

5160-42-01

**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 5166.20 and 5166.02 of the Revised Code.

- (1) The level one waiver program provides necessary waiver services to individuals of any age who meet the criteria for a developmental disabilities level of care in accordance with rule 5123-8-01 of the Administrative Code, and other eligibility requirements established in this rule.
- (2) The Ohio department of developmental disabilities (DODD), through an interagency agreement with the Ohio department of medicaid (ODM), administers the level one waiver on a daily basis in accordance with section 5162.35 of the Revised Code.

(B) Definitions

- (1) "County board" means a county board of developmental disabilities established under Chapter 5126. of the Revised Code.
- (2) "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 1915(c) of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C.A. 1396n, as in effect on October 1, 2019, under which federal reimbursement is provided for designated home and community-based services to eligible individuals.
- (3) "Individual" means a person with a developmental disability who is eligible to receive HCBS as an alternative to placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID) under the applicable HCBS waiver. A guardian or authorized representative may give, refuse to give, or withdraw consent for services or may receive notice on behalf of an individual to the extent permitted by applicable law.
- (4) "Individual Service Plan" (ISP) means a written description of the services, supports, and activities to be provided to an individual in accordance with paragraph (H) of this rule.
- (5) "Provider" means a person or agency certified or licensed by DODD 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)(2) of this rule.

- (6) "SSA" means a service and support administrator who is certified in accordance with rule 5123:2-5-02 of the Administrative Code and who provides the functions of service and support administration.

(C) Request for a referral for the level one waiver

- (1) Individuals seeking to enroll in the level one waiver program may do one of the following:
- (a) Request a referral through a local county job and family services (CDJFS);
  - (b) Request a referral to a local county board;
  - (c) Request a referral online through the Ohio benefits self-service portal ([www.Benefits.Ohio.gov](http://www.Benefits.Ohio.gov));
  - (d) Request a referral over the phone (800-324-8680).
- (2) The county board 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) The individual requesting a referral for the level one waiver program must be determined to meet the criteria for a developmental disabilities level of care in accordance with rule 5123-8-01 of the Administrative Code upon initial enrollment and no later than every twelve months thereafter; and
- (2) The individual's medicaid eligibility has been determined in accordance with Chapters 5160:1-1 to 5160:1-6 of the Administrative Code; and
- (3) The individual's health and welfare needs can be met through the utilization of level one waiver services at or below the benefit limitations designated in paragraph (G) of this rule, and other formal and informal supports regardless of funding source. Other formal or informal supports are not subject to the benefit limitations in this rule.

(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) All services available on the level one waiver, and any choices that the individual may make regarding those services;
  - (b) Any feasible alternative to the waiver program; and
  - (c) The right to choose 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, but are not yet enrolled in the level one waiver program must participate in a prescreening assessment process. This process evaluates whether the individual's 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, and within the benefit package limitations specified in paragraph (G) of this rule.
- (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, 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 (M) of this rule; 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, when combined with other non-waiver services regardless of funding source, and within the benefit package limitations specified in paragraph (G) of this rule, then the individual shall be enrolled in the level one waiver program in accordance with this rule.
- (3) The county board shall offer an available level one waiver to eligible individuals in accordance with applicable waiting list category requirements as set forth in rules 5160-41-05 and 5123-9-04 of the Administrative Code.
- (4) An individual's continued enrollment in the level one waiver program shall be redetermined no less frequently than every twelve months after the individual's initial enrollment or subsequent redetermination date. Individuals must continue to meet the eligibility criteria specified in paragraph (D) of this rule to continue enrollment in the waiver program.

- (5) The individual must require at least one waiver service monthly, or, if less than monthly, require monthly monitoring of the individual's health and welfare. If no services are planned to be delivered in a month, monthly monitoring of the individual's health and welfare must be required in the ISP, as designated in paragraph (H) of this rule, and must include at least periodic face-to-face monitoring.
- (6) While enrolled in the level one waiver, if the enrollee does not receive any waiver services for one month, the county board shall assess the enrollee's current need for waiver services, monitor the individual to verify the individual's ongoing need for waiver enrollment, and discuss these needs with the enrollee and their representative. As a result of the assessment and discussion, if no waiver services are needed, the enrollee shall be recommended for disenrollment from the waiver program and shall be given notification of hearing rights.
- (7) Disenrollment of level one waiver participants shall be done in accordance with the provisions set forth in this rule.
  - (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. The county board shall evaluate the individual, as set forth in rule 5123:2-9-01 of the Administrative Code, and submit a recommendation to DODD 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:
    - (i) Adding a higher level of available natural supports; and/or
    - (ii) Recommending 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.
  - (b) If the activities identified in paragraph (E)(7)(a) of this rule do not result in an ISP that contains covered services that are within the benefit package limitations outlined in paragraph (G) of this rule 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 shall be enrolled in accordance with rule 5123-9-04 of the Administrative Code; and
    - (ii) The individual will be offered an opportunity for placement in an ICF/IID.
  - (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 (M) of this rule.
- (F) The level one waiver program benefit package, as included in the federally approved waiver application, is limited to the services specified in Chapters 5123:2-9 and 5123-9 of the Administrative Code.
- (G) Limits on sets of level one waiver services
- (1) Level one waiver benefit limitations shall be in accordance with the benefit limitations as established in rule 5123-9-06 of the Administrative Code.
  - (2) The following benefits are subject to specific benefit limitations that, when combined cannot exceed the maximum amount as specified in appendix B to rule 5123:2-9-19 of the Administrative Code, effective in twelve month periods beginning with the individual's enrollment or redetermination date:
    - (a) Adult day support;
    - (b) Career planning;
    - (c) Group employment support;
    - (d) Individual employment support;
    - (e) Vocational habilitation.
  - (3) Non-medical transportation services are subject to a benefit limitation not to exceed the amount specified in appendix B to rule 5123:2-9-19 of the Administrative Code.
- (H) Level one waiver individual service plan requirements

