

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5123-9-01

**Rule Type:** New

**Rule Title/Tagline:** Home and community-based services waivers - enrollment, denial of enrollment, disenrollment, and reenrollment.

**Agency Name:** Department of Developmental Disabilities

**Division:**

**Address:** 30 East Broad Street, 12th Floor Columbus OH 43215-3414

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#### I. Rule Summary

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5123.04
5. **What statute(s) does the rule implement or amplify?** 5123.04, 5126.055, 5166.21
6. **What are the reasons for proposing the rule?**

The Department is rescinding rule 5123:2-9-01 and adopting replacement rule 5123-9-01. Rule 5123-9-01 includes new paragraph (K) which authorizes the Director of the Department, during the COVID-19 state of emergency, to suspend some reasons for disenrollment of an individual from a Home and Community-Based Services waiver and reflects adjustments to the timelines for a county board of developmental disabilities to submit a payment authorization for waiver services to the Department.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rule establishes procedures for the enrollment, denial of enrollment, disenrollment, and reenrollment of individuals in Home and Community-Based Services waivers administered by the Ohio Department of Developmental Disabilities.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The incorporated references are to the Revised Code, the Administrative Code, and an Ohio Department of Medicaid form. Pursuant to Section 121.75 of the Revised Code, the requirements in Sections 121.71 to 121.74 do not apply. The Revised Code and the Administrative Code are available at libraries and on the internet at <http://codes.ohio.gov>. The Department's administrative rules are also available at [dodd.ohio.gov](http://dodd.ohio.gov). The Ohio Department of Medicaid form is available at <https://medicaid.ohio.gov/resources/publications/medicaid-forms>.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$ 0

Rescinding rule 5123:2-9-01 and adopting replacement rule 5123-9-01 will neither increase nor decrease revenues or expenditures of the Department.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

The rule requires county boards of developmental disabilities to take actions. The cost of compliance will vary among county boards based on multiple factors such as the number of individuals served, the amount of staff time expended on required actions, and the wages paid to staff who carryout the actions.

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No
14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No
15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not applicable.

### **III. Common Sense Initiative (CSI) Questions**

16. Was this rule filed with the Common Sense Initiative Office? No
17. Does this rule have an adverse impact on business? No
  - A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No
  - B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No
  - C. Does this rule require specific expenditures or the report of information as a condition of compliance? No
  - D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

### **IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No
  - A. How many new regulatory restrictions do you propose adding?

Not Applicable

**B. How many existing regulatory restrictions do you propose removing?**

Not Applicable

**\*\*\*Proposed Revisions - August 25, 2020\*\*\*****5123:2-9-01 5123-9-01 Home and community-based services waivers - enrollment, denial of enrollment, disenrollment, and reenrollment.**

## (A) Purpose

This rule establishes procedures for the enrollment, denial of enrollment, disenrollment, and reenrollment of individuals in home and community-based services waivers administered by the Ohio department of developmental disabilities.

## (B) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Alternative services" means the various programs, services, and supports, regardless of funding source, other than home and community-based services, that exist as part of the developmental disabilities service system and other service systems including, but not limited to:
  - (a) Services provided directly by a county board;
  - (b) Services funded by a county board and delivered by other providers;
  - (c) Services provided and funded outside the developmental disabilities service system; and
  - (d) Services provided at the state level.
- (2) "County board" means a county board of developmental disabilities or a person or government entity, including a council of governments, with which a county board has contracted for assistance with its medicaid local administrative authority pursuant to section 5126.055 of the Revised Code.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Home and community-based services" means medicaid-funded home and community-based services provided under a medicaid component that the department administers pursuant to section 5166.21 of the Revised Code.
- (5) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
- (6) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (7) "Natural supports" means the personal associations and relationships typically developed in the community that enhance the quality of life for individuals. Natural supports may include family members, friends, neighbors, and others in the community or organizations that serve the general public who provide voluntary

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support to help an individual achieve agreed upon outcomes through the individual service plan development process.

