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 5111.86 of the Revised Code.

(B) Definitions

(1) "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.

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

(3) "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)(3) of this rule.

(4) "Prior authorization" means the process of authorizing institutional respite, informal respite, transportation, homemaker/personal care, and environmental accessibility adaptations during the initial ISP meeting or as part of the process to make a change in the ISP when a change in need has been identified. The requested services shall be prior authorized when the benefit has or will exceed the service specific benefit limitation but is within the total combined benefit limitation specified in paragraph (G) of this rule and when no assessment that contraindicates the need for the service exists.

(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 Home and Community-based

Services." Applications shall be available at all local county boards of mental retardation and developmental disabilities (CBMRDD), which act as the LMAA for the level one waiver program. Applications are also available at the local county department of job and family services (CDJFS).

(2) The LMAA 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.

(D) Eligibility criteria for the level one waiver

(1) Individuals 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 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 level one waiver program; and

(2) Individuals applying for the level one waiver program must meet financial eligibility criteria as specified in Chapter 5101:1-39 of the Administrative; Code and

(3) The individual's health and welfare needs must be assured through the utilization of level one waiver services in addition to other formal and informal supports regardless of funding source.

(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) Any feasible alternative under the waiver; and

(b) Given the choice of 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 enroll in the level one waiver program must participate in a prescreening assessment process. This process evaluates whether 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 when applicable, and within the benefit package limitations specified in paragraph (G) of this rule. The prescreening assessment process shall be conducted in accordance with rule 5123:2-9-01 of the Administrative Code.

(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 when applicable, 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 (O) of this rule and in accordance with rule 5123:2-9-01 of the Administrative Code; 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, and combined with other non-waiver services regardless of funding source when applicable, and within the benefit package limitations specified in paragraph (G) of this rule, then the individual will continue with enrollment in the level one waiver program in accordance with this rule and with rule 5123:2-9-01 of the Administrative Code.

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

(4) The LMAA 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) The statewide maximum number of individuals that can be enrolled in the level one waiver program at any given time cannot exceed three thousand for the first waiver year, five thousand for the second waiver year, and six thousand for the third waiver year.

(6) An individual's continued enrollment in the level one waiver program shall be re-determined in twelve month increments beginning with the individuals initial enrollment date. An individual must continue to meet the eligibility criteria established in paragraph (D) of this rule and the individual's health and welfare needs must continue to be met in accordance with paragraph (E)(2)(b) of this rule.

(7) Disenrollment of level one 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 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 LMAA has evaluated 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) Prior authorizing 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)(7)(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 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;

(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 (O) of this rule.

(F) The level one waiver program benefit package consists of 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;

(G) Benefit package limitations for level one waiver services

(1) Individuals enrolled in the level one waiver program are subject to the benefit package limitations for specific level one waiver services. ODMRDD, as the level one waiver program administrator, shall have mechanisms in place to ensure that applicants or individuals enrolled in the level one waiver program do not exceed the benefit limitations as identified in paragraphs (G)(2) through (G)(4) of this rule.

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

(a) Homemaker/personal care services are subject to a benefit limitation in the amount of one thousand dollars which will be approved at a higher amount through the prior authorization process if an assessed need for the additional service exists and if the total expenditures for this service do not exceed the five thousand dollar maximum specified in paragraph (G)(2) of this rule;

(b) Institutional respite services are subject to a benefit limitation in the amount of one thousand dollars which will be approved at a higher amount through the prior authorization process if an assessed need for the additional services exists and if the total expenditures for the service do not exceed the five thousand dollar maximum specified in paragraph (G)(2) of this rule;

(c) Informal respite services are subject to a benefit limitation in the amount of two thousand five hundred dollars which will be approved at a higher amount through the prior authorization process if an assessed need for the additional services exists and if the total expenditures for the service do not exceed the five thousand dollar maximum specified in paragraph (G)(2) of this rule;

(d) Transportation services are subject to a benefit limitation in the amount of five hundred dollars which will be approved at a higher amount through

the prior authorization process if an assessed need for the additional services exists and if the total expenditures for the service do not exceed the five thousand dollar maximum specified in paragraph (G)(2) of this rule.

