



NOTICE OF PUBLIC HEARING

Pursuant to Chapter 119. of the Revised Code, the Ohio Department of Developmental Disabilities hereby gives notice of its intent to rescind and adopt the following rules of the Administrative Code on a permanent basis on or about November 2, 2014, and to conduct a public hearing thereon.

Rule **5123:2-1-02** entitled *County Board Administration* is being rescinded and will be replaced by a new rule of the same number entitled *Administration and Operation of County Boards of Developmental Disabilities*. The rule directs the planning and administration of services, supports, programs, and facilities operated by county boards of developmental disabilities. The Department is rescinding the existing rule and bringing forth a new rule because amendments affect more than fifty percent of the rule.

Rule **5123:2-1-04** entitled *Early Intervention* is being rescinded. The rule directs county boards of developmental disabilities in the provision of services and supports to families with infants and toddlers from birth through age two who have or are at risk for developmental delays or disabilities. The rule is being rescinded because necessary provisions have been incorporated into proposed new rule 5123:2-1-02 (*Administration and Operation of County Boards of Developmental Disabilities*).

Rule **5123:2-1-06** entitled *Adult Services* is being rescinded. The rule directs county boards of developmental disabilities in the provision of services and supports to individuals sixteen years of age or older. The rule is being rescinded because necessary provisions have been incorporated into proposed new rule 5123:2-1-02 (*Administration and Operation of County Boards of Developmental Disabilities*).

Rule **5123:2-1-09** entitled *Family Support Services* is being rescinded. The rule establishes guidelines for county boards of developmental disabilities to implement a Family Support Services program which assists individuals with developmental disabilities to remain in the family home. The rule is being

rescinded because necessary provisions have been incorporated into proposed new rule 5123:2-1-02 (*Administration and Operation of County Boards of Developmental Disabilities*).

Rule **5123:2-2-06** entitled *Behavioral Support Strategies that Include Restrictive Measures* is a proposed new rule. The rule limits the use of and sets forth requirements for development and implementation of behavioral support strategies that include restrictive measures. The purpose of the rule is to ensure that:

- restrictive measures are used only when necessary to keep people safe;
- individuals with developmental disabilities are supported in a caring and responsive manner that promotes dignity, respect, and trust and with recognition that they are equal citizens with the same rights and personal freedoms granted to Ohioans without developmental disabilities;
- services and supports are based on an understanding of the individual and the reasons for his or her actions; and
- effort is directed at creating opportunities for individuals to exercise choice in matters affecting their everyday lives and supporting individuals to make choices that yield positive outcomes.

The rule applies broadly across the entire developmental disabilities service delivery system and replaces rule 5123:2-3-25 (*Discipline, Restraint, Behavior Modification, and Abuse of Residents*) and paragraph (J) of existing rule 5123:2-1-02 (*County Board Administration*).

Rule **5123:2-3-25** entitled *Discipline, Restraint, Behavior Modification, and Abuse of Residents* is being rescinded. The rule sets forth requirements for providing behavioral support to individuals residing in licensed residential facilities. The rule is being replaced by proposed new rule 5123:2-2-06 (*Behavioral Support Strategies that Include Restrictive Measures*) which applies broadly across the entire developmental disabilities service delivery system.

Rule **5123:2-4-01** entitled *County Board Accreditation* is being rescinded. The rule defines the procedures followed by the Department to implement an accreditation system for county boards of developmental disabilities. The rule is being rescinded because necessary provisions have been incorporated into proposed new rule 5123:2-1-02 (*Administration and Operation of County Boards of Developmental Disabilities*).

Rule **5123:2-9-04** entitled *Medicaid Local Administrative Authority* is being rescinded. The rule outlines the requirements for administration of Medicaid Home and Community-Based Services waivers by county boards of developmental disabilities that have Medicaid Local Administrative Authority in accordance with Section 5126.055 of the Revised Code. The rule is being rescinded because necessary provisions have been incorporated into proposed new rule 5123:2-1-02 (*Administration and Operation of County Boards of Developmental Disabilities*).

