual on the long-term service planning registry requests to be placed on the waiting list, the county board shall reassess the individual and place the individual on the appropriate waiting list using the new request date.
- (5) A county board shall use the long-term service planning registry as a planning tool for development and funding of future services.

(M) Due process

- (1) A county board shall provide due process rights to all individuals placed on waiting lists, service substitution lists, or a long-term service planning registry. Due process shall be available to any individual aggrieved by an action of the county board related to the following:
- (a) The approval, denial, withholding, reduction, suspension, or termination of a service funded by the medicaid program.
  - (b) The establishment or maintenance of, placement on, the failure to offer services in accordance with, or removal from a waiting list, service substitution list, or long-term service planning registry.
- (2) Due process shall be provided in accordance with Chapters 5101:6-1 to 5101:6-9 of the Administrative Code when the service involved is funded by the medicaid program and in accordance with rule 5123:2-1-12 of the Administrative Code when the services involved are not medicaid-funded.
- (3) If an individual is aggrieved in accordance with paragraph (M)(1) of this rule, a county board may, if the county board has adopted a grievance procedure under rule 5123:2-1-12 of the Administrative Code, attempt to informally resolve the matter through the grievance procedure. The filing of a grievance under the grievance procedure shall not affect the right of the individual to due process in accordance with paragraph (M)(1) of this rule.
- (4) A county board shall, in the manner specified in rule 5123:2-1-12 of the Administrative Code, give notice to each individual on the waiting list, the individual's guardian, and in accordance with paragraph (C)(13) of this rule,

the individual's family, as applicable, of the individual's due process rights. The county board shall document that notice was given and the content of such notice.

- (N) Not later than the fifteenth day of March of each even-numbered year, a county board shall prepare and submit to the director of the department its recommendations for funding of services for individuals and its proposals for reducing waiting lists for services. The report of the county board required under this paragraph may be incorporated in the county plan required to be submitted under section 5126.054 of the Revised Code.
- (O) The department shall monitor compliance with this rule by the county boards and their contract agencies. Technical support will be provided by the department upon request and through regional and statewide trainings.
- (P) When any part of this rule requires disclosure of alternative services, the county board shall ensure that providers are identified in accordance with sections 5126.046 and 5126.055 of the Revised Code and rules adopted by the department regarding free choice of provider.
- (Q) A county board which operates an ICF/MR and other operators of ICFs/MR shall not be subject to the requirements of this rule with respect to persons requesting admission to an ICF/MR. Requests for admission to ICFs/MR shall be subject to the requirements of rule 5101:3-3-02 of the Administrative Code.
- (R) Nothing in the rule shall be interpreted to alter the obligation of a county board to provide a service, which it is required to provide under applicable law. Nothing in the rule shall be interpreted to create an obligation of a county board to provide a service, unless the obligation exists under applicable law.

Replaces: Part of rules 5123:1-2-10 and 5123:2-1-02

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