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5123:2-9-01 Home and community-based services waivers - enrollment and disenrollment.

(A) Purpose

This rule establishes procedures for the enrollment, denial of enrollment, and disenrollment of individuals in home and community-based services waivers administered by the Ohio department of developmental disabilities.

(B) Definitions

- (1) "Alternative services" means the various programs, services, and supports, regardless of funding source, other than home and community-based services, that exist as part of the developmental disabilities service system and other service systems including, but not limited to:
 - (a) Services provided directly by a county board;
 - (b) Services funded by a county board and delivered by other providers;
 - (c) Services provided and funded outside the developmental disabilities service system; and
 - (d) Services provided at the state level.
- (2) "County board" means a county board of developmental disabilities 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 section 5126.055 of the Revised Code.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Home and community-based services" means medicaid-funded home and community-based services provided under a medicaid component that the department administers pursuant to section 5166.21 of the Revised Code.
- (5) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
- (6) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.

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- (7) "Natural supports" means the personal associations and relationships typically developed in the community that enhance the quality of life for individuals. Natural supports may include family members, friends, neighbors, and others in the community or organizations that serve the general public who provide voluntary support to help an individual achieve agreed upon outcomes through the individual service plan development process.
- (8) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.
- (9) "Waiver year" means the twelve-month period that begins on the date the waiver takes effect and the twelve-month period following each subsequent anniversary date of the waiver.

(C) Requests for home and community-based services

The county board shall submit or assist the individual with submission of the Ohio department of medicaid form 02399, "Request for Medicaid Home and Community-Based Services" (revised July 2014), to the county department of job and family services. The department shall accept notification of requests for home and community-based services waiver enrollment that are referred by the county department of job and family services. The department shall notify the appropriate county board when it receives a notification of a request from the county department of job and family services.

(D) Eligibility criteria for enrollment in home and community-based services waivers

To be eligible for enrollment in a home and community-based services waiver administered by the department an individual shall:

- (1) Be eligible for Ohio medicaid in accordance with rule ~~5160:1-2-01.6~~ 5160:1-2-03 of the Administrative Code;
- (2) Have a developmental disabilities level of care in accordance with rule 5123:2-8-01 of the Administrative Code;
- (3) Choose enrollment in a home and community-based services waiver in lieu of an opportunity for placement in an intermediate care facility for individuals with intellectual disabilities;
- (4) Require, at a minimum, one waiver service;

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- (5) Participate in the development of his or her individual service plan; and
- (6) Be able to have his or her health and welfare needs met through waiver services at or below the federally approved cost limitation, and through a combination of informal and formal supports including, but not limited to, waiver services, medicaid state plan services, private health insurance plan benefits, non-waiver services, and/or natural supports.

(E) Responsibilities for enrollment

- (1) A county board shall enroll individuals in home and community-based services waivers in accordance with rule 5123:2-1-08 of the Administrative Code.
- (2) When a county board intends to enroll an individual in a home and community-based services waiver, the county board shall request the department to authorize waiver capacity for the individual to be enrolled.
- (3) Upon authorization by the department to enroll an individual in a home and community-based services waiver, ~~the following activities shall take place:~~
 - (a) The county board shall determine the individual's eligibility for county board services. An individual determined to have a developmental disabilities level of care who meets all other eligibility criteria for home and community-based services waivers shall be eligible for home and community-based services waiver enrollment even if determined ineligible for county board services. The department may review a determination by a county board that an individual enrolled in a home and community-based services waiver is ineligible for county board services.
 - (b) The county board shall complete the required assessments of the individual in accordance with rule 5123:2-8-01 of the Administrative Code and any other assessments specific to the waiver in which the individual is seeking enrollment.
 - (c) Within ninety calendar days of the department's authorization to enroll an individual, the county board shall forward to the department all necessary enrollment information, including a request for developmental disabilities level of care determination with respect to the individual.
 - (d) The department shall determine whether the individual meets the criteria for a developmental disabilities level of care as specified in rule 5123:2-8-01 of the Administrative Code.

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(e) The department shall send notification to the individual upon completion of the level of care determination in accordance with paragraph ~~(H)~~ (J) of this rule.

(f) The county board shall submit a payment authorization for waiver services to the department within ninety calendar days of the individual's enrollment.

(F) Continued enrollment and disenrollment

(1) The county board shall submit a developmental disabilities level of care redetermination at least annually to the department in accordance with rule 5123:2-8-01 of the Administrative Code.

(2) Subsequent to initial enrollment of an individual in a home and community-based services waiver, the county board shall evaluate the current needs and circumstances of the individual in relationship to the services and activities described in the individual's most recent individual service plan and recommend appropriate action to the department, which may include a recommendation to disenroll the individual from the home and community-based services waiver, when:

(a) There is a significant change of condition as defined in rule 5123:2-8-01 of the Administrative Code;

(b) The individual is admitted as an inpatient to a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or is incarcerated if such admission or incarceration is reasonably anticipated to exceed ninety calendar days;

(c) The individual fails or refuses to use services in accordance with his or her individual service plan;

(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 home and community-based services waiver;

(f) The individual's health and welfare cannot be assured in accordance with the requirements of paragraph (D)(6) of this rule; or