A public hearing on the proposed rule actions will be held on **September 22, 2014**, beginning at **10:00 a.m.**, and continuing until all persons in attendance have had an opportunity to testify. The hearing will be held in the **Lobby Hearing Room of the Rhodes State Office Tower located at 30 East Broad Street, Columbus, Ohio 43215**. At this hearing, the Department will accept verbal and/or written testimony on the proposed rule actions under consideration.

Persons unable to attend the public hearing may submit written comments on the proposed rule actions. Any written comments received on or before the public hearing date will be treated as testimony and made available for public review.

Submittal of written comments may be made to Becky Phillips, Administrative Rules Coordinator, by email to becky.phillips@dodd.ohio.gov, by fax to 614/644-5013, or by U.S. mail to 30 East Broad Street, 12th Floor, Columbus, Ohio 43215-3414.

The rules are available at the Register of Ohio website: <http://registerofohio.state.oh.us> and at the Department's website: <https://doddportal.dodd.ohio.gov/rules/underdevelopment/Pages/default.aspx>. The rules are also available for review at each county board of developmental disabilities.

5123:2-1-02

Administration and operation of county boards of developmental disabilities.

(A) Purpose

The purpose of this rule is to establish standards for the administration and operation of county boards of developmental disabilities.

(B) Definitions

(1) "Adult services" has the same meaning as in section 5126.01 of the Revised Code.

(2) "County board" means a county board of developmental disabilities.

(3) "Department" means the Ohio department of developmental disabilities.

(4) "Developmental delay" means that a child has not reached developmental milestones expected for his or her chronological age as measured by qualified professionals using appropriate diagnostic instruments and/or procedures.

(a) For children under age three, developmental delay shall be established in accordance with Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this rule, 34 C.F.R. 303.10, as in effect on the effective date of this rule, and rules promulgated by the Ohio department of health.

(b) For children age three through age five, developmental delay shall be established in accordance with rules promulgated by the Ohio department of education.

(5) "Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(a) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code;

(b) It is manifested before age twenty-two;

(c) It is likely to continue indefinitely;

(d) It results in one of the following:

(i) In the case of a person under age three, at least one developmental delay or a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay;

- (ii) In the case of a person age three through age five, at least two developmental delays;
- (iii) In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for his or her age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is age sixteen or older, capacity for economic self-sufficiency; and
- (e) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.
- (6) "Early intervention services" means developmental services selected in collaboration with the parents of an infant or toddler birth through age two who is eligible for services under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this rule, and 34 C.F.R. Part 303, as in effect on the effective date of this rule, and designed to meet the developmental needs of the infant or toddler and the needs of the family to assist appropriately in the infant's or toddler's development as identified by the individual family service planning team.
- (7) "Family support services" means a family support services program described in and administered pursuant to section 5126.11 of the Revised Code.
- (8) "Help Me Grow" means Ohio's coordinated, community-based system that promotes transdisciplinary, family-centered services and supports to eligible expectant parents, newborns, and infants and toddlers birth through age two and their families. The system is directed by the Ohio department of health.
- (9) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (10) "Individual" means a person with a developmental disability.
- (11) "Intermediate care facility" means an intermediate care facility for individuals with intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative Code.
- (12) "Medicaid local administrative authority" has the same meaning as in section 5126.055 of the Revised Code.
- (13) "Service and support administration" means the duties performed by a service

and support administrator pursuant to section 5126.15 of the Revised Code.

(C) Strategic plan

- (1) The county board shall develop and adopt by resolution a strategic plan that meets the requirements of sections 5126.04 and 5126.054 of the Revised Code, includes the county board's mission and vision, and addresses the county board's strategy for:
 - (a) Promoting self-advocacy by individuals served by the county board;
 - (b) Ensuring that individuals receive services in the most integrated setting appropriate to their needs;
 - (c) Reducing the number of individuals in the county waiting for services;
 - (d) Increasing the number of individuals of working age engaged in community employment; and
 - (e) Taking measures to recruit sufficient providers of services to meet the needs of individuals receiving services in the county.
- (2) The strategic plan shall be made readily available to individuals and families who receive services, employees of the county board, citizens of the county, and any other interested persons.
- (3) The county board shall prepare a strategic plan progress report at least once per year. The strategic plan progress report shall be made readily available to individuals and families who receive services, employees of the county board, citizens of the county, and any other interested persons.
- (4) The county board shall have a mechanism for accepting public feedback regarding the strategic plan and strategic plan progress reports.

