

LAKE COUNTY BOARD OF DD/DEEPWOOD

BOARD POLICY

Reviewed and Adopted by the Board:
Date: November 22, 2021

Signature on File

Elfriede Roman, Superintendent

I. SUBJECT: ESTABLISHMENT OF WAITING LISTS FOR COUNTY BOARD FUNDED PROGRAMS AND SERVICES

II. PURPOSE:

The purpose of this policy is to:

- A. set forth the requirements the Lake County Board of DD must meet in establishing and maintaining waiting lists.
- B. establish a process of communication regarding waiting lists between the Lake County Board of DD and an individual, the individual's guardian, and the individual's family;
- C. establish procedures for due process.

III. REFERENCE

- A. ORC 121.38 Resolving agency disputes concerning services or funding
- B. ORC 5126.042 Waiting Lists for Services
- C. ORC 5126.044 Confidentiality
- D. ORC 5126.054 Three Calendar Year Plan
- E. ORC 5126.055 Services Provided by Board that has Medicaid Local Administrative Authority
- F. ORC 5126.059 Payment of nonfederal share of Medicaid expenditures
- G. ORC 5126.0510 Payment of nonfederal share of home services expenditures
- H. ORC 5160.31 Appeals regarding determination of eligibility for medical assistance program.
- I. OAC 5123:9-04 Home and Community Based Services Waivers – Waiting List
- J. OAC 5123-4-04 Resolution of Complaints involving County Boards of Developmental Disabilities and Appeals of Adverse Action Proposed or Initiated by County Boards of Developmental Disabilities
- K. OAC 5123:2-3-05 Licensed residential facilities-admission, termination of services, and transfer
- L. OAC 5123-14-01 Preadmission screening and resident review for nursing facility applicants and nursing facility residents with developmental disabilities

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- M. OAC 5123-4-01 Administration and operation of county boards of developmental disabilities
- N. OAC 5123-8-01 Developmental Disabilities Level of Care
- O. OAC 5101:6-1 to 5101:6-9 Hearings
- P. OAC 5160-3 Long-term Care Facilities; Nursing Facilities; Intermediate Care Facilities For The Individuals With Intellectual Disabilities
- Q. LCBDD/DEEPWOOD Policy C-6, Establishment of Capacity for County Board Services
- R. LCBDD/DEEPWOOD Policy A-23, Eligibility for County Board Services
- S. LCBDD/DEEPWOOD Policy C-1, Administrative Resolution of Complaints
- T. LCBDD/DEEPWOOD Policy A-13B, Emergency/Crisis Respite Care

IV. DEFINITION

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, including, but not limited to:

- a. services provided directly by the Board;
- b. services funded by the Board through providers;
- c. services offered through Ohio's Medicaid State Plan such as home health services, Private Duty Nursing, and Intermediate Care Facility of individuals with intellectual disabilities (ICF/IID).

Community-Based Alternative Services means alternative services in a setting other than a hospital, an ICF/IID, or a nursing facility.

Current need means an unmet need for home and community based services within twelve months, as determined by the 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 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, 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, or medical needs.

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- d. An individual is aging out of or being emancipated from Children Services and has needs that cannot be addressed through community-based alternative resources.
- 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 September 1, 2018, 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 September 1, 2018.

Date of request means the earliest date and time of any written or other documented request for home and community-based services, made prior to September 1, 2018.

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 ICF/IID has received notice of termination of services in accordance with rule 5123:2-3-05;
- b. A resident of a nursing facility has received a 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 5123:14-01 of the Administrative Code;
- d. An adult is losing his or her 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 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.

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Locally-Funded Home and Community-Based Services Waivers 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

State-Funded Home and Community-Based Services Waivers means the Ohio Department of Developmental Disabilities (DODD) pays, in whole or in part, the nonfederal share of Medicaid expenditures associated with an individual's enrollment in a Waiver.

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.

Waiting List Assessment Tool means the Ohio assessment for immediate need and current need contained in the Appendix of Rule 5123-9-04, "Home and Community-Based Services Waivers – Waiting List".

Waiting List for Non-Medicaid Programs or Services means a waiting list established by the County Board for non-Medicaid programs or services, when the county board has determined that available resources are not sufficient to meet the needs of all individuals who request non-Medicaid programs or services. The Board may establish priorities for making placements on its waiting lists. Any such priorities shall be in conjunction with the county board plan described in ORC 5126.054 and Strategic Plan described in Rule 5123-4-01 of the Administrative Code.

V. POLICY:

A. GENERAL WAITING LIST REQUIREMENT FOR HOME AND COMMUNITY BASED SERVICES WAIVERS

Individuals who are Medicaid eligible and need Medicaid covered services shall receive state plan services through their Medicaid plans and shall not be placed on a waiting list for those services.

The Board shall, in conjunction with the county board plan described in ORC 5126.054 and Strategic Plan described in Rule 5123-4-01 of the Administrative Code, identify how many individuals the Board plans to enroll in each type of locally funded HCBS Waiver during each calendar year, based on projected funds

available to pay the nonfederal share of Medicaid expenditures and the assessed needs of the county's residents on the Waiting List for HCBS Waivers.

