TO BE RESCINDED

5123:2-9-04 **Medicaid local administrative authority.**

(A) This rule identifies the duties of the medicaid local administrative authority (MLAA) and serves to outline the requirements for home and community-based services waiver administration by a county board that has MLAA in accordance with section 5126.055 of the Revised Code. Nothing in this rule shall be construed to limit the duties, obligations or requirements imposed on a county board as specified in Chapters 5111., 5123., and 5126. of the Revised Code and the Ohio Administrative Code, including but not limited to sections 5111.041, 5126.055, and 5126.057 of the Revised Code.

(B) Definitions

(1) "Applicable requirements" means:

(a) Federal and state laws and regulations that govern the conduct of the MLAA and/or the provider, including but not limited to Chapters 4723., 5111., 5123., and 5126. of the Revised Code and all administrative rules promulgated under the authority of these statutes.

(b) Requirements set forth in any waiver approved under the authority of section 1915(c) of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 1396n, as amended, under which federal reimbursement is provided for designated home and community-based services to eligible individuals, which is administered by ODMRDD pursuant to an interagency agreement between ODMRDD and ODJFS.

(2) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.

(3) "Home and community-based services (HCBS)" has the same meaning as in section 5126.01 of the Revised Code.

(4) "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 as defined in rule 5101:1-2-01 of the Administrative Code may take any action on behalf of an individual, may make choices for an individual or may receive notice on behalf of an individual to the extent permitted by applicable law.

(5) "Individual service needs addendum" means an individual service needs

addendum as described in section 5126.035 of the Revised Code.

(6) "ISP" means the individual service plan, a written description of the services, supports, and activities to be provided to an individual.

(7) "MLAA" means a county board with medicaid local administrative authority pursuant to section 5126.055 of the Revised Code.

(8) "ODJFS" means the Ohio department of job and family services as established by section 121.02 of the Revised Code.

(9) "ODMRDD" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.

(10) "PAWS" means payment authorization for waiver services.

(11) "Provider" means a person who has a medicaid provider agreement issued by ODJFS and is certified by ODMRDD to provide HCBS.

(12) "Service and support administration" means the functions listed in section 5126.15 of the Revised Code.

(13) "Service contract" means a contract for HCBS under section 5126.035 of the Revised Code between the MLAA and the provider.

(C) Duties of MLAA for HCBS

(1) The MLAA shall perform assessments and evaluations of the individual in accordance with division (A)(1) of section 5126.055 of the Revised Code.

(2) ISPs shall be developed for each individual in accordance with applicable requirements and shall:

(a) Be written.

(b) Be developed by the person(s) employed by, or contracting with, the county board that is responsible for service and support administration with the active participation of the individual, other persons chosen by the individual, and, where applicable, the individual's provider in accordance with sections 5126.055 and 5126.15 of the Revised Code.

(c) Describe, regardless of funding source, medical and other services identified through the assessment process to be furnished to the recipient, the service frequency, the service duration, the type of provider who will furnish each service, and the completion and approval date(s) of the ISP.

(d) Be the fundamental tool by which the MLAA and state will ensure the health, safety, and welfare of the individuals served under the waiver. As such, it will be subject to periodic review and update. These reviews will take place to determine the appropriateness and adequacy of the services, and to ensure that the services furnished are consistent with the nature and severity of the individual's disability;

(e) Be updated annually. The ISP shall be updated more frequently if there is a change in the individual's condition, if the individual chooses a new provider or types of services. The county board shall convene an ISP meeting within ten working days of a request from an individual for a review of the ISP.

(f) Be subject to the approval of ODMRDD and ODJFS in accordance with sections 5111.871 and 5126.055 of the Revised Code.

(g) Identify the county board representative(s) responsible for service and support administration.

(h) Maximize the use of natural supports and generic resources.

(i) Be maintained in accordance with rule 5101:3-1-17.2 of the Administrative Code.

(3) If the individual has been identified by ODMRDD as an individual to receive priority for HCBS pursuant to division (D)(3) of section 5126.042 of the Revised Code, the MLAA shall assist ODMRDD in expediting the transfer of the individual from an intermediate care facility for the mentally retarded or nursing facility to HCBS.

(4) In accordance with section 5126.046 of the Revised Code, the MLAA shall assist the individual(s) to choose a qualified and willing provider of the services and, at a hearing under section 5101.35 of the Revised Code, present evidence of the process for appropriate assistance in choosing providers.