(D) Eligibility determination for county board services

- (1) Except as provided in paragraph (G) of this rule, the county board shall make eligibility determinations for county board services in accordance with the definition of "developmental disability" in paragraph (B)(5) of this rule.
- (2) For persons age sixteen or older, a substantial functional limitation in a major life area is determined through completion of the Ohio eligibility determination instrument (available at <https://doddportal.dodd.ohio.gov/cnt>) and application of criteria found therein.
- (3) For persons age six through age fifteen, a substantial functional limitation in a major life area is determined through completion of the children's Ohio

eligibility determination instrument (available at <https://doddportal.dodd.ohio.gov/cnt>) and application of criteria found therein. The children's Ohio eligibility determination instrument is used in the eligibility determination process for the county board for all services and supports other than special education services.

- (4) The Ohio eligibility determination instrument and the children's Ohio eligibility determination instrument shall be administered by persons employed by county boards or regional councils of governments formed under section 5126.13 of the Revised Code by two or more county boards and authorized to do so by the department.
- (5) The county board may establish eligibility for county board services for any preschool child with a disability eligible for services under section 3323.02 of the Revised Code whose disability is not attributable solely to mental illness as defined in section 5122.01 of the Revised Code.
- (6) The county board shall complete eligibility determination within forty-five calendar days of the request for services or after all necessary information has been received from the referring party or applicant except that:

 - (a) For children under age three, the eligibility report completed by or for "Help Me Grow" shall be used for eligibility determination; and
 - (b) For children age three through age five, the evaluation completed by or for the school district for preschool special education may be used for eligibility determination.
- (7) The county board shall keep on file the documents used to determine eligibility for county board services of all persons who apply after July 1, 1991, whether or not such persons are found to be eligible. Information on persons found to be ineligible shall be maintained for five years after such determination is made.
- (8) When a person who has been determined eligible for county board services after July 1, 1991 moves or wants to move to another county in Ohio, that person shall be deemed eligible by the new county board. The new county board, however, may review the person's eligibility. During the review, the person continues to be eligible to receive services according to the new county board's strategic plan and priorities.
- (9) All persons who were eligible for county board services and receiving county board services pursuant to Chapter 5126. of the Revised Code on July 1, 1991, shall continue to be eligible for those services and to receive services as long as they are in need of services.
- (10) All persons who were eligible for case management services and receiving

case management services pursuant to Chapter 5126. of the Revised Code on January 10, 1992, shall continue to be eligible for those services and to receive services as long as they are in need of services.

- (11) All persons determined ineligible for county board services shall be referred, with their consent, to other agencies or sources of services.

(E) Statutory authority

The county board shall carry out its duties and responsibilities in accordance with Chapter 5126. of the Revised Code. If a county board operates classrooms for children, the county board shall be licensed by the Ohio department of job and family services or the Ohio department of education, as applicable.

(F) Medicaid local administrative authority

- (1) A county board with medicaid local administrative authority shall abide by all terms and conditions set forth in the federally-approved waiver documents including any appendices and attachments, sections 5126.055 and 5166.21 of the Revised Code, and administrative rules promulgated by the Ohio department of medicaid.

- (2) The department shall oversee medicaid local administrative authority activities to ensure compliance with applicable laws. If the department determines that a county board with medicaid local administrative authority is deficient in its administration of medicaid waiver services, the department may take appropriate actions authorized by applicable law including, but not limited to, division (G) of section 5126.055 of the Revised Code or section 5126.056 of the Revised Code.