(3) The following benefits are subject to specific benefit limitations that when combined cannot exceed the maximum of six thousand dollars effective during the initial three year period of the level one waiver program.

(a) Environmental accessibility adaptations are subject to a benefit limitation in the amount of two thousand dollars which can be approved at a higher amount through the prior authorization process not to exceed the six thousand dollar maximum specified in paragraph (G)(3) of this rule effective during the initial three year period of the level one waiver program. The individual's usage of this benefit shall be evaluated at least every twelve months through the ISP process in order to consider the remaining value of the benefit and future usage as the individual's needs indicate. The individual's enrollment date within the initial three-year period shall not affect the benefit amount;

(b) Personal emergency response systems (PERS) are subject to a benefit limitation not to exceed two thousand dollars effective during the initial three year period of the level one waiver program. The individual's usage of this benefit shall be evaluated at least every twelve months through the ISP process in order to consider the remaining value of the benefit and future usage as the individual's needs indicate. The individual's enrollment date within the initial three year period shall not affect the benefit amount;

(c) Specialized medical equipment and supplies are subject to a benefit limitation not to exceed two thousand dollars effective during the initial three year period of the level one waiver program. The individual's usage of this benefit shall be evaluated at least every twelve months through the ISP process in order to consider the remaining value of the benefit and future usage as the individual's needs indicate. The individual's enrollment date within the initial three year period shall not affect the benefit amount.

(4) Emergency assistance services are subject to a benefit limitation not to exceed eight thousand dollars during the initial three-year period of the level one waiver program. The individual's usage of this benefit shall be evaluated at least every twelve months through the ISP process in order to consider the remaining value of the benefit and future usage as the individual's needs indicate. Emergency assistance services do not include informal respite. The individual's enrollment date within the initial three-year period shall not affect the benefit amount.

(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 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 level one waiver enrollee and the service and support administrator (SSA), who is designated by the LMAA in accordance with section 5126.15 of the Revised Code. Providers of homemaker / personal care services 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 is subject to approval by ODJFS and ODMRDD pursuant to section 5111.871 of the Revised Code.

(I) Freedom of choice of provider

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

(J) Provision of level one waiver services

(1) Level one waiver services shall be provided by individuals or agencies who hold certification for each service they provide in accordance with 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 of the Administrative Code; and

(a) A provider licensed pursuant to section 5123.19 of the Revised Code is subject to rule 5123:2-3-19 of the Administrative Code.

(b) A provider certified to provide supported living service pursuant to section 5126.431 of the Revised Code is subject to rule 5123:2-12-06 of the Administrative Code.

(2) Each provider applicant shall adhere to the process set forth in rule 5123:2-8-02 of the Administrative Code in order to obtain the applicable certification specified in paragraph (J)(1) of this rule; and

(3) Level one waiver services shall be provided only 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

(4) 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

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

(6) Each certified level one waiver provider shall have a valid contract as specified in paragraph (K) of this rule prior to the provision of level one waiver services.

(K) Provider Contracts

The LMAA shall contract with a certified level one waiver provider that the individual waiver enrollee chooses if the provider is qualified and agrees to provide the services. The contract shall comply with any applicable standards established by ODJFS.

(L) Provider Payment Standards

Payments for the provision of level one waiver services shall be made to certified level one waiver providers in accordance with rules 5101:3-42-11 and 5123:2-8-16 of the Administrative Code.

(M) Provider complaint and dispute resolution

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

(N) Monitoring, compliance and sanctions

ODJFS shall conduct periodic monitoring and compliance reviews related to the level one 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. 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.

(O) Due process

(1) Applicants for level one waiver enrollment and waiver enrollees who are affected by any decision made by ODMRDD and/or ODJFS as recommended by the LMAA, 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 LMAA 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.

(P) Designation of local matching funds

County boards of mental retardation and developmental disabilities that have local medicaid administrative authority shall be responsible for payment of the state matching funds for each individual enrolled in the level one waiver program in accordance with 5126.057 of the Revised Code and shall be subject to the procedures set forth in rule 5123:2-9-02 of the Administrative Code.

Effective:

R.C. 119.032 review dates:

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Certification

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Date

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