

**Rule Summary and Fiscal Analysis (Part A)****Department of Job and Family Services**

Agency Name

**Division of Medical Assistance**

Division

**Mike Lynch**

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**5101:3-42-01**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Medicaid home and community-based services program - level one waiver.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **5111.85**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.85, 5111.851, 5111.852, 5111.87, 5111.871, 5111.042**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being proposed to update the waiver services included on the level one waiver and to add language about service plan development.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule sets forth the eligibility, application, and program description for the Medicaid HCBS level one waiver. Six new waiver services will be inserted and ending dates will be included for day habilitation and supported employment services. Also, language is being added to specify that service plans should include waiver services that are efficient and effective.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule incorporates one or more dated references to a federal act or acts.

This question is not applicable to any dated incorporation by reference to a federal act because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(C).

This rule incorporates one or more dated references to approved waiver document, which are generally accepted industry standards. Each reference is dated and is generally available to persons affected by this rule via the internet cite provided in the rule, in accordance with RC 121.75 (E).

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to the Ohio Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(1).

This rule incorporates one ore more references to another rule or rules of the Ohio Administrative Code. This question is not applicable to any incorporation by reference to another OAC rule because reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(3).

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

not applicable

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

Adding clarification to the RSFA question 15, and added language reflecting stakeholders recommended changes to paragraph (H)(2)(d) regarding service plans.

We did not make any changes to the second filing of this rule.

12. 119.032 Rule Review Date: **7/1/2010**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0

Not applicable

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The proposed Adult Day Services may impact the amount of federal funds which

are passed through to ODMRDD by ODJFS. ODMRDD anticipates that the estimated annual aggregate expenditures to increase. Projected costs will result in an increase for transportation and Adult day Support and Vocational Habilitation services, however, it is unclear at this time what the increased amount will be. Habilitation waiver services for children are limited by 42 CFR 440.180 (c)(3)(i). Specifically, this provision states that habilitation services may not include: "special education and related services (as defined in section 602(16) and (17) of the Education of the Handicapped Act) (20 U.S.C. 1401(16) and (17)) that are otherwise available to the individual through a local educational agency". This federal law limits the availability of habilitation services for school aged children. If a school aged child is not eligible for one of the new day services because of this restriction in federal law, we expect their service and support administrator to work with that recipient and the local education agency to explore appropriate options for meeting the child's needs. The above federal restriction is only for habilitation services and should have no impact on access to non-habilitation services. The proposed adult day services and vocational services replace day habilitation and are both habilitation services.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**