- (3) A county board that participates in the department's medicaid administrative claiming program shall comply with the department's policies and procedures governing medicaid administrative claiming and refund any payments that are disallowed by the department, the Ohio department of medicaid, or the centers for medicare and medicaid services. A county board may challenge a disallowance by the department in accordance with rule 5123:2-17-01 of the Administrative Code.

(G) Service and support administration

The county board shall determine eligibility for service and support administration, provide service and support administration, and ensure individual service plans are developed in accordance with rule 5123:2-1-11 of the Administrative Code.

(H) Non-medicaid adult services

- (1) A county board providing non-medicaid adult services shall adopt a written

policy outlining provision of the services.

- (2) Non-medicaid adult services shall be provided pursuant to section 5126.01 of the Revised Code.
- (3) Planning for non-medicaid adult services shall be conducted in accordance with the person-centered planning process described in paragraph (F)(2)(b) of rule 5123:2-1-11 of the Administrative Code.
- (4) Persons engaged in the direct provision of non-medicaid adult services shall meet the training requirements for persons engaged in the direct provision of comparable medicaid adult services as set forth in:
 - (a) Rule 5123:2-9-14 of the Administrative Code for vocational habilitation;
 - (b) Rule 5123:2-9-15 of the Administrative Code for supported employment-community;
 - (c) Rule 5123:2-9-16 of the Administrative Code for supported employment-enclave;
 - (d) Rule 5123:2-9-17 of the Administrative Code for adult day support;
 - (e) Rule 5123:2-9-44 of the Administrative Code for integrated employment;
and
 - (f) Rule 5123:2-9-51 of the Administrative Code for adult day health center services.

(I) Early intervention services

- (1) A county board providing early intervention services shall do so in accordance with Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this rule, 34 C.F.R. Part 303, as in effect on the effective date of this rule, and rules promulgated by the Ohio department of health.
- (2) A county board providing early intervention services shall adopt a written policy describing the county board's role in the county's comprehensive system for early intervention services and supports. The policy shall identify how the county board will provide early intervention services on a year-round basis for a minimum of two hundred forty days to eligible infants and toddlers and their families as part of a comprehensive, coordinated, transdisciplinary interagency early intervention system. The policy shall describe the specific role the county board has agreed to fulfill as a partner in the local "Help Me Grow" network and may include:

- (a) Public awareness/child find;
 - (b) Evaluation to determine eligibility;
 - (c) Child and family assessment;
 - (d) Service coordination;
 - (e) Early intervention services in everyday routines, activities, and places as developed through the individual family service plan development process;
 - (f) Assurances for procedural safeguards required by Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this rule, 34 C.F.R. Part 303, Subpart E, as in effect on the effective date of this rule, and rules promulgated by the Ohio department of health; and
 - (g) Whether the county board utilizes funds from the Ohio department of health to administer central coordination, evaluation and assessment, or service coordination.
- (3) Early intervention services shall be designed to meet the needs of the family related to enhancing the child's development and participation in family life. County boards shall participate in the development of individual family service plan outcomes for children and families that promote engagement, independence, and full community participation.
- (4) The county board shall maintain the following records for each child birth through age two receiving services from the county board:
- (a) Documentation verifying the date of initial referral to the early intervention system and date of request for the county board to assist in the initial evaluation and assessment process when the county board participates in the early intervention child and family evaluation and assessment;
 - (b) Documentation of eligibility;
 - (c) Other records related to services provided or arranged by the county board including the current individual family service plan; consent forms; correspondence with the family; services and case notes; documents developed by the county board including evaluations, assessments, progress reports, and documentation of records requested and documents shared or released; and documentation of the date, frequency, duration, and intensity of services delivered; and

(d) Documentation demonstrating that early intervention services provided or arranged by the county board meet the requirements of Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this rule, 34 C.F.R. Part 303, Subpart E, as in effect on the effective date of this rule, and rules promulgated by the Ohio department of health with regard to parents' rights and procedural safeguards.