(5) A provider is qualified to provide HCBS to an individual if the following requirements are met:

(a) The provider is certified by ODMRDD for the services.

(b) The provider is eligible to enter into or has entered into a service contract with the MLAA in accordance with rule 5123:2-9-05 of the Administrative Code.

(c) The provider has a medicaid provider agreement with ODJFS that covers the services.

(6) Contract for services

(a) The MLAA shall contract for services with service providers chosen by the individual in accordance with sections 5126.035 and 5126.055 of the Revised Code and rule 5123:2-9-05 of the Administrative Code.

(b) The service contract is a two-party contract between the MLAA and the provider.

(c) In the event that an employee of the county board is selected to provide an applicable HCBS waiver service (i.e., homemaker personal care or informal respite) in accordance with the individual options or level one waiver, the provisions of section 5126.033 of the Revised Code must be adhered to and the ethics council of the county board must approve a contract with the employee separate and apart from the employee's employment with the board.

(d) Pursuant to section 5126.046 of the Revised Code, the county board may provide any adult service when selected by an individual, including applicable waiver services as included with a waiver and which constitute adult services as defined in section 5126.01 of the Revised Code.

(7) If the MLAA is a county board that is certified under section 5123.045 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services in accordance with section 5126.046 of the Revised Code, the county board may furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the

individual requires. The ISP shall be the full scope of the contractual requirement for such services and the individual shall have the right to change providers in accordance with section 5126.046 of the Revised Code. Pursuant to division (A)(6) of section 5126.055 of the Revised Code, ODMRDD shall provide monitoring of such services in addition to the monitoring that the board shall do of its own employees pursuant to applicable regulations.

(8) The MLAA shall monitor the services provided to the individual to ensure the individual's health, safety, and welfare. Monitoring by the MLAA shall include compliance by the provider with quality assurance activities, certification standards and provider adherence to applicable requirements. ODMRDD shall promulgate rules or use existing rules for MLAA monitoring of compliance with standards. Monitoring by the MLAA shall be conducted with strict adherence to rules governing monitoring as established by ODMRDD. If the county board provides the services, then ODMRDD shall also monitor the services provided by the county board.

(9) The MLAA shall take necessary action, in accordance with applicable requirements, to ensure the health, safety and welfare of individuals served.

(10) The MLAA shall take action in accordance with rule 5123:2-8-18 of the Administrative Code if it determines that a deficiency or violation of applicable requirements related to provider certification standards has occurred, but has not resulted in, and is not reasonably likely to result in, a risk to the individual's health, safety, or welfare. The MLAA shall conduct quality assurance reviews in accordance with section 5126.431 of the Revised Code and rule 5123:2-12-01 of the Administrative Code for individuals who receive HCBS in accordance with the definition of supported living in section 5126.01 of the Revised Code.

(11) The MLAA shall have an investigative agent conduct investigations under section 5123.313 of the Revised Code that concern the individual.

(12) The MLAA shall have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.

(13) The MLAA shall develop and maintain a file for each individual, which, at a minimum, includes the following information:

(a) Copies of required assessments;

(b) Initial and subsequent ISPs, including evidence of the ISP's approval date;

(c) Evidence of ICF/MR level of care determination and redetermination of eligibility at a minimum of each twelve months;

(d) ODMRDD's confirmation of PAWS;

(e) Patient liability amounts and identification of HCBS provider(s) to whom each amount is assigned in accordance with paragraph (M)(2) of rule 5123:1-2-08, paragraph (L) of rule 5123:1-2-11 of the Administrative Code, paragraph (K)(2) of rule 5123:2-8-16 of the Administrative Code, or paragraph (H)(3) of rule 5123:2-9-06 of the Administrative Code, as applicable.

(f) Evidence of an ISP review at a minimum of every twelve months to determine the appropriateness and adequacy of the services, and to ensure that the services furnished will ensure the individual's health, safety and welfare and are consistent with the nature and severity of the individual's disability.

(g) Evidence that the individual was provided appropriate prior notice of any action to approve, reduce, deny, or terminate HCBS and notice of an opportunity for a fair hearing in accordance with rule 5101:6-2-04 of the Administrative Code.

(h) Identification of the person employed by or under contract with the county board that is responsible for overall service and support administration for the individual.

(14) The county board shall perform its medicaid local administrative authority in accordance with applicable requirements.

