

5123:2-9-01

HCBS waivers - Enrollment and disenrollment.**(A) Purpose**

The purpose of this rule is to establish procedures for the enrollment, denial of enrollment and disenrollment of individuals in HCBS waivers.

(B) Definitions

- (1) "CMS" means the centers for medicare and medicaid services.
- (2) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code or a person or government entity, including a council of governments, with which a county board has contracted for assistance with its medicaid local administrative authority pursuant to division (E) of section 5126.055 of the Revised Code.
- (3) "CDJFS" means county department of job and family services.
- (4) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (5) "FFP" means federal financial participation.
- (6) "HCBS" means medicaid-funded home and community-based services provided under a medicaid component that the department administers pursuant to section 5111.871 of the Revised Code.
- (7) "ICF/MR" means intermediate care facility for the mentally retarded.
- (8) "ODJFS" means the Ohio department of job and family services as established by section 121.02 of the Revised Code.
- (9) "PAWS" means payment authorization for waiver services.
- (10) "Prescreen tool" means an assessment for the level one waiver.
- (11) "SSA" means service and support administrator, a county board employee who provides a variety of coordination activities for individuals in accordance with section 5126.15 of the Revised Code.

(C) The county board shall ensure and/or assist the individual with the submission of the application for HCBS waiver enrollment (JFS 02399) to the CDJFS. The department shall accept notification of requests for HCBS waiver enrollment that are referred by the CDJFS. The department shall notify the appropriate county board when it receives a notification of a request from the CDJFS.

(D) A county board that contracts with a person or government entity, including a council of governments, for assistance with its medicaid local administrative authority pursuant to division (E) of section 5126.055 of the Revised Code shall notify in writing the director of the department that the person or government entity will implement the requirements of this rule on behalf of the county board, if the tasks and responsibilities that the contract gives to the person or government entity include the county board's tasks and responsibilities under this rule.

(E) For each separate HCBS waiver, the department may authorize enrollment by allocating to county boards enrollment numbers in accordance with rule 5123:2-9-03 of the Administrative Code, when the number of filled waiver slots for each waiver year is less than the number of waiver slots approved by CMS for that waiver year. The department shall provide notice of such allocation to county boards. Within ninety calendar days from receipt of such notice from the department, the county board shall submit the assessments and other necessary enrollment information pursuant to paragraph (F) of this rule. The county board may request an extension of the deadline referenced in this paragraph. Failure of the county board to meet the requirements of this paragraph shall result in the department providing the county board with a fifteen day prior notice that the authorization to enroll pursuant to rule 5123:2-9-03 of the Administrative Code is to be withdrawn.

(F)

(1) Upon authorization by the department to enroll individuals in HCBS waivers, the county board shall:

(a) Determine the individual's eligibility for county board services. Individuals determined to have an ICF/MR level of care and who meet all other eligibility criteria shall be eligible for HCBS waiver enrollment even if determined not eligible for county board services in accordance with this paragraph.

(b) Complete the required assessments of the individual in accordance with rules 5101:3-3-07 and 5101:3-3-15.5 of the Administrative Code and paragraphs (F)(1)(b)(i) and (F)(1)(b)(ii) of this rule.

(i) For the level one waiver, administer the prescreen tool to individuals who seek enrollment to identify any health and welfare needs that must be addressed before enrollment and, as necessary, to identify any non-waiver services and supports the individual needs to assure the individual's health and welfare. The SSA shall follow the protocol developed by the department in the administration of the prescreen tool, which shall address the circumstances in which the individual will be enrolled in the level one waiver.

(ii) For other HCBS waivers administered by the department, complete any assessment specific to those waivers in accordance with rules adopted by the department.

(c) Forward to the department all necessary enrollment information, including a request for an ICF/MR level of care determination with respect to the individual.

(2) Upon receipt of the county board's request for an ICF/MR level of care determination, the department shall determine whether the individual has an ICF/MR level of care in accordance with rules 5101:3-3-07 and 5101:3-3-15.5 of the Administrative Code.

(G)

(1) Individuals determined eligible for waiver services shall receive written notice from the department and waiver services may be initiated on the date indicated by the department. The department shall also notify the county board.

(2) Individuals determined not eligible for HCBS waiver services shall receive written notice of the denial from the department in accordance with paragraph (K) of this rule. The department also shall notify the county board.

