

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 provides medically necessary 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.

(C) Application for the level one waiver

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).

(D) Eligibility criteria for the level one waiver

(1) Individual applicants must meet the following eligibility criteria in order to participate in the level one waiver program:

(a) An individual applicant seeking to enroll in the level one waiver program must participate in a prescreening assessment process that evaluates whether health and safety 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 cost limitations specified in paragraph (G) of this rule. The prescreening assessment process shall be conducted in accordance with rule 5123:2-18-13 of the Administrative Code.

(i) If the prescreening assessment process indicates that the applicant's health and safety 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 cost limitations specified in paragraph (G) of this rule, then the individual's application shall be denied and notification of hearing rights shall be provided as established in paragraph (M) of this rule; or

(ii) If the prescreening assessment process indicates that the applicant's health and safety 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 cost limitations specified in paragraph (G) of this rule, then the applicant will continue to be evaluated for enrollment according to the remaining waiver eligibility criteria.

(b) Individuals enrolled in 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 rule 5101:3-3-07 of the Administrative Code. And 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

(c) An individual must choose to receive level one waiver services in lieu of services provided in an ICF/MR; and

(d) Individuals must meet financial eligibility criteria as specified in Chapter 5101:1-39 of the Administrative Code.

(E) Level one waiver enrollment and disenrollment

(1) 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.

(2) 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.

(3) Disenrollment of level one waiver participants shall be done in accordance with the provisions set forth in this rule and with rule 5123:1-2-10 of the Administrative Code.

(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) Personal emergency response system (PERS).

(6) Specialized medical adaptive / assistive equipment and supplies.

(7) Environmental accessibility adaptations.

(8) Emergency assistance.

(9) Habilitation-supported employment.

(10) Transportation related to habilitation-supported employment.

(G) Cost limitations for level one waiver services

(1) Individuals enrolled in the level one waiver program are subject to cost caps 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 allowable cost caps for services as identified in paragraphs (G)(2) to (G)(5) of this rule.

(a) If the prescreening assessment process indicates the health and safety needs of an applicant or enrollee would result in an individual service plan (ISP) that exceeds the cost caps for level one waiver services, then the applicant shall be denied the level one waiver enrollment and notification of hearing rights shall be provided as established in paragraph (M) of this rule; or

- (b) If, while an individual is enrolled on the level one waiver, the enrollee's health and safety needs as identified in the ISP exceed the cost caps for level one waiver services, then the enrollee shall be proposed for disenrollment and notification of hearing rights shall be provided as established in paragraph (M) of this rule.
- (2) The following services are subject to a combined five thousand dollar cost cap effective in twelve-month increments beginning with the individual's enrollment date:
- (a) Homemaker / personal care;
 - (b) Institutional respite;
 - (c) Informal respite;
 - (d) Transportation (not related to habilitation-supported employment);
 - (e) Personal emergency response system (PERS);
 - (f) Specialized medical equipment and supplies.
- (3) Environmental accessibility adaptations are subject to a ten thousand dollar cost cap during the initial three-year period of the federally approved waiver. 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 an eight thousand dollar cost cap during the initial three-year period of the federally approved waiver. 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 services do not include habilitation-supported employment or informal respite. The individual's enrollment date within the initial three-year period shall not affect the benefit amount.
- (5) The following services are subject to a combined twenty-two thousand dollar cost cap effective in twelve-month increments beginning with the individual's enrollment date:
- (a) Habilitation-supported employment;
 - (b) Transportation related to habilitation-supported employment.

(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) For licensed facilities, the ISP shall be developed 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 and habilitation-supported employment 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 safety.
 - (b) The ISP shall contain the following medicaid required elements:
 - (i) Type of service to be provided.
 - (ii) Amount of service to be provided.
 - (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 are given a free choice of qualified provider. A provider is qualified if they meet the standards established in paragraph (J) of this rule. ODMRDD shall communicate to the CBMRDD and to individuals enrolled in the level one waiver program those providers who are qualified to provide level one waiver services in accordance with section 5126.046 of the Revised Code.

(J) Provision of level one waiver services

- (1) Level one waiver services shall be provided only 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 if the Administrative Code; and

- (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 individual 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 individual who have met the eligibility requirements in paragraph (D) of this rule and have enrolled in the level one waiver program; 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.

(K) 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.

(L) Monitoring, compliance, and sanctions

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

(M) 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.

Effective:

R.C. 119.032 review dates:

Certification

Date

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