(15) The MLAA shall abide by all terms and conditions set forth in the federally-approved waiver document, including any appendices and attachments. ODMRDD shall assure that each MLAA has a current copy of the HCBS waivers and shall provide training to the MLAA on the terms, conditions, appendices and attachments of each waiver. ODMRDD shall also make such training available to providers.

(16) The MLAA shall maintain current knowledge of state and federal requirements related to HCBS waivers, using information as provided by ODMRDD and

ODJFS.

(17) The MLAA may not delegate its medicaid local administrative authority granted under section 5126.055 of the Revised Code, but may contract with a person or government entity, including a council of governments, for assistance with its medicaid local administrative authority. The MLAA that enters into such a contract shall notify the director of ODMRDD. The notice shall include the tasks and responsibilities that the contract gives to the person or government entity. The person or government entity shall comply in full with all requirements to which the MLAA is subject regarding the person or government entity's tasks and responsibilities under the contract. The MLAA remains ultimately responsible for tasks and responsibilities.

(18) The MLAA shall, through ODMRDD and ODJFS, reply to, and cooperate in arranging compliance with, a program or fiscal audit or program violation exception that a state or federal audit or review discovers as required by division (F) of section 5126.055 of the Revised Code. The MLAA, in conjunction with ODMRDD, shall cooperate fully with ODJFS and shall timely prepare and send to ODMRDD a written plan of correction or response to any adverse findings. The MLAA is liable for any adverse findings that result from an action that the MLAA takes or fails to take in its implementation of medicaid local administrative authority.

(19) The MLAA shall correct all deficiencies in the manner and times required by division (G) of section 5126.055 of the Revised Code.

(20) The MLAA shall pay to ODMRDD an annual fee equal to one per cent of the total value of all medicaid paid claims for home and community-based services for which the MLAA contracts or provides itself as required by section 5123.0412 of the Revised Code. The ODMRDD shall utilize this fee in accordance with section 5123.0412 of the Revised Code.

(21) A county board that has MLAA shall pay the nonfederal share of HCBS waiver expenditures as required by section 5126.057 of the Revised Code and rule 5123:2-9-02 of the Administrative Code, unless ODMRDD is required to pay the nonfederal share under division (C)(2) of section 5123.047 of the Revised Code.

(22) The MLAA shall submit a PAWS form to ODMRDD in the format required by ODMRDD within fourteen days of authorization of new services or modification to existing services. Upon receiving confirmation from ODMRDD, the MLAA shall provide a copy of the PAWS to the individual and any service providers that the individual has chosen within fourteen days.

(23) The MLAA shall issue a notice of hearing rights to an individual in accordance with section 5101.35 of the Revised Code when the MLAA recommends the approval, reduction, denial, or termination of the individual's HCBS and such recommendation is not reversed by ODMRDD or ODJFS.

(D) Responsibilities of the ODMRDD for medicaid waiver administration functions

(1) ODMRDD shall oversee MLAA activities to ensure compliance with applicable laws. If ODMRDD determines that the MLAA is deficient in its administration of medicaid waiver services, then ODMRDD may take appropriate actions authorized by applicable law including, but not limited to, division (G) of section 5126.055 of the Revised Code or section 5126.056 of the Revised Code to ensure MLAA compliance with applicable laws.

(2)

(a) If a county board's medicaid local administrative authority for HCBS is terminated in accordance with section 5126.056 of the Revised Code, ODMRDD shall do either of the following:

(i) Contract under section 5126.056 of the Revised Code with another county board that has not had any of its medicaid local administrative authority terminated or another entity to perform waiver administrative activities in accordance with this rule.

(ii) Appoint under section 5126.056 of the Revised Code an administrative receiver to perform waiver administrative activities in accordance with this rule.

(b) A county board whose medicaid local administrative authority for HCBS has been terminated in accordance with section 5126.056 of the Revised Code shall comply with its duties under that statute.

(3) ODMRDD and ODJFS shall seek federal financial participation (FFP) at fifty per cent of total cost for HCBS waiver administration provided in accordance with this rule subject to allowance by federal government.

(a) ODMRDD and ODJFS shall not seek FFP for HCBS waiver administration claims if either agency determines that all or part of the claims do not comply with standards set forth in federal law and OMB circulars and other directives or guidelines issued by the federal

government.

(b) ODMRDD and ODJFS shall not seek FFP for HCBS waiver administration claims for any county board that does not have a contract with ODMRDD obligating the county board to abide by federal law including but not limited to the requirements set forth in federal law, OMB circulars, and other directives or guidelines issued by the federal government. The contract required shall be in the form as set forth in appendix A to this rule.

