

5123-9-04

**Home and community-based services waivers - waiting list.****(A) Purpose**

This rule sets forth requirements for the waiting list established pursuant to section 5126.042 of the Revised Code when a county board of developmental disabilities determines that available resources are insufficient to enroll individuals who are assessed to need and who choose home and community-based services in department-administered home and community-based services waivers.

**(B) Definitions**

For the purposes of this rule, the following definitions apply:

- (1) "Adult" means an individual who is eighteen years of age or older.
- (2) "Alternative services" means the various programs, funding mechanisms, services, and supports, other than home and community-based services, that exist as part of the developmental disabilities service system and other service systems. "Alternative services" includes, but is not limited to, services offered through Ohio's medicaid state plan such as home health services and services available at an intermediate care facility for individuals with intellectual disabilities.
- (3) "Community-based alternative services" means alternative services that are available and likely to meet an individual's needs in a setting other than a hospital, an intermediate care facility for individuals with intellectual disabilities, or a nursing facility. "Community-based alternative services" includes, but is not limited to, services provided through a community mental health agency or a public children services agency or services arranged by a county family and children first council described in section 121.37 of the Revised Code.
- (4) "County board" means a county board of developmental disabilities.
- (5) "Current need" means an unmet need for home and community-based services within twelve months, as determined by a county board based upon assessment of the individual using the waiting list assessment tool. Situations that give rise to current need include:
  - (a) An individual is likely to be at risk of substantial harm due to:
    - (i) The primary caregiver's declining or chronic physical or psychiatric condition that significantly limits ~~his or her~~ the primary caregiver's ability to care for the individual;

- (ii) Insufficient availability of caregivers to provide necessary supports to the individual; or
    - (iii) The individual's declining skills resulting from a lack of supports.
  - (b) An individual has an ongoing need for limited or intermittent supports to address behavioral, physical care, or medical needs, in order to sustain existing caregivers and maintain the viability of the individual's current living arrangement.
  - (c) An individual has an ongoing need for continuous supports to address significant behavioral, physical care, or medical needs.
  - (d) An individual is aging out of or being emancipated from children's services and has needs that cannot be addressed through community-based alternative services.
  - (e) An individual requires waiver funding for adult day services or employment-related supports that are not otherwise available as vocational rehabilitation services funded under section 110 of the Rehabilitation Act of 1973, 29 U.S.C. 730, as in effect on the effective date of this rule, or as "special education" or "related services" as those terms are defined in section 602 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1401, as in effect on the effective date of this rule.
  - (f) An individual is living in an intermediate care facility for individuals with intellectual disabilities or a nursing facility and has a viable discharge plan.
- (6) "Date of request" means the earliest date and time of any written or otherwise documented request for home and community-based services made prior to September 1, 2018.
- (7) "Department" means the Ohio department of developmental disabilities.
- (8) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (9) "Immediate need" means a situation that creates a risk of substantial harm to an individual, caregiver, or another person if action is not taken within thirty calendar days to reduce the risk. Situations that give rise to immediate need include:

- (a) A resident of an intermediate care facility for individuals with intellectual disabilities has received notice of termination of services in accordance with rule ~~5123:2-3-05~~ 5123-3-05 of the Administrative Code.
  - (b) A resident of a nursing facility has received thirty-day notice of intent to discharge in accordance with Chapter 5160-3 of the Administrative Code.
  - (c) A resident of a nursing facility has received an adverse determination in accordance with rule ~~5123:2-14-01~~ 5123-14-01 of the Administrative Code.
  - (d) An adult is losing ~~his or her~~ a primary caregiver due to the primary caregiver's declining or chronic physical or psychiatric condition or due to other unforeseen circumstances (such as military deployment or incarceration) that significantly limit the primary caregiver's ability to care for the individual when:
    - (i) Impending loss of the caregiver creates a risk of substantial harm to the individual; and
    - (ii) There are no other caregivers available to provide necessary supports to the individual.
  - (e) An ~~adult or child~~ individual is engaging in documented behavior that creates a risk of substantial harm to the individual, caregiver, or another person.
  - (f) There is impending risk of substantial harm to the individual or caregiver as a result of:
    - (i) The individual's significant care needs (i.e., bathing, lifting, high-demand, or twenty-four-hour care); or
    - (ii) The individual's significant or life-threatening medical needs.
  - (g) An adult has been subjected to abuse, neglect, or exploitation and requires additional supports to reduce a risk of substantial harm to the individual.
- (10) "Individual" means a person with a developmental disability.
- (11) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.