(8) "Prior authorization" has the same meaning as in rule 5123-9-07 of the Administrative Code.

~~(8) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code. [Term is not used in this rule.]~~

(9) "Waiver eligibility span" means the twelve-month period following either an individual's initial waiver enrollment date or a subsequent eligibility redetermination date.

~~(9)~~ (10) "Waiver year" means the twelve-month period that begins on the date the waiver takes effect and the twelve-month period following each subsequent anniversary date of the waiver.

### (C) Requests for home and community-based services

When an individual who is not yet enrolled in medicaid requests home and community-based services, the county board shall submit or assist the individual with submission of Ohio department of medicaid form 02399, "Request for Medicaid Home and Community-Based Services Waiver" (revised ~~July 2014~~ August 2018), to the county department of job and family services. The department shall accept notification of requests for home and community-based services waiver enrollment that are referred by the county department of job and family services. The department shall notify the appropriate county board when it receives notification of a request from the county department of job and family services.

### (D) Eligibility criteria for enrollment in home and community-based services waivers

To be eligible for enrollment in a home and community-based services waiver administered by the department an individual shall:

- (1) Be eligible for Ohio medicaid in accordance with rule 5160:1-2-03 of the Administrative Code;
- (2) Have a developmental disabilities level of care in accordance with rule ~~5123:2-8-01~~ 5123-8-01 of the Administrative Code;
- (3) Choose enrollment in a home and community-based services waiver in lieu of an opportunity ~~for placement to reside~~ in an intermediate care facility for individuals with intellectual disabilities;
- (4) Require, at a minimum, one waiver service;

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- (5) Participate in the development of his or her individual service plan; and
  - (6) Be able to have his or her health and welfare needs met through waiver services at or below the federally-approved cost limitation, and through a combination of informal and formal supports including, but not limited to, waiver services, medicaid state plan services, private health insurance plan benefits, non-waiver services, and/or natural supports.
- (E) Responsibilities for enrollment
- (1) A county board shall enroll individuals in home and community-based services waivers in accordance with rule ~~5123:2-1-08~~ [5123-9-04](#) of the Administrative Code.
  - (2) When a county board intends to enroll an individual in a home and community-based services waiver, the county board shall request the department to authorize waiver capacity for the individual to be enrolled.
  - (3) Upon authorization by the department to enroll an individual in a home and community-based services waiver:
    - (a) The county board shall complete the required assessments of the individual in accordance with rule ~~5123:2-8-01~~ [5123-8-01](#) of the Administrative Code and any other assessments specific to the waiver in which the individual is seeking enrollment.
    - (b) Within ninety calendar days of the department's authorization to enroll an individual, the county board shall forward to the department all necessary enrollment information, including a request for developmental disabilities level of care determination with respect to the individual.
    - (c) The department shall determine whether the individual meets the criteria for a developmental disabilities level of care in accordance with rule ~~5123:2-8-01~~ [5123-8-01](#) of the Administrative Code. An individual determined to have a developmental disabilities level of care who meets all other eligibility criteria for home and community-based services waivers shall be eligible for home and community-based services waiver enrollment.
    - (d) The department shall send notification to the individual upon completion of the level of care determination in accordance with paragraph (J) of this rule.

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- (e) The county board shall ~~submit a payment authorization for waiver services to the department within ninety calendar days of the individual's enrollment;~~
- (i) Submit a payment authorization for waiver services to the department no later than the first date of any planned service within an individual's waiver eligibility span except when:
    - (a) A delay is caused by failure of an entity other than the county board to update an individual's record in the Ohio benefits system, in which case, no later than fourteen calendar days after the individual's enrollment in the waiver is reflected in the department's information system; or
    - (b) The individual funding level of an individual to be enrolled in the individual options waiver exceeds the maximum value of the funding range, in which case, no later than fourteen calendar days after prior authorization is approved by the department.
  - (ii) Submit an updated payment authorization for waiver services to the department no later than fourteen calendar days after authorizing a change to an individual's services or revising an individual service plan, whichever is earlier. If submission of the updated payment authorization for waiver services is rejected by the department's information system due to discrepancies between provider billing and service authorization, the payment authorization for waiver services is to be submitted no later than fourteen calendar days after the discrepancy has been successfully resolved.
  - (iii) Correct an error to a payment authorization for waiver services no later than fourteen calendar days after identification of the error.