B. GENERAL WAITING LIST REQUIREMENT FOR NON-MEDICAID SERVICES

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The Board shall establish and maintain waiting lists for each non-Medicaid program or service administered by the Board on a first come first serve basis, excluding priorities established conjunction with the county board plan described in ORC 5126.054 and Strategic Plan described in Rule 5123-4-01 of the Administrative Code.

The Board shall establish a separate waiting list for the following categories for which available resources are not sufficient to meet the needs of all individuals who request non-Medicaid programs or services:

- 1) Family Support Services

C. PROCEDURES ON REQUESTS FOR SERVICES

- 1) An individual residing in Lake County or the individual's Guardian, as applicable, who thinks the individual has an immediate or current need may contact the SSA Department to request an assessment of the individual using the Waiting List Assessment tool. The SSA assigned to Wait List will initiate an assessment within thirty calendar days.
- 2) An individual or Guardian, as applicable, shall have access to the individual's completed waiting list assessment tool maintained in DODD's web-based waiting list management system should they desire. If the individual or Guardian does not want to access the DODD web-based system, they will be provided a copy by the SSA Department, upon request.
- 3) The SSA Director, or designee, will place an individual's name on the waiting list for HCBS Waivers 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 (including a situation in which an individual has a current need despite the individual's enrollment in an HCBS Waiver).
- 4) An individual's name will not be placed on the Waiting List for HCBS Waivers when the individual:

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- 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 necessary action will be taken by the Board within 30 calendar days to ensure the immediate need is met. SSA will provide the individual or Guardian with the option of having the individual's needs met in an ICF/IID or through community-based alternative services. Once an individual or Guardian chooses a setting in which he or she prefers to receive services, the Board shall take action to ensure the immediate need is met, including by enrollment on an HCBS Waiver, if necessary. Such action may also include assisting the individual or Guardian in identifying and accessing alternative services that are available to meet the individual's needs.
- 5) When an individual's name is placed on the Waiting List for HCBS Waiver services, the SSA Director or designee will:
- a. Record, in DODDs web-based waiting list management system:
 - (i) The individual's status date; and
 - (ii) For an individual included in the transitional wait list, the individual's date of request.
 - b. Notify the individual or the individual's Guardian that the individual's name has been placed on the waiting list for HCBS Waivers.
 - c. Provide contact information for a person at the Board who can assist in identifying and accessing alternative services that address, to the extent possible, the individual's assessed needs.
- 6) Annually, SSA will:
- a. Review the waiting list assessment tool and service needs of each individual whose name is included on the waiting list for HCBS Waivers with the individual and/or Guardian; and
 - b. Assist in identifying and accessing alternative services.
- 7) When it has been determined that an individual's status has changed with regard to having an immediate and/or current need or an individual's status date has changed, the SSA Director or designee shall update the individual's record in DODD's web-based waiting list management system.

D. ORDER OF ENROLLMENT IN COUNTY BOARD FUNDED HOME AND COMMUNITY BASED SERVICES WAIVERS

- 1) Individuals will be selected for enrollment in this order:
 - a. Individuals with immediate need who require waiver funding to address the immediate need.

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- b. Individuals who have met multiple criteria for current need for twelve or more consecutive months and who were not offered enrollment in an HCBS Waiver in the prior calendar year. When two or more individuals meet the same number of criteria for the current need, the individual with the earliest of either the status date or date of request shall 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 the current need, the individual with the earliest of either the status date or date of request shall be selected for enrollment.
 - d. Individuals who meet a single criterion for current need. When two or more individuals meet the same number of criteria for the current need, the individual with the earliest of either the status date or date of request shall be selected for enrollment.
- 2) Individuals with immediate need and individuals with current need can be enrolled in HCBS Waivers concurrently.
 - 3) Meeting criteria for immediate need and/or current need does not guarantee enrollment in a county board funded HCBS Waiver within a specific timeframe.
 - 4) When an individual is identified as next to be enrolled from the Wait List, the SSA Director or designee will assign an SSA to assist the individual with the eligibility and enrollment process. The SSA, in accordance with SSA Procedure-7 Enrollment and Discharge, will:
 - a. Assess the individual using the statewide Level of Care Assessment tool. The results of the LOC tool, along with a Clinician Verification form confirming the individual's qualifying condition, will be submitted to the DODD web-based LOC system for approval.
 - b. The SSA will complete additional assessments, including a comprehensive Functional Assessment and confirm with the SSA Director, or designee, which type of Waiver that is sufficient to meet the needs of the individual in the most cost-effective manner.

E. ORDER OF ENROLLMENT IN STATE FUNDED HCBS WAIVERS

- 1) The Ohio Department of Developmental Disabilities (DODD) will determine the order for enrolling individuals in state-funded HCBS Waivers.
- 2) Meeting the criteria for immediate need and/or current need does not guarantee enrollment in a state-funded Waiver within a specific timeframe.

