

5123-4-01Administration and operation of county boards of developmental disabilities.(A) Purpose

This rule establishes standards for the administration and operation of county boards of developmental disabilities that protect the rights of individuals and ensure the safe and equitable provision of services to eligible individuals and their families.

(B) Definitions

(1) "Adult services" has the same meaning as in section 5126.01 of the Revised Code.

(2) "County board" means a county board of developmental disabilities.

(3) "Department" means the Ohio department of developmental disabilities.

(4) "Developmental delay" means that a child has not reached developmental milestones expected for his or her chronological age as measured by qualified professionals using appropriate diagnostic instruments and/or procedures.

(a) For children birth through age two, developmental delay shall be established in accordance with part C and rules promulgated by the department.

(b) For children age three through age five, developmental delay shall be established in accordance with rules promulgated by the Ohio department of education.

(5) "Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(a) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code;

(b) It is manifested before age twenty-two;

(c) It is likely to continue indefinitely;

(d) It results in one of the following:

(i) In the case of a person birth through age two, at least one developmental delay or a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay;

- (ii) In the case of a person age three through age five, at least two developmental delays; or
- (iii) In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for his or her age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is age sixteen or older, capacity for economic self-sufficiency; and
- (e) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.
- (6) "Early intervention services" means developmental services selected in collaboration with the parents of a child birth through age two who is eligible for services under part C, and designed to meet the developmental needs of the child and the needs of the child's family to assist appropriately in the child's development as identified in the individualized family service plan.
- (7) "Early intervention system" means Ohio's statewide, coordinated, comprehensive, interagency system for which the department is the lead agency, that promotes transdisciplinary, family-centered services and supports to eligible children birth through age two and their families in accordance with part C.
- (8) "Family support services" means a family support services program described in and administered pursuant to section 5126.11 of the Revised Code.
- (9) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (10) "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.
- (11) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (12) "Individualized family service plan" means the written plan for providing early intervention services to an eligible child and the child's family.
- (13) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.

- (14) "Medicaid local administrative authority" has the same meaning as in section 5126.055 of the Revised Code.
- (15) "Part C" means part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this rule, and 34 C.F.R. part 303, as in effect on the effective date of this rule.
- (16) "Service and support administration" means the duties performed by a service and support administrator pursuant to section 5126.15 of the Revised Code.

(C) Strategic plan

- (1) A county board shall develop and adopt by resolution a strategic plan that meets the requirements of sections 5126.04 and 5126.054 of the Revised Code, includes the county board's mission and vision, and addresses the county board's strategy for:
- (a) Promoting self-advocacy by individuals served by the county board through the person-centered planning process, activities, and community connections;
  - (b) Ensuring that individuals receive services in the most integrated setting appropriate to their needs;
  - (c) Reducing the number of individuals in the county waiting for services;
  - (d) Increasing the number of individuals of working age engaged in community employment;
  - (e) Taking measures to recruit sufficient providers of services to meet the needs of individuals receiving services in the county; and
  - (f) Meeting with each newly certified independent provider within sixty calendar days of the provider being selected to provide services to an individual, for purposes of confirming the provider understands the individual service plan and the provider's responsibilities and ensuring the provider has contact information for the county board.
- (2) The strategic plan shall be made readily available to individuals and families who receive services, employees of the county board, citizens of the county, and any other interested persons.
- (3) A county board shall prepare a strategic plan progress report at least once per year. The strategic plan progress report shall be made readily available to individuals

and families who receive services, employees of the county board, citizens of the county, and any other interested persons.

(4) A county board shall have a mechanism for accepting public feedback regarding the strategic plan and strategic plan progress reports.

(D) Eligibility determination for county board services

(1) Except as provided in paragraph (H) of this rule, a county board shall make eligibility determinations for county board services in accordance with the definition of "developmental disability" in paragraph (B)(5) of this rule.

(2) For persons age sixteen or older, a substantial functional limitation in a major life area is determined through completion of the Ohio eligibility determination instrument (available at <http://dodd.ohio.gov>) or an alternative instrument issued by the department for use in determining eligibility for county board services and application of criteria found therein.

(3) For persons age six through age fifteen, a substantial functional limitation in a major life area is determined through completion of the children's Ohio eligibility determination instrument (available at <http://dodd.ohio.gov>) or an alternative instrument issued by the department for use in determining eligibility for county board services and application of criteria found therein. The children's Ohio eligibility determination instrument or an alternative instrument issued by the department for use in determining eligibility for county board services is used in the eligibility determination process for the county board for all services and supports other than special education services.