### (F) Continued enrollment and disenrollment

- (1) The county board shall submit a developmental disabilities level of care redetermination at least annually to the department in accordance with rule ~~5123:2-8-01~~ 5123-8-01 of the Administrative Code.
- (2) Subsequent to initial enrollment of an individual in a home and community-based services waiver, the county board shall evaluate the current needs and circumstances of the individual in relationship to the services and activities described in the individual's most recent individual service plan and recommend appropriate action to the department, which may include a recommendation to disenroll the individual from the home and community-based services waiver, when:
  - (a) There is a significant change of condition as defined in rule ~~5123:2-8-01~~ 5123-8-01 of the Administrative Code;
  - (b) The individual is admitted as an inpatient to a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or is incarcerated if such admission or incarceration is reasonably anticipated to



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exceed ninety calendar days;

- (c) The individual fails or refuses to use services in accordance with his or her individual service plan;
  - (d) The individual interferes with or otherwise refuses to cooperate with the county board and such interference or refusal to cooperate renders the county board unable to perform its medicaid local administrative authority pursuant to section 5126.055 of the Revised Code;
  - (e) The individual ceases to meet the eligibility criteria for enrollment in the home and community-based services waiver;
  - (f) The individual's health and welfare cannot be assured in accordance with the requirements of paragraph (D)(6) of this rule; or
  - (g) The individual requests to be disenrolled from the home and community-based services waiver.
- (3) When the cost of waiver services for the individual exceeds the amount authorized by the centers for medicare and medicaid services for the waiver in which the individual is enrolled, the county board shall evaluate the individual, consider the measures set forth in paragraphs (F)(3)(a) to (F)(3)(e) of this rule, and submit a recommendation to the department regarding whether or not the individual can remain enrolled in the waiver and have his or her health and welfare assured by one or more of the following measures:
- (a) Adding more available natural supports;
  - (b) Accessing available non-waiver services, other than natural supports;
  - (c) Accessing additional medicaid state plan services;
  - (d) Accessing private health insurance plan benefits; and/or
  - (e) Sharing supports and services, such as natural supports and non-waiver services, by collaborating with other systems, organizations, agencies, and people with and without disabilities.
- (4) Upon receipt of a recommendation and necessary information from a county board in accordance with paragraph (F)(2) or (F)(3) of this rule, the department shall within thirty calendar days, make a determination as to the individual's continued enrollment in the waiver, inform the county board accordingly, and take whatever additional actions may be required by law. If the department determines that the individual cannot continue to be enrolled in the waiver and have his or her health and welfare assured by one or more of the measures set forth in paragraph (F)(3) of this rule, the department shall propose to disenroll the individual from the waiver and provide notice in accordance with paragraph (J) of this rule.