F. CHANGE IN AN INDIVIDUAL'S COUNTY OF RESIDENCE

- 1) If an individual on the waiting list for HCBS Waivers relocates to Lake County from another county and has notified the SSA Department of the

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move, the SSA assigned to Wait List will review the individual's Wait List Assessment Tool within 90 calendar days.

- a. When the SSA Director or designee determines, based on the Wait List Assessment Tool, that the individual has a current need that cannot be met by community-based alternative services (including a situation in which an individual has a current need despite the individual's enrollment in an HCBS Waiver), will update the individual's county of residence in DODD's web-based Waiting List Management System without changing the status date or date of request assigned by the previous county board.
 - b. When the SSA Director or designee determines, based on the Wait List Assessment Tool, that the individual has a current need which can be met by community-based alternative services, the individual will not be added to the Wait List; however, will be assisted to identify and access those community-based alternative services that can meet the assessed needs.
- 2) When an individual relocates to Lake County from another county, the individual's name and date of request for any non-Medicaid category of service will be added to any waiting list using the date of request made to Lake County, upon eligibility determination for county board services.
 - 3) An individual can be placed on the Wait List for county board funded services i.e. Family Support Services, concurrently with being placed on the HCBS Waiver Wait List.

G. IMMEDIATE NEED STATUS

When an individual's circumstance is determined to meet the immediate needs category, the Board will identify and take necessary actions to reduce or eliminate the risk of substantial harm, within 30 calendar days. Supports shall be coordinated to address the immediate needs and may include community-based alternative services rather than HCBS Waiver enrollment. Alternatives may include but are not limited to: respite through locally funded supports or if currently enrolled on an HCBS Waiver, through State Plan Medicaid Services in the form of a short-term admission to an ICF/IID for up to 90 days, Home Healthcare or Private Duty Nursing, home modifications or adaptive equipment, linkage to other professional services, ICF/IID openings in the county, or coordinating additional unpaid supports.

A refusal to accept community-based alternative services that meet the immediate need, other than services in an ICF/IID, does not mean a person will receive an HCBS Waiver, rather, a refusal to accept community-based alternative services that are offered to reduce or eliminate the risk of substantial harm to self or others may indicate that the situation will need further assessment to verify that the identified unmet need continues to meet the criteria of an immediate need as defined in Rule.

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Once the SSA Director or designee identifies an individual who meets the criteria for an immediate need, the SSA Director or designee will arrange for an Immediate

Needs Review Committee meeting per SSA Procedure-3 “Immediate Needs Review Committee”.

When the Board, through the Immediate Needs Review Committee, confirms an immediate need exists and that no other community-based alternative services are available that will mitigate the risk of substantial harm to the individual, caregiver, or others, then the SSA Director or designee may request an HCBS Waiver sufficient to meet the immediate need for purposes of enrollment.

H. REMOVAL FROM THE HCBS WAIVER WAIT LIST

- 1) Individuals will be removed from the HCBS Waiver Wait List under the following circumstances:
 - a. When the individual no longer has a qualifying condition defined in Paragraph (C) (3) (a) of this Policy;
 - b. When the individual is determined to no longer have a current need;
 - c. Upon request of the individual or individual’s Guardian;
 - d. Upon enrollment onto an HCBS Waiver that meets the individual’s needs;
 - e. If the individual or Guardian, as applicable, declines enrollment in an HCBS Waiver or community-based alternative services that are sufficient to meet the individual’s needs;
 - f. If the individual or the individual’s Guardian fails to respond to attempts by the county board to contact by at least two different methods, one of which will be certified mail to the last known address of the individual or Guardian, as applicable;
 - g. When it is determined that the individual does not have a developmental disabilities level of care in accordance with OAC 5123:2-8-01
 - h. When the individual is no longer a resident of the county or state of Ohio; or
 - i. Upon the individual’s death.

I. DUE PROCESS

- 1) Due process shall be afforded to an individual aggrieved by an action of the Board related to the following:
 - a) the approval, denial, withholding, reduction, suspension or termination of a service funded by the Medicaid program;
 - b) placement on, denial of placement on, , or removal from the HCBS Waiver waiting list, or removal from the Transitional Wait List; or
 - c) A dispute regarding the individual’s date of request or status date.

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- 2) Due process shall 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 when the service involved is funded by the Medicaid program and in accordance with rule 5123:2-1-12 of the Administrative Code when the services involved are not Medicaid-funded.
- 3) If an individual is aggrieved, the Board will attempt to informally resolve the matter through the grievance procedure. The filing of a grievance under the grievance procedure shall not affect the right of the individual to due process in accordance with this rule.
- 4) The Board shall give notice to each individual on the waiting list of the individual's due process rights. The Board shall document that notice was given and the content of such notice.

VI. DISTRIBUTION

Board Members
All Management Staff
All Staff (via Department Managers)
LEADD President

VII. REVIEWED:

11/21, 11/19, 8/18, 8/17, 8/16, 8/15, 8/14, 8/13, 8/12, 6/08, 6/06, 7/04, 4/04, 4/02, 5/01, 1/01, 9/99, 4/98, 5/96, 8/95, 7/95, 10/93, 6/92, 4/92, 11/91, 8/91