(4) The Ohio eligibility determination instrument, the children's Ohio eligibility determination instrument, and any alternative instrument issued by the department for use in determining eligibility for county board services shall be administered by persons employed by county boards or regional councils of governments formed under section 5126.13 of the Revised Code by two or more county boards and authorized to do so by the department.

(5) A county board may establish eligibility for county board services for any preschool child with a disability eligible for services under section 3323.02 of the Revised Code whose disability is not attributable solely to mental illness as defined in section 5122.01 of the Revised Code.

(6) A county board shall complete eligibility determination within forty-five calendar days of the request for services or after all necessary information has been received from the referring party or applicant except that:

- (a) For children birth through age two, the eligibility report completed by or for the early intervention system shall be used for eligibility determination; and
- (b) For children age three through age five, the evaluation completed by or for the school district for preschool special education may be used for eligibility determination.
- (7) A county board shall keep on file the documents used to determine eligibility for county board services of all persons who apply after July 1, 1991, whether or not such persons are found to be eligible. Information on persons found to be ineligible shall be maintained for five years after such determination is made.
- (8) When a person who has been determined eligible for county board services after July 1, 1991 moves or wants to move to another county in Ohio, that person shall be deemed eligible by the new county board. The new county board, however, may review the person's eligibility. During the review, the person continues to be eligible to receive services according to the new county board's strategic plan and priorities.
- (9) All persons who were eligible for county board services and receiving county board services pursuant to Chapter 5126. of the Revised Code on July 1, 1991, shall continue to be eligible for those services and to receive services as long as they are in need of services.
- (10) All persons who were eligible for case management services and receiving case management services pursuant to Chapter 5126. of the Revised Code on January 10, 1992, shall continue to be eligible for those services and to receive services as long as they are in need of services.
- (11) All persons determined ineligible for county board services shall be referred, with their consent, to other agencies or sources of services.
- (12) All persons determined ineligible for county board services shall be informed of the process for resolution of complaints and appeals of adverse action in accordance with rule 5123:2-1-12 of the Administrative Code.

(E) Waiting lists for non-medicaid programs and services

- (1) If a county board determines that available resources are not sufficient to meet the needs of all individuals who request non-medicaid programs or services, the county board shall establish one or more waiting lists for such programs or services in accordance with the county board's strategic plan described in

paragraph (C) of this rule except that a waiting list shall not be established for early intervention services to eligible children and their families.

- (2) Due process in accordance with rule 5123:2-1-12 of the Administrative Code shall be available to an individual aggrieved by an action of a county board related to the establishment or maintenance of, placement on, the failure to offer services in accordance with, or removal from a waiting list for non-medicaid programs and services established in accordance with paragraph (E)(1) of this rule. A county board may, if it has adopted a written policy describing an informal process for resolution of complaints and appeals of adverse action in accordance with rule 5123:2-1-12 of the Administrative Code, attempt to informally resolve the matter. An attempt to informally resolve the matter shall not affect the individual's right to due process.
- (3) 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 for non-medicaid programs and services established in accordance with paragraph (E)(1) of this rule, the individual's guardian, and in accordance with section 5126.044 of the Revised Code, the individual's family, as applicable, of the individual's due process rights. The county board shall document that such notice was given and the content of the notice.
- (4) Upon the department's request, a county board shall submit in a format specified by the department, documentation related to its waiting lists for non-medicaid programs and services established in accordance with paragraph (E)(1) of this rule, including but not limited to, information regarding individuals who requested services or were removed from a waiting list.

(F) Statutory authority

A county board shall carry out its duties and responsibilities in accordance with Chapter 5126. of the Revised Code. If a county board operates classrooms for children, the county board shall be licensed by the Ohio department of job and family services or the Ohio department of education, as applicable.

(G) Medicaid local administrative authority

- (1) A county board with medicaid local administrative authority shall abide by all terms and conditions set forth in the federally-approved waiver documents including any appendices and attachments, sections 5126.055 and 5166.21 of the Revised Code, and administrative rules promulgated by the Ohio department of medicaid.

- (2) The department shall oversee medicaid local administrative authority activities to ensure compliance with applicable laws. If the department determines that a county board with medicaid local administrative authority is deficient in its administration of medicaid waiver services, the department may take appropriate actions authorized by applicable law including, but not limited to, division (G) of section 5126.055 of the Revised Code or section 5126.056 of the Revised Code.
- (3) A county board that participates in the department's medicaid administrative claiming program shall comply with the department's policies and procedures governing medicaid administrative claiming and refund any payments that are disallowed by the department, the Ohio department of medicaid, or the centers for medicare and medicaid services. A county board may challenge a disallowance by the department in accordance with rule 5123:2-17-01 of the Administrative Code.
- (4) When the department refers an individual for whom the department is paying the nonfederal share of medicaid expenditures for home and community-based services to a county board for enrollment in home and community-based services, the county board shall assist the department in expediting the enrollment.

