5101:3-40-01 **Medicaid home and community-based services program - individual options waiver.**

(A) Purpose

(1) The purpose of this rule is to establish the individual options waiver as a component of the medicaid home and community-based services program pursuant to sections 5111.85 and 5111.87 of the Revised Code.

(2) The individual options waiver program provides necessary waiver services to individuals who meet the level of care criteria for an intermediate care facility for individuals with mental retardation and developmental disabilities.

(3) The Ohio department of mental retardation and developmental disabilities (ODMRDD), through an interagency agreement with the Ohio department of job and family services (ODJFS), administers the individual options waiver program on a daily basis in accordance with section 5111.91 of the Revised Code.

(B) Definitions

(1) "County board of mental retardation and developmental disabilities" (CBMRDD) means a board established under chapter 5126 of the Revised Code.

(2) "Home and community-based services" (HCBS) means any federally approved medicaid waiver service provided to a waiver enrollee as an alternative to institutional care under Section 1915c of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C.A. 1396n, as amended, under which federal reimbursement is provided for designated home and community-based services to eligible individuals.

(3) "Medicaid local administrative authority" (MLAA) means the statutory authority of each county board of mental retardation and developmental disabilities (CBMRDD) to administer a component of the medicaid home community-based services program as specified in section 5126.055 of the Revised Code.

(4) "Provider" means a person or agency certified by ODMRDD that has met the provider qualification requirements to provide the specific individual options waiver service and holds a valid medicaid provider agreement.

(C) Application for the individual options waiver

(1) Individuals seeking to enroll in the individual options waiver program must complete the JFS Form 02399 "Home and Community-Based Services Waiver Referral." Referral forms shall be available at all local county boards of mental retardation and developmental disabilities (CBMRDD) which act as

the MLAA for the individual options waiver program. Referral forms are also available at the local county department of job and family services (CDJFS). Referral forms are to be used in accordance with rule 5101:1-38-01.2 of the Administrative Code.

(2) The MLAA is responsible for explaining to individuals requesting HCBS the services available through the individual options waiver benefit package including the amount, scope and duration of services and the benefit package limitations.

(D) Eligibility criteria for the individual options waiver

(1) Individuals applying for the individual options waiver program must meet the eligibility criteria contained in paragraph (D) of this rule and in accordance with rule 5123:2-13-02 of the Administrative Code.

(a) The individual must require the level of care provided in an ICF/MR and be eligible for ICF/MR services upon initial enrollment and no later than every twelve months thereafter, as specified in rules 5101:3-3-07 and 5101:3-3-15.5 of the Administrative Code. An individual must be determined eligible for an ICF/MR level of care upon the effective date of enrollment in the individual options waiver; and

(b) The individual must meet Medicaid eligibility criteria as specified in Chapters 5101:1-37, 5101:1-38, and 5101:1-40 of the Administrative Code; and

(c) The individual's health and welfare needs must be assured through the utilization of individual options waiver services at or below the federally approved cost limitation, and, other formal and informal supports regardless of funding source.

(E) Individual options waiver enrollment, continued enrollment, and disenrollment

(1) Individuals who meet the eligibility criteria in paragraph (D) of this rule, or their legal representative, shall be informed of the following:

(a) Any feasible alternative under the waiver; and

(b) Given the choice of either institutional or home and community-based services.

(2) The MLAA shall offer available individual options waiver slots to eligible individuals in accordance with applicable waiting list category requirements set forth in rules 5101:3-41-05 and 5123:2-1-08 of the Administrative Code.

(3) An individual's continued enrollment in the individual options waiver program

shall be redetermined in no later than twelve-month increments beginning with the individuals initial enrollment date. An individual must continue to meet the eligibility criteria specified in paragraph (D) of this rule to continue enrollment in the program.

(4) The statewide maximum number of individuals that can be enrolled in the individual options waiver shall be as specified in the federally approved waiver document.

(5) Disenrollment of individual options waiver participants shall be done in accordance with the provisions set forth in this rule and with rule 5123:2-9-01 of the Administrative Code.

(a) Individuals enrolled in the individual options waiver program shall not be disenrolled from the waiver due to an increase in the need for a covered service(s) that causes the total need for the covered service(s) to reach the federally approved cost limitation, unless the MLAA has evaluated the individual and determined that the individual's health and welfare cannot be assured by the doing the following:

(i) Adding a higher level of available natural supports; and/or

(ii) Accessing emergency services covered through the individual options waiver benefit package; and/or

(iii) Accessing additional non-waiver services other than natural supports; and/or

(iv) Accessing funds placed in a local or state risk fund in accordance with rule 5123:1-5-02 of the Administrative Code.

(b) If the activities identified in paragraph (E)(5)(a) of this rule are unsuccessful and it is determined that services are not sufficient to assure the individual's health and welfare then the individual will be disenrolled from the waiver and shall be given notification of hearing rights as established in paragraph (N) of this rule.

(F) Individual options waiver program benefit package

(1) The individual options waiver program benefit package consists of the following services:

(a) Homemaker / personal care;

(b) Social work / counseling;

(c) Interpreter;

(d) Nutrition;

(e) Home-delivered meals;

(f) Habilitation /supported employment;

(g) Environmental accessibility adaptations;

(h) Transportation;

(i) Specialized medical equipment and supplies;

(j) Respite.