- (12) "Locally-funded home and community-based services waiver" means the county board pays the entire nonfederal share of medicaid expenditures in accordance with sections 5126.059 and 5126.0510 of the Revised Code.
- (13) "Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.
- (14) "Service and support administration" means the duties performed by a service and support administrator pursuant to section 5126.15 of the Revised Code.
- (15) "State-funded home and community-based services waiver" means the department pays, in whole or in part, the nonfederal share of medicaid expenditures associated with an individual's enrollment in the waiver.
- (16) "Status date" means the date on which the individual is determined to have a current need based on completion of an assessment of the individual using the waiting list assessment tool.
- (17) "Transitional list of individuals waiting for home and community-based services" means the list maintained in the department's web-based individual data system which ~~shall include~~ includes the name and date of request for each individual on a list of individuals waiting for home and community-based services on August 31, 2018 established in accordance with rule 5123:2-1-08 of the Administrative Code as that rule existed on August 31, 2018.
- (18) "Waiting list assessment tool" means the Ohio assessment for immediate need and current need contained in the appendix to this rule, which ~~shall~~ will be used for purposes of making a determination of an individual's eligibility to be added to the waiting list for home and community-based services defined in paragraph (B)(20) of this rule and administered by persons who successfully complete training developed by the department.
- (19) "Waiting list date" means, as applicable, either:
  - (a) The date of request for an individual whose name is included on the transitional list of individuals waiting for home and community-based services; or
  - (b) The earliest status date for an individual whose name is not included on the transitional list of individuals waiting for home and community-based services.
- (20) "Waiting list for home and community-based services" means the list established by county boards and maintained in the department's web-based waiting list

management system which ~~shall include~~ includes the name, status date, date of request (as applicable), waiting list date, and the criteria for current need by which an individual is eligible based on administration of the waiting list assessment tool, for each individual determined to have a current need on or after September 1, 2018.

(C) Planning for locally-funded home and community-based services waivers

A county board ~~shall~~ will, in conjunction with development of its plan described in section 5126.054 of the Revised Code and its strategic plan described in rule 5123-4-01 of the Administrative Code, identify how many individuals the county board plans to enroll in each type of locally-funded home and community-based services waiver during each calendar year, based on projected funds available to the county board to pay the nonfederal share of medicaid expenditures and the assessed needs of the county's residents on the waiting list for home and community-based services. This information ~~shall~~ will be made available to any interested person upon request.

(D) Administration of the waiting list assessment tool

- (1) A county board will administer the initial waiting list assessment tool to an individual when the individual, the individual's guardian, or a member of the individual's family:
  - (a) Requests the county board administer the waiting list assessment tool;
  - (b) Requests the individual be enrolled in a home and community-based services waiver or placed on the waiting list for home and community-based services; or
  - (c) Identifies an unmet need.
- (2) A county board will re-administer the waiting list assessment tool to an individual when the individual, the individual's guardian, or a member of the individual's family identifies a change in circumstance that may result in the individual having a current need or an immediate need.
- (3) When cause for administering the waiting list assessment tool is identified in accordance with paragraph (D)(1) or (D)(2) of this rule, a county board will:
  - (a) Explain to the individual, the individual's guardian (which may include a public children services agency), or the individual's family member, as applicable, the waiting list assessment tool process and timeframes set forth in this rule.