(4) Claims for FFP for HCBS waiver administration activities performed in accordance with this rule shall comply with the following requirements:

(a) The MLAA shall identify the employees and/or persons paid under contract who perform HCBS waiver administration activities and identify for each whether such activities are one hundred per cent or less than one hundred per cent of their time.

(b) The MLAA shall accurately reflect in the employee position description and/or the terms of the contract with the contract entity the HCBS waiver administration activities for which FFP is claimed.

(c) The MLAA shall not claim FFP for HCBS waiver administration, activities billed as targeted case management or service coordination according to rules 5123:2-15-41 and 5101:3-37-19 of the Administrative Code.

(d) The MLAA shall meet the documentation requirements described in paragraph (E) of this rule and the cost reporting requirements described in paragraph (F) of this rule.

(e) The MLAA shall not claim reimbursement as HCBS waiver administration activities functions or services that are not expressly set forth in paragraph (C) of this rule.

(f) The superintendent of a county board shall sign a certification with each claim submission that the claim has been reviewed, and that the claim is in compliance with this rule and federal law, OMB circulars, and other directives or guidelines issued by the federal government.

(5) The MLAA shall be responsible for repayment of any FFP it received for HCBS waiver administration activities if the FFP is required to be repaid to the

federal government as the result of a federal or state audit. The MLAA shall immediately reimburse ODMRDD or ODJFS if either state agency is required to repay FFP to the federal government for incorrect payments to the county board for HCBS waiver administrative activities, or if the claims are otherwise denied or deferred by the federal government.

(6) ODMRDD shall assure that PAWS forms appropriately submitted by the MLAA are entered into the medicaid payment system within ten working days of receipt from the county board so that providers are able to receive payment in a timely manner.

(7) If ODMRDD receives from a provider repayment of payments for HCBS under a service contract, ODMRDD shall refund to or otherwise credit the MLAA with the nonfederal share of the repayment if the MLAA paid the nonfederal share.

(E) Documentation requirements for MLAAs for reimbursement of salaries and benefits of persons who perform HCBS waiver administration activities

(1) "Total salary cost," defined as base wages plus fringe benefits, shall be reimbursed on an ongoing basis in accordance with paragraph (E) of this rule.

(2) When MLAA employees and/or persons paid under a contract with a MLAA spend less than one hundred per cent of their time performing HCBS waiver administration activities for which FFP is claimed, each person shall complete a department-approved HCBS waiver activity form. The purpose of the HCBS waiver activity form is to allocate total salary cost between HCBS waiver administration activities and other MLAA activities performed by the person.

(3) The MLAA shall select for all persons who spend less than one hundred per cent of their time performing HCBS waiver administration activities either the periodic or continuous methodology to document the amount of time spent in the performance of these activities.

(a) A periodic methodology requires HCBS waiver administration activities to be documented for one week each month as specified by the department.

(b) A continuous methodology requires HCBS waiver administration activities to be documented on a daily basis.

(c) The MLAA may elect to change this methodology on January first of each year upon providing written notification to the department.

(d) HCBS waiver administration activities provided under these conditions shall be documented in quarter-hour increments.

(4) Clerical/support staff shall document their performance of HCBS waiver administration activities for which FFP is claimed using the HCBS waiver activity form. Documentation is to be completed following completion of the administration activity.

(5) Supporting documentation shall verify that the HCBS waiver administration activity noted on the waiver activity form occurred. The documentation may include, but is not limited to, individual's records, copies of ISPs, employee calendars, appointment schedules, mileage records, copies of letters, and activity check lists.

(6) To obtain FFP reimbursement, the MLAA shall submit an invoice, department-approved employee rosters, and supporting activity sheets to the department on a monthly basis.

(7) The MLAA shall ensure that all necessary financial and statistical data supporting the claim for reimbursement is made available to ODMRDD, ODJFS, the United States department of health and human services, and any other state or federal agency having audit authority.

(8) The MLAA shall maintain all records and forms necessary to fully disclose the extent of services provided and related business transactions for a period of seven years from the date of receipt of payment, or for six years after any initiated audit is completed and adjudicated, whichever is longer.

(9) ODMRDD shall provide training, at least annually, to MLAAs on proper methods for documentation and billing of FFP.

(F) Cost reporting requirement for MLAAs for allowable waiver administration overhead and other costs

(1) Total overhead and other costs shall be reimbursed on an annual basis in accordance with paragraph (F) of this rule.

