5101:3-42-01 **Medicaid home and community-based services program - level one waiver.**

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

(1) The level one waiver program provides necessary waiver services to individuals of any age who meet the level of care criteria for an intermediate care facility for individuals with mental retardation and other developmental disabilities (ICF/MR) as set forth in rule 5101:3-3-07 of the Administrative Code, and other eligibility requirements established in this rule.

(2) 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 level one waiver 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 Administrative 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 1915(c) of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C.A. 1396n (as in effect on 3/31/06) under which federal reimbursement is provided for designated home and community-based services to eligible individuals.

(3) "Individual" means a person with mental retardation or other developmental disability who is eligible to receive HCBS as an alternative to placement in an intermediate care facility for the mentally retarded under the applicable HCBS waiver. A guardian or authorized representative may take any action on behalf of the individual, may make choices for an individual or may receive notice on behalf of an individual to the extent permitted by applicable law.

(4) "Individual Service Plan" (ISP)" means ~~individual service plan,~~ a written description of the services, supports, and activities to be provided to an individual.

(5) "Provider" means a person or agency certified by ODMRDD that has met the provider qualification requirements to provide specific waiver services, as specified in paragraph (J)(1) of this rule, with a valid medicaid provider agreement as specified in paragraph (J)(2) of this rule.

(6) "SSA" means a service and support administrator who is certified in accordance with rules adopted by ODMRDD under Chapter 5123:2-5 of the Administrative Code and who provides the functions of service and support administration.

(C) Application for the level one waiver

(1) Individuals seeking to enroll in the level one waiver program must complete the JFS ~~Form~~ 02399 "~~The Application for~~ Request for Medicaid Home and Community-based Services~~."~~ (HCBS)" (rev. 1/2006). ~~Applications~~ Forms shall be available at all ~~local county boards~~CBMRDD. ~~Applications~~ Forms are also available at the ~~local~~ county department of job and family services (CDJFS). ~~Referral forms~~ Forms are to be used in accordance with rule 5101:1-38-01.2 of the Administrative Code.

(2) The ~~county board~~ CBMRDD is responsible for explaining to individuals requesting HCBS, the services available through the level one waiver benefit package, including the amount, scope and duration of services and the benefit package limitations. The CBMRDD shall assist all individuals requesting HCBS to complete the JFS Form 02399 and shall file the form with the CDJFS in accordance with rule 5101:1-38-01.6 of the Administrative Code.

(D) Eligibility criteria for the level one waiver

(1) The individual applying for the level one waiver program 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 ~~5123:2-8-12~~ 5123:2-9-01 of the Administrative Code and in accordance with the process set forth in rule 5101:3-3-15.5 of the Administrative Code; and

(2) The individual's medicaid eligibility has been determined in accordance with Chapters 5101:1-37 to 5101:1-42 of the Administrative Code; and

(3) The individual's health and welfare needs can be met through the utilization of level one waiver services at or below the benefit limitations designated in paragraph (G) of this rule, and~~/or~~ other formal and informal supports

regardless of funding source. Other formal or informal supports are not subject to the benefit limitations in this rule.

(4) The individual must require, at a minimum, one waiver service, as described in paragraph (F) of this rule, to be considered eligible for this waiver.

(E) Level one waiver enrollment, continued enrollment, and disenrollment

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

(a) All services available on the level one waiver, as delineated in paragraph (F) of this rule and any choices that the individual may make regarding those services;

~~(a)~~(b) Any feasible alternative to the waiver program; and

~~(b)~~(c) The right to choose either institutional or home and community-based services.

(2) Individuals determined eligible for the level one waiver program in accordance with paragraph (D) of this rule who are seeking to, but are not yet enrolled in the level one waiver program must participate in a prescreening assessment process. This process evaluates whether the individual's health and welfare needs can be met with the level of service provided through the level one waiver program, combined with other non-waiver services regardless of funding source, and within the benefit package limitations specified in paragraph (G) of this rule.

