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Hearing Date: 4/1/2024

Today's Date: 4/9/2024

Agency: Ohio Department of Medicaid

Rule Number(s): 5160-40-01, 5160-41-17, 5160-42-01

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Kerstin Sjoberg, Disability Rights Ohio

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Hearing Summary Report

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

Summary of the comments received from Kerstin Sjoberg:

I. OAC Proposed Rules 5160-40-01(C), 5160-41-17(C), and 5160-42-01(C): Eligibility

- A. The current rules place an affirmative duty on the county board to explain to individuals requesting HCBS the services available through the waiver benefit package including the amount, scope, and duration of services, as well as any applicable benefit package limitations. See Section (C)(2) of the current rules. The proposed rules remove the reference to this affirmative duty. All individuals seeking to access a HCBS waiver program should be provided thorough explanations of the various Medicaid HCBS waiver benefit packages and any applicable limitations to foster an informed decision. Requested change: Restore the language in the current rules to the proposed new rules.
- B. The current rules state that if an individual does not use at least one waiver service monthly, then the individual receives monthly monitoring of the individual's health and welfare. Additionally, when no services are to be delivered in the month, the individual service plan (ISP) is amended to include monthly monitoring and at least a periodic face-to-face monitoring. Then, the county board is required to assess the enrollee's current service needs, discuss these needs with the enrollee, and their representative, and only as a result of the assessment and discussion, recommend disenrollment where appropriate. In contrast, the proposed rules require that an individual have least one waiver service on a monthly basis documented in the individual's approved person-centered services plan as a condition of eligibility for the waiver program without the above-mentioned process afforded by the current rules. The proposed rules eliminate protections afforded individuals prior to the county board taking action to terminate waiver enrollment. The proposed rules instead only afford notice of hearing rights after the fact. See Section (E)(7)–(8) of current rule 5160-40-01, Section (E)(6)–(7) of current rule 5160-41-17, Section (E)(5)–(6) of current rule 5160-42-01, and Section (C)(1)(e) of the new rules. Different individuals with developmental disabilities benefit from different waiver services including, for example, environmental accessibility adaptations, and specialized medical equipment and supplies that are paid for once but used on a monthly (or even daily) basis. It is unclear whether expenditures on necessary services like these will satisfy the requirements of the new rules. Other individuals with disabilities need waiver services and supports on a regular basis including, for example, residential respite, but not necessarily monthly. As written, the new rules would disproportionately impact individuals with disabilities who would otherwise qualify for and need HCBS simply because that need is intermittent. Requested change: Restore the language in the current rules into the proposed new rules and clarify that the need for monthly waiver services is not a prerequisite for waiver eligibility.

II. OAC Proposed Rules 5160-40-01(E), 5160-41-17(E), and 5160-42-01(E): Benefit Package

The current rules explicitly state the requirement for the Ohio Department of Developmental Disabilities (DODD) and the county board of developmental disabilities to justify appealable decisions when an individual requests a hearing. See Section (M)(2) of the current rules. The proposed rules remove the reference to this requirement. See Section (E)(4) of the proposed rules. This removal makes it difficult for individuals who want to pursue a due process hearing to be fully informed about the parties' respective roles, rights, and obligations at the state hearing.

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It is necessary for all governmental entities involved in and responsible for a decision on appeal to be present at the state hearing so that state hearing officers can develop the complete record needed to make a fair and accurate determination. Because waiver-administration has been delegated to DODD and to county boards, their participation is integral to the state hearing process. It is equally integral to the concept of participant direction and informed decision making that individuals be aware of any requirement for DODD and the county board to be present at a hearing. Individuals can discern that obligation within the current rules, but the proposed rules unnecessarily obfuscate the parties' respective obligations. Requested change: Honor the protections afforded individuals receiving waiver services and transparency in the state hearing process by restoring the language in the current rules.

The current rules provide specific circumstances that trigger a review or revision of an individual service plan (ISP) more frequently than every 12 months. Those circumstances include the request of individual; whenever the individual's needs, situation, circumstances, or status change; or if the individual chooses a new provider or type of service or support. See Section (H)(3)(e) of current rule 5160-40-01 and Section (H)(3)(d) of current rules 5160-41-17 and 5160-42-01. The proposed rules remove these automatic triggers, which could create difficulties for individuals and county boards needing to amend ISPs or obtain key services and supports. Individuals with disabilities commonly experience changes in their own needs or changes in the care that service providers, family, friends, and others are able to provide. Further, the participant-directed elements of the waiver require individuals to be able to choose a new provider or type of service or support. The current rules set clear expectations for those administering the waiver program and the individuals receiving waiver services as to the situations when an ISP must be reviewed or revised. Requested change: Restore the language in the current rules that expressly identifies when the ISP is to be reviewed and revised more frequently than annually.

III. OAC Proposed Rules 5160-40-01(F), 5160-41-17(F), and 5160-42-01(F): Service Provisions
The current rules require the Ohio Department of Developmental Disabilities (DODD) to create and maintain an online database of providers who are qualified to provide waiver services and to make the database accessible to individuals applying for or receiving services. See Section (I) of the current rules. This requirement has been removed in Section (F)(3) of the proposed rules. The proposed rules contemplate "participant direction" from the individual with a disability and give that individual authority to make decisions. See Sections (B)(7) and (E)(1)(b) of proposed rule 5160-40-01, Sections (B)(10) and (E)(1)(b) of proposed rule 5160-41-17, and Sections (B)(5) and (E)(1)(b) of proposed rule 5160-42-01. But "participant direction" can only be meaningful if the individual is able to make an informed decision about each aspect of the process, including choosing a provider. An accessible database of qualified providers remains necessary for individuals with disabilities to make informed decisions and otherwise provide meaningful direction. The proposed rules should continue to require DODD to maintain an online database of providers. Requested change: Restore the language in the current rules to preserve this requirement and ensure there is a user-friendly way to identify qualified service providers in a particular geographic area.

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Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

No changes to the rules were made in response to the comments received. In general, removal of language and procedures was intentional to streamline the purpose of the rule. Procedures removed continue to be implemented through the operating agency and located in OAC Agency 5123 or other OAC rules.

Responses to comments

I.A.: The affirmed duty by a county board that was removed is an operation of the Department of Developmental Disabilities and the county boards. Details of these duties are located in OAC Chapter 5123-4.

I.B.: The language removed pertains to a process of the operating agency the Department of Developmental Disabilities. This option was not removed from the programs, the rule was restructured to streamline and remove procedures.

II.A.: The language removed pertains to a process of the operating agency, the Department of Developmental Disabilities and county boards. This process remains effective in other OAC rules pertaining to appeals and duties of a county board. The proposed language in the rules provides reference to specific OAC rule on appeals.

II.B.: The language removed pertains to a process of the operating agency, the Department of Developmental Disabilities. This option was not removed from the programs, the proposed language in the rule was restructured to remove operating agency procedures. Details of these procedures are located in OAC Chapter 5123-4.

III.: The language removed pertains to an operation of the Department of Developmental Disabilities and was not eliminated as an option in the program.