(J) Family support services

(1) The county board shall adopt a written policy governing provision of family support services. The policy shall:

(a) Specify that individuals or family members of individuals may receive family support services funds;

(b) Define family members who are eligible to receive family support services funds;

(c) Describe goods and services that may be purchased with family support services funds;

(d) Address whether or not the county board will use an income-based fee schedule to determine eligibility for family support services funds, and if an income-based fee schedule is used, whether or not the county board will require applicants to submit documentation to verify their income;

(e) Set forth the process for individuals and family members to apply for family support services funds and for the county board to review and approve/disapprove applications; and

(f) Describe payment processes that meet requirements established by the county auditor.

(2) The county board may use funds allocated for the family support services program as match for medicaid waivers.

(K) Volunteers

The county board may utilize volunteers as an integral part of overall service delivery. The county board shall require background investigations on volunteers. Volunteers shall not be considered in the calculation of staffing ratios.

(L) Cost reports

The county board shall annually prepare and electronically file a cost report detailing its income and expenditures in accordance with section 5126.131 of the Revised Code and guidelines established by the department and shall:

- (1) Reconcile its income and expenditures on a monthly basis in accordance with standards established by the county auditor;
- (2) Retain the cost report and accurate records and documentation necessary to support the cost report for six years from the date of receipt of payment for the final settlement of the cost report or until an initiated audit is resolved, whichever is longer; and
- (3) Ensure its business manager and other county board personnel who prepare cost reports or supporting documentation successfully complete:
 - (a) A department-provided orientation program in cost report preparation within ninety days of employment or contract; and
 - (b) Department-provided annual training in cost report preparation thereafter.

(M) Records

- (1) The county board shall maintain fiscal records that are in compliance with county and state auditor's requirements pursuant to section 149.38 of the Revised Code.
- (2) The county board shall adopt written policies and procedures which address confidentiality, access, duplication, dissemination, and destruction of personnel records.
- (3) The county board shall adopt written policies and procedures which address confidentiality, access, duplication, dissemination, and destruction of records of individuals served in accordance with the Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d, as in effect on the effective date of this rule and as applicable, the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, as in effect on the effective date of this rule.
- (4) Records of the county board shall be accessible to department personnel authorized by the director of the department.

(N) Safety

- (1) The design and maintenance of county board facilities and equipment shall be in conformance with all applicable laws, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as in effect on the effective date of this rule.

- (2) Each facility owned, leased, or operated by the county board shall be inspected annually by the local fire marshal or designee to ensure compliance with fire safety practices.
- (3) If the county board provides a swimming program, regardless of location, a person who holds a current "American Red Cross" or equivalent lifeguarding certificate shall be present.
- (4) The county board shall develop written building emergency plans which include procedures for fire, tornado, bomb threat, power failure, natural disaster, medical emergency, and other emergencies. The building emergency plans shall be available to all personnel, volunteers, individuals served, parents, and guardians.

(O) Health

- (1) When the county board is directly providing facility-based services, the county board shall adopt written policies and procedures that ensure the general health and well-being of all individuals served and address:
 - (a) Providing first aid and emergency treatment;
 - (b) Securing emergency squad or ambulance services or the services of the individual's personal physician;
 - (c) Providing first aid training, cardiopulmonary resuscitation training, and training in universal precautions for infection control including hand-washing and disposal of bodily waste to county board personnel engaged in direct services positions in accordance with rule 5123:2-2-01 of the Administrative Code;
 - (d) Providing suitable first-aid facilities, equipment, and supplies;
 - (e) Providing for the management of communicable diseases, handling of illness on-site, and return after an illness or other health condition; and
 - (f) Posting emergency numbers by each telephone.
- (2) The written policies and procedures described in paragraph (O)(1) of this rule shall be communicated to all personnel, individuals served, parents, guardians, and providers of services, and shall be available in each county board facility upon request.
- (3) The county board shall adopt a written policy concerning administration of medication by county board personnel.