(a) If the prescreening assessment process indicates that the eligible individual's health and welfare needs cannot be met with the level of services provided through the level one waiver program, combined with other non-waiver services regardless of funding sources, and within the benefit package limitations specified in paragraph (G) of this rule, then the individual shall not be enrolled in the level one waiver program and notification of hearing rights shall be provided as established in paragraph (M) of this rule; or

(b) If the prescreening assessment process indicates that the eligible individual's health and welfare needs can be met with the level of services provided through the level one waiver program, when combined with other non-waiver services regardless of funding source, and within the benefit package limitations specified in paragraph (G) of

this rule, then the individual ~~will continue~~ shall be enrolled in the level one waiver program in accordance with this rule.

(3) ODMRDD shall allocate waiver slots to the county board in accordance with rule 5123:2-9-03 of the Administrative Code.

(4) The ~~county board~~ CBMRDD shall offer available level one waiver slots to eligible individuals in accordance with applicable waiting list category requirements as set forth in rules 5101:3-41-05 and 5123:2-1-08 of the Administrative Code.

(5) An individual's continued enrollment in the level one waiver program shall be redetermined no less frequently than every twelve months after the individual's initial enrollment or subsequent redetermination date. Individuals must continue to meet the eligibility criteria specified in paragraph (D) of this rule to continue enrollment in the waiver program.

(6) The maximum number of individuals that can be enrolled in the level one waiver program statewide ~~are as~~ shall not exceed the allowable number specified in the federally approved waiver document. The approved waiver document is available at http://jfs.ohio.gov/OHP/bca/HCBSWaiver.pdf .

(7) The individual must require at least one waiver service monthly, or, if less than monthly, require monthly monitoring of the individual's health and welfare. If no services are planned to be delivered in a month, monthly monitoring of the individual's health and welfare must be required in the ISP, as designated in paragraph (H) of this rule, and must include at least periodic face-to-face monitoring.

~~(7)~~(8) While enrolled in the level one waiver, if the enrollee does not receive any waiver services as described in paragraph (F) of this rule for ~~thirty consecutive days~~ one month , the county board shall, within fifteen days after the ~~thirtieth day~~ end of the calendar month , assess the enrollee's current ~~needs~~ need for waiver services, and discuss these needs with the enrollee and their representative. As a result of the assessment and discussion, if no waiver services are ~~planned to be delivered,~~ needed, the enrollee shall be recommended for disenrollment from the waiver program and shall be given notification of hearing rights as established in paragraph (M) of this rule.

~~(8)~~(9) Disenrollment of level one waiver participants shall be done in accordance with the provisions set forth in this rule.

(a) Individuals enrolled in the level one 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 exceed the benefit package limitations, as specified in paragraph (G) of this rule, unless the county board has assessed the individual and determined that the individual's health and welfare cannot be assured by doing the following:

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

(ii) Recommending additional services covered through the level one waiver benefit package; and/or

(iii) Accessing emergency services covered through the level one waiver benefit package; and/or

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

(v) 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)(8)(a)~~ (E)(9)(a)of this rule do not result in an ISP that contains covered services that are within the benefit package limitations outlined in paragraph (G) of this rule and it is determined that services are not sufficient to assure the individual's health and welfare, then the following will apply:

(i) The individual will be given the opportunity to apply for an alternate home and community-based waiver program, to the extent that such waiver openings exist, that may be more adequate in meeting the individual's service needs. An individual may take priority over others waiting for waiver services if they meet one of the waiting list priority categories which includes emergency situations as established in rule 5123:2-1-08 of the Administrative Code; and

(ii) The individual will be offered an opportunity for placement in an ICF/MR to include a state operated development center;

(c) Individuals enrolled in the level one waiver program who are recommended for disenrollment from the waiver program shall be given notification of hearing rights as established in paragraph (M) of this

rule.

(F) The level one waiver program benefit package is limited to the following services:

(1) Homemaker / personal care;

(2) Institutional respite;

(3) Informal respite;

(4) Transportation;

(5) Environmental accessibility adaptations;

(6) Personal emergency response systems (PERS);

(7) Specialized medical adaptive / assistive equipment and supplies;

(8) Emergency assistance;

(9) Day habilitation, available until 6/30/07;

(10) Supported employment, available until 6/30/07;.