(2) The individual options waiver program participants shall be subject to a cost limitation administered on a statewide basis for waiver services which shall be as established in the federally approved waiver document.

(G) Individual options service plan requirements

(1) All services shall be provided to an individual enrolled in the individual options waiver program pursuant to a written individual service plan (ISP).

(2) Licensed facilities shall develop the ISP for each individual in accordance with rule 5123:2-3-17 of the Administrative Code.

(3) The ISP shall be developed by qualified persons with input from the individual waiver enrollee and the service and support administrator (SSA) who is designated by the MLAA in accordance with section 5126.15 of the Revised Code. Homemaker / personal care providers shall participate in the ISP meetings when a request for their participation is made by the individual enrollee.

(a) The ISP shall list the individual options waiver services and the non-waiver services, regardless of funding source, that are necessary to ensure the enrollee's health and welfare; and

(b) The ISP shall contain the following medicaid required elements:

(i) Type of services to be provided; and

(ii) Amount of service to be provided; and

(iii) Frequency and duration of each service to be provided; and

(iv) Type of provider to furnish each service; and

(c) The ISP shall be developed on at least an annual basis consistent with the individual's redetermination as referenced in paragraph (E)(3) of this rule or as the individual's needs change.

(H) Freedom of choice of provider

Individuals enrolled in the individual options waiver program shall be given a free choice of qualified individual options waiver providers. A provider is qualified if they meet the standards established in paragraph (I) of this rule. ODMRDD shall communicate to the MLAA and to individuals enrolled in the individual options waiver program those providers who are qualified to provide individual options waiver services in accordance with section 5126.046 of the Revised Code.

(I) Provision of individual options waiver services

(1) Individual options waiver services shall be provided by individuals or agencies who have a valid medicaid provider agreement in accordance with rule 5101:3-1-17.2 of the Administrative Code; and

(2) Individual options waiver services shall be provided by individuals or agencies who have certification in accordance with standards developed by ODMRDD; and

(3) Individual options waiver services shall be provided only to individuals who have met the eligibility requirements in paragraph (D) of this rule and are enrolled in the individual options waiver program at the time of service delivery; and

(4) Individual options waiver services shall be provided in accordance with each enrollee's ISP as specified in paragraph (G) of this rule; and

(5) Each certified individual options waiver provider shall have a valid contract as specified in paragraph (J) of this rule prior to the provision of waiver services.

(J) Provider contracts

The MLAA shall contract with the certified individual options waiver providers that the individual waiver enrollee chooses if the providers are qualified and agree to provide the services.

(K) Provider payment standards

Payments standards for the individual options waiver program shall be in accordance with rule 5101:3-41-11 of the Administrative Code.

(L) Provider complaint and dispute resolution

In addition to any other remedies available to a medicaid provider, CBMRDD, as the MLAA, as well as individual and agency providers of individual options waiver services are subject to the provisions set forth in section 5126.036 of the Revised Code regarding the resolution of complaints and disputes.

(M) Monitoring, compliance, and sanctions

ODJFS shall conduct periodic monitoring and compliance reviews related to the individual options waiver program in accordance with section 5111.85 of the Revised Code. Reviews may consist of, but are not limited to, physical inspections of records and sites where services are provided, interviews of providers, recipients, and administrators of waiver services. If the director determines pursuant to a review that a person or government entity has violated a rule governing a medicaid waiver component, the director may establish a corrective action plan for the violator and impose fiscal, administrative, or both types of sanctions on the violator in accordance with rules developed by the department as set forth in section 5111.85 of the Revised Code. Certified individual options waiver providers, in accordance with the medicaid provider agreement, ODMRDD, and CBMRDD shall furnish to ODJFS, the centers for medicare and medicaid services (CMS), and the medicaid fraud control unit or their designees any records related to the administration and/or provision of individual options waiver services.

(N) Due process

(1) Applicants for individual options waiver enrollment and for waiver enrollees who are affected by any decision made by ODMRDD and/or ODJFS as recommended by the MLAA, to approve, reduce, deny or terminate enrollment or to change the level and/or type of waiver service delivered shall be afforded medicaid due process in accordance with section 5101.35 of the Revised Code through the state fair hearing process, and as specified in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code.

(2) If an applicant or enrollee requests a hearing, as specified in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code, the participation of ODMRDD, and/or ODJFS, and the MLAA is required during the hearing proceedings to justify the decision under appeal, in accordance with section 5126.055 of the Revised Code.

(3) All rules related to medicaid due process shall be interpreted in a manner consistent with section 1.11 of the Revised Code, which requires that they be liberally construed in order to promote their objective and assist the individual in obtaining justice. All rules relating to the right to a hearing and limitations on that right shall be interpreted in favor of the right to a hearing.

(O) Designation of local matching funds

County boards of mental retardation and developmental disabilities that have medicaid local administrative authority shall be responsible for payment of the non-federal matching funds for each individual enrolled in the individual options waiver program in accordance with 5126.057 of the Revised Code and shall be subject to the provisions set forth in rule 5123:2-13-03 of the Administrative Code.

Effective:

R.C. 119.032 review dates:

_____

Certification

_____

Date

Promulgated Under:	119.03
Statutory Authority:	5111.01, 5111.85
Rule Amplifies:	5111.85, 5111.87, 5111.871
Prior Effective Dates:	12/30/03 (Emer.), 3/30/92