- (b) Identify services available to meet the individual's needs while the waiting list assessment tool is being completed.
  - (c) Assess the individual using the waiting list assessment tool.
    - (i) The waiting list assessment tool will be initiated by conducting an interview with the individual and the individual's guardian, as applicable, within fifteen calendar days of the date that cause for administering the waiting list assessment tool is identified in accordance with paragraph (D)(1) or (D)(2) of this rule. The county board will document extenuating circumstances related to the individual that delay conduct of the interview.
    - (ii) The waiting list assessment tool will be completed within forty-five calendar days of the date the interview with the individual and/or the individual's guardian is conducted in accordance with paragraph (D)(3)(c)(i) of this rule. The county board will document extenuating circumstances related to the individual that delay completion of the waiting list assessment tool.
- (4) A county board will notify the individual or the individual's guardian, as applicable, of the outcome of administration of the waiting list assessment tool within ten calendar days of completion.
  - (a) The notice will include a copy of the individual's completed waiting list assessment tool and an explanation of the individual's/guardian's due process rights in accordance with paragraph (J) of this rule.
  - (b) When the county board determines the individual does not require waiver enrollment or placement on the waiting list for home and community-based services because community-based alternative services are available to meet the individual's assessed needs, the notice will include:
    - (i) A list of the individual's assessed needs.
    - (ii) Specific community-based alternative services that address each assessed need.
    - (iii) The date by which the county board will follow-up with the individual/guardian to determine if the suggested community-based alternative services have been accessed.
    - (iv) Contact information for a person at the county board who can assist in identifying and accessing community-based alternative services.

~~(D)~~(E) Waiting list for home and community-based services

~~(1) An individual or the individual's guardian, as applicable, who thinks the individual has an immediate need or a current need may contact the county board in the individual's county of residence to request an assessment of the individual using the waiting list assessment tool. The county board shall initiate an assessment of the individual using the waiting list assessment tool within thirty calendar days. An individual or the individual's guardian, as applicable, shall have access to the individual's completed waiting list assessment tool maintained in the department's web-based waiting list management system and upon request, shall be provided a copy by the county board.~~

~~(2)~~(1) The county board ~~shall~~ will place an individual's name on the waiting list for home and community-based services when, based on assessment of the individual using the waiting list assessment tool, the individual:

(a) Has been determined to have a condition that is:

(i) Attributable to a mental or physical impairment or combination of mental and physical impairments, other than an impairment caused solely by mental illness;

(ii) Manifested before the individual is age twenty-two; and

(iii) Likely to continue indefinitely; and

(b) Has a current need which cannot be met by community-based alternative services in the county where the individual resides (including a situation in which an individual has a current need despite the individual's enrollment in a home and community-based services waiver).

~~(3)~~(2) The county board ~~shall~~ will not place an individual's name on the waiting list for home and community-based services when the individual:

(a) Is a child who is subject to a determination under section 121.38 of the Revised Code and requires home and community-based services; or

(b) Has an immediate need, in which case the county board ~~shall~~ will take action necessary to ensure the immediate need is met. The county board ~~shall~~ will provide the individual or the individual's guardian (which may include a public children services agency), as applicable, with the option of having the individual's needs met in an intermediate care facility for individuals with intellectual disabilities or through community-based alternative services. Once an individual or individual's guardian chooses

the ~~setting in which he or she prefers to receive services~~ preferred setting option, the county board ~~shall~~ will take action to ensure the individual's immediate need is met, including by enrollment in a home and community-based services waiver, if necessary. Such action may also include assisting the individual or the individual's guardian, as applicable, in identifying and accessing alternative services that are available to meet the individual's needs.

~~(4)~~(3) When a county board places an individual's name on the waiting list for home and community-based services, the county board ~~shall~~ will:

(a) Record, in the department's web-based waiting list management system:

(i) The individual's status date; and

(ii) For an individual included in the transitional list of individuals waiting for home and community-based services defined in paragraph (B) (17) of this rule, the individual's date of request.

(b) Notify the individual or the individual's guardian, as applicable, that the individual's name has been placed on the waiting list for home and community-based services.

(c) Provide contact information to the individual or the individual's guardian, as applicable, for a person at the county board who can assist in identifying and accessing alternative services that address, to the extent possible, the individual's needs.