(11) Supported employment - community;

(12) Supported employment - enclave;

(13) Adult day supports;

(14) Vocational habilitation;

(15) Supported employment - adapted equipment;

(16) Non-medical transportation to access the services listed in paragraphs (F)(11) to (F)(14) of this rule.

(G) ~~Benefit package limitations for~~ Limits on sets of level one waiver services

(1) Individuals enrolled in the level one waiver program are subject to ~~the benefit package~~ limitations for specific sets of level one waiver services. ODMRDD,

as the level one waiver program administrator, shall ensure that applicants or individuals enrolled in the level one waiver program do not exceed the benefit limitations as identified in paragraphs (G)(2) to (G)(4) of this rule.

(2) The following services are subject to ~~specific benefit~~ limitations that when the cost of these services are combined cannot exceed a maximum of five thousand dollars effective in twelve month periods beginning with the individual's enrollment or redetermination date:

(a) Homemaker/personal care services ~~are subject to a benefit limitation in the amount of one thousand dollars which will be recommended at a higher amount if an assessed need for the additional service exists and the above limitation is not exceeded~~;

(b) Institutional respite services ~~are subject to a benefit limitation in the amount of one thousand dollars which will be recommended at a higher amount if an assessed need for the additional services exists and the above limitation is not exceeded~~;

(c) Informal respite services ~~are subject to a benefit limitation in the amount of two thousand five hundred dollars which will be recommended at a higher amount if an assessed need for the additional services exists and the above limitation is not exceeded~~;

(d) Transportation services ~~are subject to a benefit limitation in the amount of five hundred dollars which will be recommended at a higher amount if an assessed need for the additional services exists and the above limitation is not exceeded~~.

(3) The following benefits are subject to specific benefit limitations that when combined cannot exceed a maximum of six thousand dollars during a three year period ~~of the individual's level one waiver program enrollment~~:

(a) Environmental accessibility adaptations ~~are subject to a benefit limitation in the amount of two thousand dollars, however, this service can be recommended at a higher amount if an assessed need for the services exists and the above limitation is not exceeded~~;

(b) Personal emergency response systems ~~are subject to a benefit limitation not to exceed two thousand dollars, however, this service can be recommended at a higher amount if an assessed need for the services exists and the above limitation is not exceeded~~;

(c) Specialized medical equipment and supplies ~~are subject to a benefit limitation not to exceed two thousand dollars, however, this service can be recommended at a higher amount if an assessed need for the services exists and the above limitation is not exceeded~~.

(4) The following benefits are subject to specific benefit limitations that, when combined cannot exceed the maximum amount as specified in appendix B of rule 5101:3-41-15 of the Administrative Code, effective in twelve month periods beginning with the individual's enrollment or redetermination date:

(a) Supported employment - enclave;

(b) Supported employment - community;

(c) Supported employment - adapted equipment;

(d) Adult day supports;

(e) Vocational habilitation.

(5) Non-medical transportation services are subject to a benefit limitation not to exceed the amount specified in appendix B of rule 5101:3-41-15 of the Administrative Code.

~~(4)~~(6) Emergency assistance services are subject to a benefit limitation not to exceed eight thousand dollars during a initial three-year period ~~of the individual's level one waiver program enrollment~~. Emergency assistance services do not include informal respite, supported employment-community, supported employment-enclave, adult day supports, vocational habilitation, or non-medical transportation.

(H) Level one waiver individual service plan requirements

(1) All services shall be provided to individual enrolled on the level one waiver pursuant to a written ISP.

(2) The ISP shall be developed by qualified persons with input from the level one waiver enrollee and the SSA in accordance with section 5126.15 of the Revised Code. 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 level one waiver services and the non-waiver services, regardless of funding source, that are necessary to ensure the

enrollee's health and welfare.

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

(i) Type of service to be provided; and

(ii) Amount of service to be provided; and

(iii) Frequency and duration of each service; and

(iv) Type of provider to furnish each service.

(c) The ISP shall be developed on at least an annual basis consistent with the individual's redetermination as referenced in paragraph (E)(2) of this rule or as the individual's needs change and in accordance with of Chapter 5123:2 of the Administrative Code.