(a) "Overhead costs" are defined as the approved portion of administration,

capital, and building service costs allocated to HCBS waiver administration activities.

(b) "Other costs" are defined as travel, equipment less than five hundred dollars, equipment repairs, supplies, liability insurance, advertisement, printing, and other miscellaneous expenses directly assignable to HCBS waiver administration activities.

(2) The MLAA shall identify and report all HCBS waiver administration activity costs on the operating and expenditure report submitted to ODMRDD pursuant to section 5126.12 of the Revised Code.

(3) An annual reconciliation shall be performed by ODMRDD for all medicaid allowable overhead costs and other costs as reported for waiver administration activities.

(4) All HCBS waiver administration costs reported shall be subject to audit and final cost settlement. ODMRDD or ODJFS may audit any funds a county board or contractor receives for waiver administration, including any source documentation supporting the receipts and disbursements associated with such funds.

(G) Medicaid recipient and medicaid applicant appeals

(1) Any recipient of or applicant for HCBS may utilize the process set forth in section 5101.35 of the Revised Code for any purpose authorized by that statute or rules promulgated implementing that statute. The process set forth in section 5101.35 of the Revised Code is available only to applicants, recipients, and their lawfully appointed authorized representatives.

(2) Providers shall not utilize, or attempt to utilize, the process set forth in section 5101.35 of the Revised Code. Providers shall not appeal or pursue any other legal challenge to a decision resulting from the process set forth in section 5101.35 of the Revised Code.

(3) Applicants for and recipients of HCBS shall use the process set forth in section 5101.35 of the Revised Code for any challenge to the type, amount, scope or duration of services included or excluded from an ISP or an individual service needs addendum. Providers shall have no standing in an appeal under section 5101.35 of the Revised Code, or in any other forum to challenge the type, amount, scope or duration of services included or excluded from an ISP or an individual service needs addendum.

(4) The MLAA shall implement any final state hearing decision or administrative appeal decision issued by ODJFS, unless a court of competent jurisdiction modifies such decision as the result of an appeal by the medicaid applicant or recipient.

(H) Provider challenges to the MLAA's actions in the performance of its duties

(1) Any action proposed or initiated by the MLAA regarding a service contract for non-medicaid services shall not be governed by this rule.

(2) A provider shall follow the procedures set forth in rule 5123:2-8-18 of the Administrative Code to challenge any recommendations, determinations, or corrective action plans issued by the MLAA resulting from the MLAA's monitoring. Those procedures shall be the exclusive remedies for resolving any such provider challenge.

(3) Except as provided in paragraphs (H)(2) and (I) of this rule, a provider may follow the procedures set forth in section 5126.036 of the Revised Code to challenge any of the following:

(a) Recommendations, determinations, or corrective action plans issued by the MLAA relating to or resulting from any of its duties enumerated in paragraph (C) of this rule.

(b) An action the MLAA has taken or has not taken that is required by a service contract for HCBS.

(c) The MLAA's refusal to enter into a service contract for HCBS with the provider.

(d) The MLAA's termination of a service contract for HCBS between the provider and the MLAA.

(I) Provider certification disputes and medicaid provider agreement disputes

(1) Providers of HCBS may pursue all remedies for disputes regarding their certification or their medicaid provider agreements available to them under Chapter 119. of the Revised Code as presently authorized by law.

(2) No action taken by the MLAA shall constitute an adjudication entitling a HCBS

provider with the right to pursue a remedy under Chapter 119. of the Revised Code. Any recommendation by the MLAA for decertification of a provider shall be referred to ODMRDD for any action it determines is necessary.

(J) Immediate corrective action by the MLAA to ensure health, safety, and welfare

The MLAA may take immediate action to ensure the health, safety and welfare of an individual receiving HCBS where there is substantial risk of immediate harm to the individual only as expressly provided for in law. Nothing in this rule shall limit the authority of county boards to take immediate action to ensure an individual's health, safety, and welfare as provided for under law.

(K) Federal financial participation (FFP)

(1) The MLAA shall not authorize payment for HCBS prior to the approval date of the ISP including approval of emergency services.

(2) The MLAA shall ensure that FFP is not claimed for the cost of room and board, except when provided as part of respite care in a facility approved by ODMRDD that is not a private residence.

(3) FFP shall not be claimed for waiver services furnished to recipients while they are inpatients of a hospital, a nursing facility, or an ICF/MR (except for respite or institutional respite appropriately provided in a licensed facility).

Effective:

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Certification

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Date

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