~~(5)~~(4) Annually, a county board ~~shall~~ will:

(a) Review the waiting list assessment tool and service needs of each individual whose name is included on the waiting list for home and community-based services with the individual and the individual's guardian, as applicable; and

(b) Assist the individual or the individual's guardian, as applicable, in identifying and accessing alternative services.

~~(6)~~(5) Under any circumstances, when a county board determines an individual's status has changed with regard to having an immediate need and/or having a current need or an individual's status date has changed, the county board ~~shall~~ will update the individual's record in the department's web-based waiting list management system.



~~(E)~~(F) Order for enrolling individuals in locally-funded home and community-based services waivers

- (1) ~~Individuals shall be selected~~A county board will select individuals for enrollment in locally-funded home and community-based services waivers in this order:
  - (a) Individuals with immediate need who require waiver funding to address the immediate need.
  - (b) Individuals who have met multiple criteria for current need for twelve or more consecutive months and who were not offered enrollment in a home and community-based services waiver in the prior calendar year. When two or more individuals meet the same number of criteria for current need, the individual with the earliest of either the status date or date of request ~~shall~~ will be selected for enrollment.
  - (c) Individuals who have met multiple criteria for current need for less than twelve consecutive months. When two or more individuals meet the same number of criteria for current need, the individual with the earliest of either the status date or date of request ~~shall~~ will be selected for enrollment.
  - (d) Individuals who meet a single criterion for current need. When two or more individuals meet a single criterion for current need, the individual with the earliest of either the status date or date of request ~~shall~~ will be selected for enrollment.
- (2) Individuals with immediate need and individuals with current need may be enrolled in locally-funded home and community-based services waivers concurrently.
- (3) Meeting the criteria for immediate need and/or current need does not guarantee enrollment in a locally-funded home and community-based services waiver within a specific timeframe.
- (4) When an individual is identified as next to be enrolled in a locally-funded home and community-based services waiver, the county board ~~shall~~ will determine the individual's eligibility for enrollment in a home and community-based services waiver. When the county board determines an individual is eligible for enrollment in a home and community-based services waiver, the county board ~~shall~~ will determine which type of locally-funded home and community-based services waiver is sufficient to meet the individual's needs in the most cost-effective manner.

~~(F)~~(G) Order for enrolling individuals in state-funded home and community-based services waivers

- (1) The department ~~shall~~ will determine the order for enrolling individuals in state-funded home and community-based services waivers.
- (2) Meeting the criteria for immediate need and/or current need does not guarantee enrollment in a state-funded home and community-based services waiver within a specific timeframe.

~~(G)~~(H) Change in an individual's county of residence

When an individual on the waiting list for home and community-based services moves from one county to another and the individual or the individual's guardian, as applicable, notifies the receiving county board, the receiving county board ~~shall~~ will, within ninety calendar days of receiving notice, review the individual's waiting list assessment tool.

- (1) When the receiving county board determines that the individual has a current need which cannot be met by community-based alternative services in the receiving county (including a situation in which an individual has a current need despite the individual's enrollment in a home and community-based services waiver), the receiving county board ~~shall~~ will update the individual's county of residence in the department's web-based waiting list management system without changing the status date or date of request assigned by the previous county board.
- (2) When the receiving county board determines that the individual has a current need which can be met by community-based alternative services in the receiving county, the receiving county board ~~shall~~ will assist the individual or the individual's guardian, as applicable, in identifying and accessing those services.

~~(H)~~(I) Removal from waiting list for home and community-based services

A county board ~~shall~~ will remove an individual's name from the waiting list for home and community-based services:

- (1) When the county board determines that the individual no longer has a condition described in paragraph ~~(D)(2)(a)~~ (E)(1)(a) of this rule<sub>;</sub>
- (2) When the county board determines that the individual no longer has a current need<sub>;</sub>
- (3) Upon request of the individual or the individual's guardian, as applicable<sub>;</sub>