(H) Service and support administration

A county board shall determine eligibility for service and support administration, provide service and support administration, and ensure individual service plans are developed in accordance with rule 5123:2-1-11 of the Administrative Code.

(I) Adult services provided to individuals who are not enrolled in home and community-based services waivers

- (1) A county board providing adult services to individuals who are not enrolled in home and community-based services waivers shall adopt a written policy outlining provision of the services.
- (2) Adult services to individuals who are not enrolled in home and community-based services waivers shall be provided pursuant to section 5126.01 of the Revised Code and rule 5123:2-2-05 of the Administrative Code.
- (3) Planning for adult services to individuals who are not enrolled in home and community-based services waivers shall be conducted in accordance with the person-centered planning process described in rule 5123:2-1-11 or 5123:2-3-03 of the Administrative Code, as applicable.

(4) Persons engaged in the direct provision of adult services to individuals who are not enrolled in home and community-based services waivers shall meet the training requirements for persons engaged in the direct provision of comparable home and community-based services as set forth in:

(a) Rule 5123:2-9-13 of the Administrative Code for career planning;

(b) Rule 5123:2-9-14 of the Administrative Code for vocational habilitation;

(c) Rule 5123:2-9-15 of the Administrative Code for individual employment support;

(d) Rule 5123:2-9-16 of the Administrative Code for group employment support; and

(e) Rule 5123:2-9-17 of the Administrative Code for adult day support.

(J) Early intervention services

(1) A county board providing early intervention services shall do so in accordance with part C and rules promulgated by the department.

(2) A county board providing early intervention services shall adopt a written policy describing the county board's role in the county's comprehensive system for early intervention services. The policy shall identify how the county board will provide early intervention services on a year-round basis to eligible children and their families as part of the early intervention system. The policy shall describe the source of funds available to administer early intervention services and the specific role the county board has agreed to fulfill as a partner in the local early intervention system, which may include:

(a) Public awareness/child find;

(b) Evaluation to determine eligibility;

(c) Child and family assessment;

(d) Service coordination;

(e) Early intervention services in everyday routines, activities, and places as developed through the individualized family service plan development process; and



(f) Assurances for procedural safeguards required by part C and rules promulgated by the department.

(K) Family support services

(1) A county board may use funds allocated for the family support services program as match for medicaid home and community-based services waivers.

(2) When a county board directly awards funds allocated for the family support services program to individuals or family members of individuals, the county board shall adopt a written policy governing provision of family support services. The policy shall:

(a) Specify that individuals or family members of individuals may receive family support services funds;

(b) Define family members who are eligible to receive family support services funds;

(c) Describe goods and services that may be purchased with family support services funds;

(d) Address whether or not the county board will use an income-based fee schedule to determine eligibility for family support services funds, and if an income-based fee schedule is used, whether or not the county board will require applicants to submit documentation to verify their income;

(e) Set forth the process for individuals and family members to apply for family support services funds and for the county board to review and approve/disapprove applications; and

(f) Describe payment processes that meet requirements established by the county auditor.

(L) Employees

(1) A county board shall enroll each service and support administrator and each staff member who is engaged in a direct services position in the Ohio attorney general's retained applicant fingerprint database ("Rapback").

(2) A county board shall provide annual written notice to each staff member explaining the conduct for which the staff member may be placed on the abuser registry and setting forth the requirement for each staff member who is engaged in a direct services position to report in writing to the county board, if he or she

is formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code within fourteen calendar days after the date of such charge, conviction, or guilty plea.

(M) Volunteers

- (1) A county board may engage volunteers to provide supplementary services. A county board shall not submit claims for medicaid reimbursement for services provided by volunteers.
- (2) A county board shall ensure that volunteers are at all times under supervision of paid supervisory staff of the county board.
- (3) A county board shall ensure that volunteers who provide more than forty hours of service working directly with individuals served by the county board during a calendar year receive training in:
  - (a) The role and responsibilities of the county board with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;
  - (b) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
  - (c) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department; and
  - (d) An overview of emergency procedures.
- (4) A county board shall ensure that volunteers who provide more than forty hours of service working directly with individuals served by the county board during a calendar year undergo background investigations.
  - (a) The background investigation for a volunteer shall include:
    - (i) Requiring the volunteer to submit a statement to the county board with the volunteer's signature attesting that he or she has not been convicted of or pleaded guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

(ii) Requiring the volunteer to sign an agreement under which the volunteer agrees to notify the county board within fourteen calendar days if the volunteer is formally charged with, is convicted of, or pleads guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code. The agreement shall provide that failure to make the notification may result in termination of the volunteer's services.