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- (5) When the department proposes to disenroll an individual in accordance with paragraph (F)(2) or (F)(3) of this rule, the county board shall:
- (a) Offer the individual the opportunity to apply for an alternative home and community-based services waiver for which the individual is eligible that may more adequately address the needs of the individual, to the extent that such waiver openings exist; and
  - (b) Assist the individual in identifying and obtaining alternative services that are available and may more adequately address the needs of the individual.
- (6) In the event that options set forth in paragraphs (F)(5)(a) and (F)(5)(b) of this rule do not meet the individual's needs, the county board may offer the individual an opportunity ~~for placement~~ to reside in an intermediate care facility for individuals with intellectual disabilities.
- (G) Suspension of medicaid waiver payment
- (1) In the event an individual is admitted as an inpatient to a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities or is incarcerated, the county board shall notify the department.
    - (a) Upon receipt of notification, the department shall suspend medicaid waiver payments for the individual for a period not to exceed ninety calendar days during the time the individual is admitted as an inpatient or is incarcerated.
    - (b) When the individual continues to remain admitted as an inpatient or incarcerated, the county board shall, prior to the ninety-first calendar day after the date of admission as an inpatient or incarceration, submit a recommendation to the department to disenroll the individual from the home and community-based services waiver.
  - (2) Upon receipt of a recommendation and necessary information from a county board in accordance with paragraph (G)(1)(b) of this rule, the department shall within thirty calendar days, make a determination as to the individual's continued enrollment in the waiver, inform the county board accordingly, and take whatever additional actions may be required by law, which may include, but are not limited to, proposing to disenroll the individual from the waiver and providing notice in accordance with paragraph (J) of this rule. If the department determines to disenroll an individual based on a recommendation by the county board, the county board may request reenrollment when the individual is discharged from the hospital, nursing facility, or immediate care facility for individuals with intellectual disabilities or is no longer incarcerated.
- (H) Reenrollment
- (1) When an individual who has been disenrolled from a home and community-based services waiver requests reenrollment within the same waiver year, the individual

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shall be reenrolled in that waiver provided:

- (a) The circumstances leading to the individual's disenrollment have been resolved; and
  - (b) The individual meets the eligibility criteria for enrollment in home and community-based services waivers in accordance with paragraph (D) of this rule.
- (2) When an individual who has been disenrolled from a home and community-based services waiver requests reenrollment in a subsequent waiver year, the individual may be reenrolled in a waiver:
- (a) Provided the individual meets the eligibility criteria for enrollment in home and community-based services waivers in accordance with paragraph (D) of this rule; and
  - (b) In accordance with the process set forth in paragraph (E) of this rule.

### (I) Waiver capacity

In accordance with section 5126.054 of the Revised Code, a county board shall annually inform the department of its waiver capacity request. Based on the county board's request, the department may authorize enrollment when the number of filled waivers for each year is less than the number of waivers approved by the centers for medicare and medicaid services for that year. The department shall provide notice of waiver capacity to county boards. Within ninety calendar days from receipt of such notice from the department, the county board shall submit the assessments and other necessary enrollment information pursuant to paragraph (E) of this rule. The county board may request and the department may grant for good cause, an extension of the deadline referenced in this paragraph. Failure of the county board to meet the requirements of this paragraph shall result in the department providing the county board with prior notice of no less than fifteen calendar days that the authorization to enroll pursuant to this rule is to be withdrawn.

### (J) Required notices

- (1) The department shall send written notice to an individual and the county board when the individual is enrolled in a home and community-based services waiver. The notice shall include the date on which waiver services may be initiated.
- (2) The department shall send written notice to an individual and the county board when the individual is disenrolled from a home and community-based services waiver. The notice shall be made in accordance with paragraph (J)(3) of this rule.
- (3) When denial of enrollment in or disenrollment from a home and community-based services waiver is proposed, the individual shall receive notice of his or her right to a state hearing in accordance with section 5160.31 of the Revised Code and rules implementing that statute.

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- (a) The department shall issue the notice when:
  - (i) Denial of enrollment is based on a determination that the individual does not meet the criteria for a developmental disabilities level of care; or
  - (ii) The department proposes disenrollment for any reason, including disenrollment based on the county board's recommendation made in accordance with paragraph (F)(2), (F)(3), or (G)(1)(b) of this rule.
- (b) The county board shall issue the notice when the county board proposes to deny enrollment based on the individual's position on the waiting list for home and community-based services waivers established in accordance with rule ~~5123-2-1-08~~ 5123-9-04 of the Administrative Code.

### (K) Authority of director to suspend provisions of this rule

During the COVID-19 state of emergency declared by the governor, the director of the department may suspend the disenrollment criteria in paragraphs (F)(2)(a), (F)(2)(c), (F)(2)(d), (F)(2)(e), and/or (F)(2)(f) of this rule.