- (4) Upon enrollment of the individual in a home and community-based services waiver that meets the individual's needs;₂
  - (5) If the individual or the individual's guardian, as applicable, declines enrollment in a home and community-based services waiver or community-based alternative services that are sufficient to meet the individual's needs;₂
  - (6) If the individual or the individual's guardian, as applicable, fails to respond to attempts by the county board to contact the individual or the individual's guardian by at least two different methods, ~~one of which shall be certified mail from the following list~~ to the last known address of the individual or the individual's guardian, as applicable;₂
    - (a) Electronic mail;
    - (b) Traceable delivery service; or
    - (c) Personal service.
  - (7) When the county board determines the individual does not have a developmental disabilities level of care in accordance with rule ~~5123:2-8-01~~ 5123-8-01 of the Administrative Code;₂
  - (8) When the individual is no longer a resident of Ohio; ~~or.~~
  - (9) Upon the individual's death.
- ~~(I) Advancement from transitional list of individuals waiting for home and community-based services to waiting list for home and community-based services~~
- ~~(1) The department shall maintain the transitional list of individuals waiting for home and community-based services as defined in paragraph (B)(17) of this rule until December 31, 2020.~~
  - ~~(2) A county board shall administer the waiting list assessment tool to each individual residing in the county whose name is included on the transitional list of individuals waiting for home and community-based services.~~
    - ~~(a) The county board shall administer the waiting list assessment tool to each individual residing in the county whose name is included on the transitional list of individuals waiting for home and community-based services who receives service and support administration when the individual service plan is next scheduled for review following September 1, 2018.~~

- ~~(b) The county board shall administer the waiting list assessment tool to each individual residing in the county whose name is included on the transitional list of individuals waiting for home and community-based services who does not receive service and support administration no later than December 31, 2020. A county board may request and the department may provide assistance to identify, locate, contact, or administer the waiting list assessment tool to individuals residing in the county but unknown to the county board.~~
- ~~(c) There are three possible outcomes of administration of the waiting list assessment tool:
  - ~~(i) The county board determines the individual has an immediate need, in which case the individual shall receive services in accordance with paragraph (D)(3)(b) of this rule;~~
  - ~~(ii) The county board determines the individual has a current need, in which case the county board shall use community-based alternative services in the county to meet the individual's needs or if the individual's needs cannot be met by community-based alternative services in the county, the county board shall add the individual's name to the waiting list for home and community-based services; or~~
  - ~~(iii) The county board determines the individual has neither an immediate need nor a current need.~~~~
- ~~(d) Once the waiting list assessment tool has been administered to an individual whose name is included on the transitional list of individuals waiting for home and community-based services and a determination made, the county board shall notify the department and the department shall remove the individual's name from the transitional list of individuals waiting for home and community-based services.~~
- ~~(3) The county board or the department shall attempt to contact each individual whose name is included on the transitional list of individuals waiting for home and community-based services or the individual's guardian, as applicable, by at least two different methods, one of which shall be certified mail to the last known address of the individual or the individual's guardian, as applicable. The department shall remove an individual's name from the transitional list of individuals waiting for home and community-based services when the individual or the individual's guardian, as applicable:~~

- ~~(a) Fails to respond to attempts by the county board or the department to establish contact; or~~
- ~~(b) Declines an assessment of the individual using the waiting list assessment tool.~~

(J) Due process

~~(1) Due process shall be afforded to an individual aggrieved by an action of a county board related to:~~

- ~~(a) The approval, denial, withholding, reduction, suspension, or termination of a service funded by the state medicaid program;~~
- ~~(b) Placement on, denial of placement on, or removal from the waiting list for home and community-based services or the transitional list of individuals waiting for home and community-based services; or~~
- ~~(c) A dispute regarding an individual's date of request or status date.~~

(1) Due process will be afforded to an individual when a county board takes an action related to placement on, denial of placement on, or removal from the waiting list for home and community-based services.

(2) The county board will issue and explain due process to the individual or the individual's guardian, as applicable, using a form approved by the Ohio department of job and family services (available at [odjfs.state.oh.us/forms/](http://odjfs.state.oh.us/forms/)).

~~(2)~~(3) Due process shall will be provided in accordance with section 5160.31 of the Revised Code and Chapters 5101:6-1 to 5101:6-9 of the Administrative Code.

Effective:

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Certification

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Date

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