- (1) All services shall be provided to individuals enrolled on the level one waiver pursuant to a written ISP.
- (2) The ISP shall be developed by qualified persons with input from the level one waiver enrollee and the SSA in accordance with section 5126.15 of the Revised Code. Providers shall participate in the ISP meetings when a request for their participation is made by the individual enrollee.
- (3) The ISP shall contain the following required criteria, and will comport with the outlined procedures for review and revision:
  - (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 shall be reviewed on at least an annual basis consistent with the individual's redetermination as referenced in paragraph (E)(2) of this rule or as the individual's needs change and in accordance with rule 5123:2-1-11 of the Administrative Code.
  - (d) The SSA shall review and revise the ISP more frequently than the required annual basis under the following circumstances:
    - (i) At the request of the individual or a member of the individual's team; or
    - (ii) Whenever the individual's assessed needs, situation, circumstances or status changes; or
    - (iii) If the individual chooses a new provider or type of service or support;  
or
    - (iv) As a result of the continuous review process of the ISP; or
    - (v) Identified trends and patterns of unusual or major unusual incidents; or

- (vi) When services are reduced, denied, or terminated.
- (e) The ISP shall be developed to include only waiver services which are consistent with efficiency, economy and quality of care. When reasonable, waiver services are not provided entirely at a one to one ratio. When combined with other non-waiver services, waiver services must ensure the health and welfare for the individual for whom the ISP is developed; and
- (f) The ISP is subject to approval by ODM and DODD pursuant to section 5166.05 of the Revised Code. Notwithstanding the procedures set forth in this rule, ODM may in its sole discretion, and in accordance with section 5166.05 of the Revised Code, authorize services and direct the county board or DODD to amend ISPs for individuals if ODM determines that such services are medically necessary and the procedures set forth in this rule would not accommodate a request for such medically necessary services.

(I) Free choice of provider

Individuals enrolled in the level one waiver program shall be given a free choice of qualified level one waiver providers in accordance with rules 5160-41-08 and 5123:2-9-11 of the Administrative Code. A provider is qualified if they meet the standards established in paragraph (J) of this rule. DODD shall create and maintain an online database of those providers who are qualified to provide level one waiver services. This list will be accessible to county boards and individuals applying for or receiving services. county board shall assist an individual, as needed, with exercising the right to free choice of provider in accordance with rule 5123:2-9-11 of the Administrative Code.

(J) Provision of level one waiver services

- (1) Level one waiver services shall be provided by persons or agencies who hold certification or licensure for each service they provide in accordance with section 5123.045 of the Revised Code, and division 5123:2 of the Administrative Code; and
- (2) Level one waiver services shall be provided only by persons or agencies who have a valid medicaid provider agreement in accordance with rule 5160-1-17.2 of the Administrative Code; and

- (3) 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
- (4) Level one waiver services shall be provided in accordance with each enrollee's individual service plan as specified in paragraph (H) of this rule.
- (5) No provider of level one waiver services shall enter into or maintain any contract with the enrollee for the provision of waiver services except as noted in paragraph (J)(2) of this rule.

(K) Provider payment standards

Provider payment standards for the level one waiver are established in Chapters 5160-41, 5123:2-9, and 5123-9 of the Administrative Code.

(L) Monitoring, compliance and sanctions

ODM shall conduct periodic monitoring and compliance reviews related to the level one waiver program in accordance with section 5162.10 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, enrollees, and administrators of waiver services. Certified or licensed level one waiver providers, in accordance with the medicaid provider agreement, DODD, and county board shall furnish to ODM, 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 ODM, CMS and the medicaid fraud control unit or their designee.

(M) Due process

- (1) When DODD, ODM, or the county board takes action to approve, deny, or terminate enrollment in the level one waiver, or to deny or change the level and/or type of waiver services delivered to a level one waiver enrollee, the entity recommending or taking action will provide 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) When an individual requests a hearing, as specified in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code, the participation of DODD and the county



board are required during the hearing proceedings to justify the decision under appeal.

(N) Notwithstanding any provisions to the contrary in this rule, during the COVID-19 state of emergency the provision in paragraph (H)(1) requiring services to be provided pursuant to written ISP is suspended for adult day supports and vocational habilitation services occurring at a non-residential facility. In addition, DODD is authorized to deem any provider approved by ODM or certified by the Ohio department of aging (ODA) to provide waiver services as having satisfied the requirements for certification by DODD for the same or similar services.

Effective: 6/12/2020

CERTIFIED ELECTRONICALLY

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Certification

06/12/2020

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Date

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