

5160-42-01

**Medicaid home and community-based services program - level one waiver.****(A) Purpose**

- (1) The Ohio department of developmental disabilities (DODD) is responsible for the daily operation of the level one (L1) waiver which will be administered pursuant to sections 5166.20 and 5166.02 of the Revised Code.**
- (2) DODD operates the L1 waiver program pursuant to an interagency agreement with the Ohio department of medicaid (ODM) 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 January 1, 2024, 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 and 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. The ISP is developed using a person-centered planning process.**
- (5) "Participant direction" means an individual has authority to make decisions about the individual's waiver services and accepts responsibility for taking a direct role in managing the services. Participant direction includes the exercise of budget authority and employer authority.**
- (6) "Person-centered planning" is a process directed by the individual, that identifies his or her strengths, values, capacities, preferences, needs and desired outcomes. The process includes team members who assist and support the**

individual to identify and access medically necessary services and supports needed to achieve his or her defined outcomes in the most inclusive community setting.

(7) "Provider" means a person or agency who is eligible per Chapter 5123-2 of the Administrative Code and rule 5160-1-17.2 of the Administrative Code to provide L1 waiver services as specified in this rule.

(8) "SSA" means a service and support administrator who is eligible to perform the functions of service and support administration per rules 5123-4-02 and 5123-5-02 of the Administrative Code.

### (C) Eligibility

(1) To be eligible for the L1 waiver program:

(a) The individual's medicaid eligibility has been established in accordance with Chapters 5160:1-1 to 5160:1-6 of the Administrative Code;

(b) The individual has been determined to have a developmental disabilities level of care in accordance with rule 5123-8-01 of the Administrative Code;

(c) The individual's health and welfare can be ensured through the utilization of L1 waiver services at or below the federally approved cost limitation, and other formal and informal supports regardless of funding source;

(d) The individual participates in the development of a person-centered services plan in accordance with the process and requirements set forth in rules 5123-9-02 and 5123-4-02 of the Administrative Code; and

(e) The individual requires the provision of at least one waiver service monthly as documented in the individual's approved person-centered services plan.

### (D) Enrollment

(1) Requests for the L1 waver program are set forth in rules 5160:1-2-03 and 5123-9-01 of the Administrative Code utilizing ODM 02399 form Request for Medicaid Home and Community Based Services (HCBS) Waiver.

(2) Individuals who meet the eligibility criteria established in paragraph (C) of this rule, or their legal representative will be informed of the following:

- (a) All services available on the L1 waiver, and any choices that the individual may make regarding those services;
  - (b) Any viable alternative to the waiver program; and
  - (c) The right to choose either institutional or home and community-based services.
- (3) DODD allocates waivers to the county board in accordance with section 5166.22 of the Revised Code.
- (4) The county board offers an available L1 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.
- (5) An individual's continued enrollment in the L1 waiver program is 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 (C) of this rule to continue enrollment in the waiver program.
- (6) The maximum number of individuals that can be enrolled in the L1 waiver program statewide will not exceed the allowable number specified in the federally approved waiver document.

(E) Benefit Package

- (1) The L1 waiver program provides necessary home and community-based services to individuals of any age as an alternative to institutional care in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).
  - (a) The L1 waiver program benefit package, as indicated in the federally approved waiver application, is limited to the services specified in Chapter 5123-9 of the Administrative Code.
  - (b) The L1 waiver program supports individuals who want to direct some of their services through participant direction. The individual or the individual's guardian or the individual's designee perform the duties associated with participant direction.
- (2) All services will be provided to an individual enrolled on the L1 waiver program pursuant to a written person-centered Individual Service Plan (ISP).

- (a) The ISP will be developed by qualified persons with input from the individual in accordance with rule 5123-4-02 of the Administrative Code.
- (b) The ISP will be developed to include only waiver services which are consistent with efficiency, economy and quality of care and identify non-waiver services, regardless of funding source.
- (3) 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.
- (4) When DODD, ODM, or the county board acts to, deny, or terminate enrollment in the L1 waiver program, or to deny or reduce the level of waiver services delivered to an enrollee, the individual will be notified of his or her hearing rights in accordance with section 5101:6 of the Administrative Code.

(F) Service Provision

- (1) Authorized L1 waiver services will be provided by persons or agencies who:
  - (a) Are eligible per rule 5160-1-17.2 of the Administrative Code; and
  - (b) Are eligible per chapter 5123-2 and if applicable chapter 5123-3 of the Administrative Code.
- (2) Services will be provided utilizing person-centered practices and in settings in accordance with 42 C.F.R. 441.530 (as in effect January 1, 2024).
- (3) Individuals enrolled, or their legal representative will be informed of freedom of choice in qualified providers in accordance with rule 5160-41-08 of the Administrative Code and 42 C.F.R. 431.51 (as in effect on January 1, 2024).
- (4) L1 waiver program payment standards are operated in accordance with rule 5160-41-19 of the Administrative Code.
  - (a) The maximum allowable payment rates of the L1 waiver program services are provided in Chapter 5123-9 of the Administrative Code.
- (5) ODM may conduct periodic monitoring and compliance reviews related to the level one waiver program in accordance with section 5162.10 of the Revised Code.

- (a) 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.
- (6) Records related to the administration and provision of L1 services may be reviewed by ODM, the auditor of the state, the attorney general, and the medicaid fraud unit or their designees per sections 5162.10 and 6160.22 of the Revised Code.
- (7) Individuals enrolled in the waiver program will be responsible for provision of information to administering agencies as set forth in Chapter 5160:1-2 of the Administrative Code.

Replaces: 5160-42-01

Effective:

Five Year Review (FYR) Dates:

---

Certification

---

Date

Promulgated Under: 119.03  
Statutory Authority: 5166.02  
Rule Amplifies: 5164.25, 5166.04, 5166.20, 5162.35  
Prior Effective Dates: 04/28/2003, 07/01/2005, 07/01/2006, 01/01/2007,  
07/01/2007, 09/15/2011, 09/01/2013, 05/01/2017,  
02/01/2018, 01/01/2019, 01/01/2020, 06/12/2020  
(Emer.), 10/17/2020