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- (g) The individual requests to be disenrolled from the home and community-based services waiver.
- (3) When the cost of waiver services for the individual exceeds the amount authorized by the centers for medicare and medicaid services for the waiver in which the individual is enrolled, the county board shall evaluate the individual, consider the measures set forth in paragraphs (F)(3)(a) to (F)(3)(e) of this rule, 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 additional medicaid state plan services;
 - (d) Accessing private health insurance plan benefits; and/or
 - (e) Sharing supports and services, such as natural supports and non-waiver services, by collaborating with other systems, organizations, agencies, and people with and without disabilities.
- (4) Upon receipt of a recommendation from a county board in accordance with paragraph (F)(2) or (F)(3) 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, and take whatever additional actions may be required by law. If the department determines that the individual cannot 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 (F)(3) of this rule, the department shall propose to disenroll the individual from the waiver in accordance with ~~the notice provisions in paragraph (I)(2)~~ paragraph (J) of this rule.
- (5) When the department proposes to disenroll an individual in accordance with paragraph (F)(2) or (F)(3) of this rule, the county board shall ~~do both of the following~~:
 - (a) Offer the individual the opportunity to apply for an alternative home and community-based services waiver for which the individual is eligible that may more adequately address the needs of the individual, to the extent that such waiver openings exist; and

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- (b) Assist the individual in identifying and obtaining alternative services that are available and may more adequately address the needs of the individual.
- (6) In the event that options set forth in paragraphs (F)(5)(a) and (F)(5)(b) of this rule do not meet the individual's needs, the county board may offer the individual an opportunity for placement in an intermediate care facility for individuals with intellectual disabilities.
- (G) Suspension of medicaid waiver payment
 - (1) In the event an individual is admitted as an inpatient to a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities or is incarcerated, the county board shall notify the department.
 - (a) Upon receipt of notification, the department shall suspend medicaid waiver payments for the individual for a period not to exceed ninety calendar days during the time the individual is admitted as an inpatient or is incarcerated.
 - ~~(b) Within ninety calendar days of the date of admission, if the individual continues to remain in the hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities, the county board shall recommend to the department either disenrollment from the waiver or continued suspension of medicaid waiver payments. If the county board recommends a continued suspension of medicaid waiver payments, it shall provide the following information to the department:~~
 - ~~(i) Evidence of reasonable expectations that the individual will return to the community;~~
 - ~~(ii) Evidence of active planning to ensure a successful transition to the community; and~~
 - ~~(iii) An assurance that services outlined in the individual service plan are sufficient to ensure the individual's health and welfare in the community.~~
 - ~~(c) Upon review of the county board's recommendation, the department may grant an extension for a period of time and under such conditions it deems appropriate.~~
 - (b) When the individual continues to remain admitted as an inpatient or incarcerated, the county board shall, prior to the ninety-first calendar day after the date of admission as an inpatient or incarceration, submit a

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recommendation to the department to disenroll the individual from the home and community-based services waiver.

- (2) Upon receipt of a recommendation from a county board in accordance with paragraph ~~(F)(2), (F)(3), or~~ **[Note: (F)(2) and (F)(3) are addressed in paragraph (F)(4).]** (G)(1)(b) 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, inform the county board accordingly, and take whatever additional actions may be required by law, which may include, but are not limited to, proposing to disenroll the individual from the home and community-based services waiver in accordance with paragraph (J) of this rule. If the department determines to disenroll an individual based on a recommendation by the county board, the county board may request a new waiver when the individual is discharged from the hospital, nursing facility, or immediate care facility for individuals with intellectual disabilities or is no longer incarcerated.

(H) Reenrollment

An individual who is disenrolled from a home and community-based services waiver shall be reenrolled in that waiver upon the individual's request provided:

- (1) The circumstances leading to the individual's disenrollment have been resolved;
- (2) The individual meets the eligibility criteria for enrollment in home and community-based services waivers in accordance with paragraph (D) of this rule; and
- (3) The effective dates of disenrollment and reenrollment occur within in the same waiver year.

~~(H)~~ (I) Waiver capacity

In accordance with section 5126.054 of the Revised Code, a county board shall annually inform the department of its waiver capacity request. Based on the county board's request, the department may authorize enrollment when the number of filled waivers for each year is less than the number of waivers approved by the centers for medicare and medicaid services for that year. The department shall provide notice of waiver capacity 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 (E) of this rule. The county board may request and the department may grant for good cause, an extension of the deadline referenced in this paragraph. Failure of the county board

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to meet the requirements of this paragraph shall result in the department providing the county board with prior notice of no less than fifteen calendar days that the authorization to enroll pursuant to this rule is to be withdrawn.

~~(H)~~ (J) Required notices

- (1) The department shall send written notice to an individual and the county board when the individual is enrolled in a home and community-based services waiver. The notice shall include the date on which waiver services may be initiated.
- (2) The department shall send written notice to an individual and the county board when the individual is disenrolled from a home and community-based services waiver. The notice shall be made in accordance with paragraph ~~(H)~~ (J)(3) of this rule.

~~(J)~~ Due process notification

(3) When denial of enrollment in or disenrollment from a home and community-based services waiver is proposed, the department shall provide written notice to the individual no less than fifteen calendar days prior to the effective date of the proposed action. Notification shall inform the individual of his or her right to a state hearing under section 5160.31 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 calendar days of the date of the notice, the proposed action shall not be taken pending the outcome of the state hearing the individual shall receive notice of his or her right to a state hearing in accordance with section 5160.31 of the Revised Code and rules implementing that statute.

(a) The department shall issue the notice when:

- (i) Denial of enrollment is based on a determination that the individual does not meet the criteria for a developmental disabilities level of care; or
- (ii) The department proposes disenrollment for any reason, including disenrollment based on the county board's recommendation made in accordance with paragraph (F)(2), (F)(3), or (G)(1)(b) of this rule.

(b) The county board shall issue the notice when the county board proposes to deny enrollment based on the individual's position on the waiting list for home and community-based services waivers established in accordance with rule 5123:2-1-08 of the Administrative Code.