

5123:2-2-02

Free choice of provider.(A) Purpose

The purpose of this rule is to implement section 5126.046 and divisions (A)(3) and (B)(3) of section 5126.055 of the Revised Code and to establish procedures for individuals to choose qualified providers of home and community-based services, medicaid case management services, and habilitation center services.

(B) Application

This rule applies to each MLAA.

(C) Definitions

- (1) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.
- (2) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (3) "Guardian" means the guardian of the person of a minor or an adult. If no guardian of the person has been appointed for a minor, "guardian" means either parent of a minor unless the parents are separated or divorced or their marriage has been dissolved or annulled, in which case "guardian" means the parent who is the residential parent and legal custodian of the minor. If no guardian of the person has been appointed for a minor and the minor is in the legal or permanent custody of a person or government agency, "guardian" means that person or government agency.
- (4) "Habilitation center services" means services provided by a habilitation center certified by the department under section 5123.041 of the Revised Code and covered by the medicaid program pursuant to rules adopted under section 5111.041 of the Revised Code.
- (5) "Home and community-based services" means medicaid-funded home and community-based services specified in division (B)(1) of section 5111.87 of the Revised Code and provided under the medicaid components the department administers pursuant to section 5111.871 of the Revised Code.
- (6) "Individual" means person with mental retardation or other developmental disability who is eligible to receive home and community-based services, medicaid case management services, or habilitation center services.
- (7) "ISP" means the individual service plan, a written description of the services, supports, and activities to be provided to an individual.

- (8) "ODJFS" means the Ohio department of job and family services as established by section 121.02 of the Revised Code.
- (9) "Medicaid case management services" means case management services provided to an individual with mental retardation or other developmental disability that the state medicaid plan requires.
- (10) "MLAA" means a county board with medicaid local administrative authority pursuant to section 5126.055 of the Revised Code.
- (11) "Qualified provider" means a provider that meets the following requirements:
- (a) The provider is certified by the department for the services;
 - (b) The provider is eligible to enter into or has entered into a service contract with the MLAA in accordance with section 5126.035 of the Revised Code;
 - (c) The provider has a medicaid provider agreement with ODJFS that covers the services.
- (12) "Service and support administration" has the same meaning as in section 5126.01 of the Revised Code, and pursuant to section 5126.15 of the Revised Code, includes a set of mandated functions to be provided by the county board. Service and support administration supports individuals in determining and pursuing goals and maintains the individual as the focus while coordinating services across multiple systems.
- (13) "Single point of accountability" means the identified person assigned functions of service and support administration pursuant to section 5126.15 of the Revised Code who is responsible to an individual for the effective implementation and coordination of his or her ISP process.

(D) Decision-making responsibility

- (1) An individual shall be responsible for making all decisions regarding free choice of providers, unless the individual has a guardian, in which case the guardian shall be responsible for making such decisions.
- (2) Individuals with guardians have the right to participate in decisions regarding the free choice of providers.

(E) Qualified provider lists

- (1) The department shall create and maintain on its provider information website lists of all qualified providers of home and community-based services.

medicaid case management services, and habilitation center services. The department shall update the list monthly. Qualified providers shall update their information as required by the department.

(2) The individual's single point of accountability shall utilize the lists created by the department pursuant to paragraph (E)(1) of this rule to assist the individual in identifying potential providers in accordance with paragraph (H) of this rule.

(F) Assistance to interested parties regarding becoming providers

The MLAA shall provide information to all interested parties regarding how to become qualified providers including, but not limited to, how to obtain an application for provider certification from the department.

(G) Notification process

Annually, the MLAA shall provide to each individual and the individual's family information that contains the following:

(1) A written statement that lists of all qualified providers may be obtained from the department's provider information website and instructions regarding how to obtain access to the lists;

(2) An explanation of the procedures the MLAA will follow in accordance with paragraph (H) of this rule to assist an individual in the selection of a qualified provider; and

(3) A written description of the individual's hearing rights pursuant to section 5101.35 of the Revised Code in the event the individual is denied his or her choice of a qualified provider.

(H) Provider choice process

(1) If the individual requests a particular qualified provider, the MLAA shall honor the individual's request without utilizing the provider selection process set forth in paragraph (H)(2) of this rule.