(H)

(1) The county board shall submit an ICF/MR level of care redetermination to the department in accordance with rule 5101:3-3-15.5 of the Administrative Code.

(2) Subsequent to initial enrollment in HCBS waivers, the county board shall evaluate the current needs and circumstances of the individual in relationship to the services and activities described on the individual's most current individual service plan (ISP) and recommend appropriate action to the department, which may include a recommendation to disenroll the individual from the HCBS waiver, when any one of the following occur:

(a) There is a significant change in the individual's condition as defined in rule paragraph (B)(10) of rule 5101:3-3-15.5 of the Administrative Code.

(b) The individual is admitted to a nursing facility or ICF/MR or is incarcerated.

(c) The individual fails or refuses to use services in accordance with the ISP.

(d) The individual interferes with or otherwise refuses to cooperate with the county board and such interference or refusal to cooperate renders the county board unable to perform its medicaid local administrative authority under section 5126.055 of the Revised Code.

(e) The individual ceases to meet the eligibility criteria for enrollment in the HCBS waiver.

(3) Upon receipt of a recommendation from a county board in accordance with paragraph (H)(2) of this rule, the department shall within a reasonable period of time make a determination, inform the county board accordingly and take whatever additional actions that may be required by law, which may include, but are not limited to, proposing to disenroll the individual from the HCBS waiver in accordance with paragraph (K) of this rule.

(I)

(1) When the cost of waiver services for the individual exceeds the amount authorized by CMS for the waiver in which the individual is enrolled, the county board shall evaluate the individual and submit a recommendation to the department regarding whether or not the individual can remain enrolled in the waiver and have his or her health and welfare assured by one or more of the following measures:

(a) Adding more available natural supports;

(b) Accessing available non-waiver services, other than natural supports;

(c) Accessing funds on deposit in a county MR/DD medicaid reserve fund or the state bridge fund in accordance with rule 5123:1-5-02 of the Administrative Code;

(d) If the individual is enrolled in the level one waiver, accessing services available under the emergency assistance service covered by that waiver; or

(e) If the individual is enrolled in the level one waiver, prior authorizing additional services or levels of service subject to the limitations of that waiver.

The county board shall consider all of the measures set forth in paragraphs (I)(1)(a) to (I)(1)(e) of this rule before submitting a recommendation to the department.

(2) Upon receipt of a recommendation from a county board in accordance with paragraph (I)(1) of this rule, the department shall within a reasonable period

of time make a determination as to the individual's continued enrollment in the waiver and inform the county board accordingly. If the department determines that the individual can not continue to be enrolled in the waiver and have his or her health and welfare assured by one or more of the measures set forth in paragraph (I)(1) of this rule, the department shall propose to disenroll the individual from the waiver in accordance with paragraph (K) of this rule.

(3) When the department proposes to disenroll an individual in accordance with paragraph (I)(2) of this rule, the county board shall do both of the following:

(a) Offer the individual the opportunity to apply for an alternate HCBS waiver for which the individual is eligible that may more adequately respond to the services needs of the individual, to the extent that such waiver openings exist; and

(b) Offer the individual an opportunity for placement in an ICF/MR including a state-operated developmental center.

(J) Replacement of a disenrolled individual shall be initiated by the county board and authorized by the department when the federally authorized limit of participants and FFP for the current waiver year has not been reached.

(1) The county board shall replace the disenrolled individual with an individual selected pursuant to rule 5123:2-1-08 of the Administrative Code.

(2) Failure of the county board to replace a disenrolled individual shall result in the department providing the county board with a fifteen day prior notice that the authorization to enroll pursuant to rule 5123:2-9-03 of the Administrative Code is to be withdrawn.

(K) When the enrollment or denial of enrollment in or disenrollment from an HCBS waiver is proposed, written notice shall be provided to the individual at least fifteen days prior to the proposed action. Notification shall include information informing the individual of his or her right to a state hearing under section 5101.35 of the Revised Code and Chapters 5101:6-1 to 5101:6-9 of the Administrative Code. If the individual exercises his or her right to appeal within fifteen days of the date of the notice, the proposed action shall not be taken pending the outcome of the state hearing. When enrollment, denial of enrollment, or disenrollment is proposed because of the county board's recommendation, and the individual requests a state hearing, the county board shall comply with its obligation to participate in the state hearing in accordance with section 5126.055 of the Revised Code. The department and the county board shall abide by the findings of the state hearing.

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Certification

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