(iii) Establishing the volunteer is not included in any of the databases described in paragraph (C)(2) of rule 5123:2-2-02 of the Administrative Code.

(iv) Obtaining a criminal records check conducted by the Ohio bureau of criminal identification and investigation. If the volunteer does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the criminal records check shall include information from the federal bureau of investigation.

(b) A county board shall, at a frequency of no less than once every five years, conduct a background investigation in accordance with paragraph (M)(4)(a) of this rule for each volunteer.

(c) A county board shall not engage or continue to engage a volunteer who:

(i) Is included in one or more of the databases described in paragraph (C)(2) of rule 5123:2-2-02 of the Administrative Code; or

(ii) Has a conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code if the corresponding exclusionary period as specified in paragraph (E) of rule 5123:2-2-02 of the Administrative Code has not elapsed.

#### (N) Cost reports

A county board shall annually prepare and electronically file a cost report detailing its income and expenditures in accordance with section 5126.131 of the Revised Code and guidelines established by the department and shall:

(1) Reconcile its income and expenditures on a monthly basis in accordance with standards established by the county auditor;

(2) Retain the cost report and accurate records and documentation necessary to support the cost report for six years from the date of receipt of payment for

the final settlement of the cost report or until an initiated audit is resolved, whichever is longer; and

(3) Ensure its business manager and other county board personnel who prepare cost reports or supporting documentation successfully complete:

(a) A department-provided orientation program in cost report preparation within ninety calendar days of employment or contract; and

(b) Department-provided annual training in cost report preparation thereafter.

#### (O) Records

(1) A county board shall maintain fiscal records that are in compliance with county and state auditor's requirements pursuant to section 149.38 of the Revised Code.

(2) A county board shall adopt written policies and procedures which address confidentiality, access, duplication, dissemination, and destruction of county board personnel records.

(3) A county board shall adopt written policies and procedures which address confidentiality, access, duplication, dissemination, and destruction of records of individuals served in accordance with the Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d, as in effect on the effective date of this rule and as applicable, the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, as in effect on the effective date of this rule.

(4) Records of a county board shall be accessible to department personnel authorized by the director of the department.

(5) A county board shall submit information and reports as directed by the department.

(6) A county board shall ensure that information about individuals served, including the individual's living arrangements and address, guardianship status, and guardian's address and contact information, is updated in the department's information systems within fifteen calendar days of any change.

#### (P) Safety

(1) The design and maintenance of county board facilities and equipment shall be in conformance with all applicable laws, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as in effect on the effective date of this rule.

- (2) Each facility owned, leased, or operated by a county board shall be inspected annually by the local fire marshal or designee to ensure compliance with fire safety practices.
- (3) If a county board provides a swimming program, regardless of location, a person who holds a current "American Red Cross" or equivalent lifeguarding certificate shall be present.
- (4) A county board shall develop written building emergency plans which include procedures for fire, tornado, bomb threat, power failure, natural disaster, medical emergency, and other emergencies. The building emergency plans shall be available to all county board personnel, volunteers, individuals served, parents, and guardians.

#### (Q) Health

- (1) When a county board is directly providing facility-based services, the county board shall adopt written policies and procedures that ensure the general health and well-being of all individuals served and address:
  - (a) Procedure to be followed when individuals are ill or injured, including provision of first aid and emergency treatment;
  - (b) Securing emergency squad or ambulance services or the services of the individual's personal physician;
  - (c) Providing first aid training, cardiopulmonary resuscitation training, and training in universal precautions for infection control including hand-washing and disposal of bodily waste to county board personnel engaged in direct services positions in accordance with rule 5123:2-2-01 of the Administrative Code;
  - (d) Providing suitable first-aid facilities, equipment, and supplies;
  - (e) Providing for the management of communicable diseases, handling of illness on-site, and return after an illness or other health condition; and
  - (f) Posting emergency numbers by each telephone.
- (2) The written policies and procedures described in paragraph (Q)(1) of this rule shall be communicated to all county board personnel, individuals served, parents, guardians, and providers of services, and shall be available upon request by any person.