(d) The ISP is subject to approval by ODJFS and ODMRDD pursuant to section 5111.871 of the Revised Code. Notwithstanding the procedures set forth in this rule, ODJFS may in its sole discretion, and in accordance with ~~federal guidelines~~ section 5111.852 of the Revised Code, authorize services and direct the CBMRDD or ODMRDD to amend ISPs for individuals if ODJFS determines that such services are medically necessary and the procedures set forth in this rule would not accommodate a request for such medically necessary services.

(I) Free choice of provider

Individuals enrolled in the level one waiver program shall be given a free choice of qualified level one waiver providers in accordance with rules 5101:3-41-08 and 5123:2-9-11 of the Administrative Code. A provider is qualified if they meet the standards established in paragraph (J) of this rule. ODMRDD shall create and maintain an internet-based list of those providers who are qualified to provide level one waiver services in accordance with sections 5126.046 of the Revised Code. This list will be accessible to county boards and individuals applying for or receiving services. ~~TCounty boards~~ CBMRDD shall provide information about the internet-based provider list to applicants and enrollees and shall assist an individual to access this list to assure the individual's free choice of qualified providers.

(J) Provision of level one waiver services

(1) Level one waiver services shall be provided by persons or agencies who hold

certification for each service they provide in accordance with section ~~5123.045~~5123.16 of the Revised Code, and ~~rules 5123:2-8-03, 5123:2-8-04, 5123:2-8-06, 5123:2-8-07, 5123:2-8-08, 5123:2-8-09, 5123:2-8-10, and 5123:2-8-11~~ Chapters 5123:2-8 and 5123:2-9 of the Administrative Code; and

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

(3) Level one waiver services shall be provided only to individuals who have met the eligibility requirements in paragraph (D) of this rule and have been enrolled in the level one waiver program at the time of service delivery; and

(4) Level one waiver services shall be provided in accordance with each enrollee's individual service plan as specified in paragraph (H) of this rule.

(5) No provider of level one waiver services shall enter into or maintain any contract for the provision of waiver services except as noted in paragraph (J)(2) of this rule. Only those subcontracts specified in Chapters 5123:2-8 and 5123:2-9 of the Administrative Code are permissible.

(K) Provider payment standards

Providers of service in the level one waiver program shall be subject to the payment standards set forth in rules 5101:3-42-11 and 5123:2-8-16 of the Administrative Code. At such time as reimbursement standards in rules 5101:3-41-11 and 5123:2-9-06 of the Administrative Code are in effect, those payment standards shall apply.

(L) Monitoring, compliance and sanctions

ODJFS shall conduct periodic monitoring and compliance reviews related to the level one waiver program in accordance with Chapter 5111. 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, enrollees, and administrators of waiver services. Certified level one waiver providers, in accordance with the medicaid provider agreement, ODMRDD, and CBMRDD shall furnish to ODJFS, the center 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 level one waiver services. Individuals enrolled in the level one waiver program shall cooperate with all monitoring, compliance and quality assurance reviews conducted by ODJFS, CMS and the medicaid fraud control unit or their designee.

(M) Due process

(1) ~~Applicants~~ Whenever an applicant for or enrollee of the level one waiver ~~enrollment and waiver enrollees who are~~ program is affected by any ~~decision made~~ action proposed or taken by ODMRDD ~~and/~~or ODJFS ~~as~~ or when action is recommended by the ~~county board, to approve, reduce, deny or terminate enrollment or to change the level and/or type of waiver service delivered shall be afforded due process in accordance with section 5101.35 of the Revised Code through the state fair hearing process,~~ the entity recommending or taking the action will provide due process according to Section 5101.35 of the Revised Code and ~~as specified in~~ Chapters 5101:6-1 to 5101:6-9 of the Administrative Code. Such actions may include, but are not limited to, the approval, denial, or termination of enrollment or a denial or change in the level, and/or type of waiver services delivered to a level one waiver enrollee.

(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 the ~~county board~~ CBMRDD are required during the hearing proceedings to justify the decision under appeal.

Effective:

R.C. 119.032 review dates: 07/01/2010

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	5111.85
Rule Amplifies:	5111.85, 5111.851, 5111.852, 5111.87, 5111.871, 5111.91, 5111.042
Prior Effective Dates:	7/1/2005