(2) Except as provided in paragraph (H)(1) of this rule, the MLAA shall use the following provider selection process to assist an individual in choosing qualified providers. This process shall be used if the individual does not have a provider, the individual has a provider but chooses to select a different provider, or the individual has a provider but chooses to select an additional provider.

(a) If an agency is asked to be available for selection to provide services and supports, that agency shall provide the following information to the

individual and person assisting the individual in selecting a provider of services and supports:

(i) A description of all services provided, including entrance criteria;

(ii) Qualifications of staff;

(iii) Accreditation status;

(iv) Information about outcomes and performance; and

(v) Reports from consumers on satisfaction with the outcomes achieved.

(b) If a person is asked to be available for selection to provide services and supports, that person shall provide the following information to the individual and person assisting the individual in selecting a provider of services and supports:

(i) A description of all services provided;

(ii) Qualifications of the person; and

(iii) Any other relevant information about past experiences in providing services and supports.

(c) Upon the individual's selection of a willing and qualified provider of services and supports, the individual or the person who is assisting the individual in selecting a provider shall make a referral to or notify that provider to communicate the reason for the referral, and the expected outcome.

(d) Each county board shall develop a policy and procedure describing the type of information that will be shared with the selected provider. This information is only provided upon written consent of the individual and may include, but is not be limited to:

(i) A copy of the relevant sections of an individual's ISP, including pertinent assessment information;

(ii) Relevant medical history;

(iii) Relevant psychological/psychiatric information, including behavior support needs;

(iv) Relevant social information, including criminal background, if applicable;

- (v) Identified health risks;
 - (vi) Identified safety risks;
 - (vii) Applicable information on previous services and supports;
 - (viii) The amount of funding available to the individual for the provision of the relevant service (individual allocation and individual budget);
 - (ix) Other relevant information as determined by the individual.
- (e) Each provider of services and supports will be required to review the information referenced in paragraph (H)(2)(d) of this rule and meet with the individual and/or the person requested by the individual to assist him/her prior to determining if the provider can meet the expected outcome of the individual.
- (f) If the provider of services and supports determines that the expected outcome of the individual can be met, that provider shall determine if supplemental, situational and/or other evaluations should occur in order to develop a service delivery strategy. If this information is needed and the individual agrees, a recommendation is then made to the person employed by or under contract with the county board to provide service and support administration for the individual for authorization prior to obtaining such information.
- (g) If the provider of services and supports determines that he or she cannot meet the expected outcome of the individual, that provider shall communicate the decision to the individual in a manner that is understandable to the individual and will communicate the reason in writing to the person who is employed by or under contract with the county board to provide service and support administration for the individual.
- (3) The individual's single point of accountability shall inform and review as necessary with the individual/guardian the department's statewide website internet provider pool. If the individual/guardian chooses to utilize the website, the single point of accountability shall offer assistance regarding utilization of the pool in choosing a provider.
- (4) The individual shall notify the individual's single point of accountability of the individual's choice of provider.
- (5) When selecting a qualified provider, an individual may choose a provider that provides services outside of the individual's county of residence.

(I) Arrangements for services

- (1) The individual's single point of accountability shall assist the individual in making arrangements with the chosen provider for the provision of services.
- (2) Unless the MLAA is the chosen provider, the MLAA shall contract with the provider chosen by the individual in accordance with sections 5126.035 and 5126.055 of the Revised Code.
- (3) The chosen provider and the services and supports to be provided by the provider shall be documented in the individual's ISP.

(J) Due process and appeal rights

If the individual chooses a provider who is qualified and willing to provide a service, but is denied that provider, the MLAA shall inform the individual of the individual's right to request a hearing under section 5101.35 of the Revised Code. The individual's right to a hearing shall be explained in a manner the individual can understand. At the hearing, the county board shall present evidence of the process for appropriate assistance in choosing providers.

(K) Monitoring compliance

The department shall monitor the MLAA's compliance with this rule in accordance with sections 5123.044 and 5126.055 of the Revised Code.

- (1) The department shall monitor the county board's compliance with free choice of provider when the county board is the chosen service provider.
- (2) The MLAA shall perform the duties for free choice of provider as described in paragraph (C) of rule 5123:2-9-04 of the Administrative Code.
- (3) The department shall investigate or cause an investigation of complaints when it is alleged that an individual is being denied free choice of provider. These complaints shall be treated in the same manner as a rights violation under section 5123.64 of the Revised Code.

Effective:

R.C. 119.032 review dates:

Certification

Date

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