(3) A county board shall adopt a written policy consistent with applicable statutes concerning administration of medication by county board personnel.

(4) All medication administered by county board personnel shall be pharmacy-labeled to indicate owner, contents, required dosage, and schedule. Such medication shall be secured in a locked cabinet and removed by designated and qualified personnel.

(R) County board accreditation

(1) The department shall conduct an accreditation review of each county board at least once every three years to determine the county board's compliance with applicable statutes and rules. An accreditation review shall include a comprehensive on-site review conducted by representatives of the department at the county board's offices and facilities and may include off-site review of records, documents, or other materials.

(2) There are three possible outcomes of an accreditation review:

(a) The department shall issue accreditation for a term of three years to a county board that exceeds minimum compliance with applicable statutes and rules;

(b) The department shall issue accreditation for a term of one year to a county board that demonstrates minimum compliance with applicable statutes and rules; or

(c) The department shall hold accreditation in abeyance for a county board that is not in compliance with applicable statutes and rules. The department shall work with the county board to develop an acceptable plan of correction within ninety calendar days. If an acceptable plan of correction is not developed within ninety calendar days, the county board may be subject to receivership pursuant to section 5126.081 of the Revised Code. While a county board's accreditation is in abeyance, the county board shall not enroll individuals in home and community-based services waivers.

(3) The department shall notify a county board at least ninety calendar days prior to conducting an accreditation review.

(4) After conclusion of the comprehensive on-site review, the department shall conduct an exit conference with the superintendent of the county board and any other persons the county board invites. The purpose of the exit conference is to provide the county board with an oral summary of the county

board's compliance status and present any findings of noncompliance. The exit conference may be held on-site at the conclusion of the on-site review but shall be conducted no more than five business days following the conclusion of the on-site review except by mutual agreement between the department and the superintendent of the county board.

- (5) The department shall issue a written accreditation review summary to the president of the county board or the president's designee and the superintendent of the county board within seven calendar days of conclusion of the on-site review. The accreditation review summary shall be objective in terms of observations and citations, relying upon documentation that clearly addresses the standards reviewed.
- (6) Within fourteen calendar days of receipt of a written accreditation review summary that includes one or more citations, the county board shall submit to the department, a written appeal or a written plan of correction for each citation. If the county board does not submit a written appeal within fourteen calendar days, the accreditation review summary shall be final and not subject to appeal by the county board.
- (a) The appeal for a citation shall include the county board's basis with supporting documentation for challenging the citation. The department shall allow or disallow the appeal within ten calendar days of receipt.
- (b) If the appeal is disallowed, the county board shall submit a written plan of correction for each citation to the department within fourteen calendar days. The written plan of correction shall include:
- (i) A description of corrective action, including systemic changes necessary to prevent recurrence;
- (ii) Implementation date of corrective action;
- (iii) Person responsible for implementing corrective action; and
- (iv) Supporting documentation which verifies implementation of corrective action.
- (c) The department shall approve or disapprove the plan of correction within twenty calendar days of receipt.
- (d) The department shall not issue accreditation until the county board's written plan of correction is approved.

(7) The department shall recognize county boards that demonstrate excellence through achievement of outstanding results or development of successful approaches regarding employment, self-advocacy, substantial downsizing or conversion of an intermediate care facility for individuals with intellectual disabilities, person-centered planning, or serving individuals presenting complex challenges by posting information about the county board's innovative practices at the department's website.

(S) Compliance reviews

A county board that is certified by the department pursuant to section 5123.161 of the Revised Code to provide supported living or home and community-based services is subject to rule 5123:2-2-04 of the Administrative Code and may be eligible for an abbreviated compliance review in accordance with that rule.

(T) Providing applicable statutes and rules

A county board shall upon request, assist any interested party to locate and secure a copy of provisions of Chapter 5126. of the Revised Code and the administrative rules of the department. The county board shall ensure that employees of the county board and entities under contract with the county board receive information about revisions to the Revised Code and administrative rules of the department that are pertinent to their roles.

(U) Waiver of requirements in Chapter 5123-4 or 5123:2-1 of the Administrative Code

A county board may request or the department may initiate a waiver of requirements outlined in Chapter 5123-4 or 5123:2-1 of the Administrative Code that govern the administration and operation of county boards, so long as the requirements are not those of the Revised Code.



Replaces: 5123:2-1-02  
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CERTIFIED ELECTRONICALLY

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Certification

06/11/2018

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Date

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