- (4) All medication administered by county board personnel shall be pharmacy-labeled to indicate owner, contents, required dosage, and schedule. Such medication shall be secured in a locked cabinet and removed by designated and qualified personnel.

(P) County board accreditation

- (1) The department shall conduct an accreditation review of each county board at least once every three years to determine the county board's compliance with applicable statutes and rules. An accreditation review shall include a comprehensive on-site review conducted by representatives of the department at the county board's offices and facilities and may include off-site review of records, documents, or other materials.

(2) There are three possible outcomes of an accreditation review:

- (a) The department shall issue accreditation for a term of three years to a county board that exceeds minimum compliance with applicable statutes and rules;
- (b) The department shall issue accreditation for a term of one year to a county board that demonstrates minimum compliance with applicable statutes and rules; or
- (c) The department shall hold accreditation in abeyance for a county board that is not in compliance with applicable statutes and rules. The department shall work with the county board to develop an acceptable plan of correction within ninety days. If an acceptable plan of correction is not developed within ninety days, the county board may be subject to receivership pursuant to section 5126.081 of the Revised Code. While a county board's accreditation is in abeyance, the county board shall not enroll individuals in home and community-based services waivers.
- (3) The department shall notify a county board at least ninety days prior to conducting an accreditation review.
- (4) After conclusion of the comprehensive on-site review, the department shall conduct an exit conference with the president of the county board or the president's designee, the superintendent of the county board, and any other persons the county board invites. The purpose of the exit conference is to provide the county board with an oral summary of the county board's compliance status and present any findings of noncompliance. The exit conference may be held on-site at the conclusion of the on-site review but shall be conducted no more than five business days following the conclusion of the on-site review except by mutual agreement between the department

and the superintendent of the county board.

- (5) The department shall issue a written accreditation review summary to the superintendent of the county board within seven days of conclusion of the on-site review. The accreditation review summary shall be objective in terms of observations and citations, relying upon documentation that clearly addresses the standards reviewed.
- (6) Within fourteen days of receipt of a written accreditation review summary that includes one or more citations, the county board shall submit to the department, a written appeal or a written plan of correction for each citation. If the county board does not submit a written appeal within fourteen days, the accreditation review summary shall be final and not subject to appeal by the county board.
- (a) The appeal for a citation shall include the county board's basis with supporting documentation for challenging the citation. The department shall allow or disallow the appeal within ten days of receipt.
- (b) If the appeal is disallowed, the county board shall submit a written plan of correction for each citation to the department within fourteen days. The written plan of correction shall include:
- (i) A description of corrective action, including systemic changes necessary to prevent recurrence;
- (ii) Implementation date of corrective action;
- (iii) Person responsible for implementing corrective action; and
- (iv) Supporting documentation which verifies implementation of corrective action.
- (c) The department shall approve or disapprove the plan of correction within twenty days of receipt.
- (d) The department shall not issue accreditation until the county board's written plan of correction is approved.
- (7) The department shall develop and implement a system for recognizing county boards that demonstrate excellence through achievement of outstanding results or development of successful approaches regarding employment, self-advocacy, substantial downsizing or conversion of intermediate care facilities, person-centered planning, or serving individuals presenting complex challenges. The department shall recognize a county board that demonstrates excellence by issuing a letter of distinction to the county board. The department shall post letters of distinction at its website as a means of

sharing innovative practices among county boards.

(Q) Compliance reviews

A county board that is certified by the department pursuant to section 5123.161 of the Revised Code to provide supported living or home and community-based services is subject to rule 5123:2-2-04 of the Administrative Code and may be eligible for an abbreviated compliance review in accordance with that rule.

(R) Providing applicable statutes and rules

The county board shall upon request, assist any interested party to locate and secure a copy of provisions of Chapter 5126. of the Revised Code and the administrative rules of the department. The county board shall ensure that employees of the county board and entities under contract with the county board receive information about revisions to the Revised Code and administrative rules of the department that are pertinent to their roles.

(S) Waiver of requirements in Chapter 5123:2-1 of the Administrative Code

The county board may request or the department may initiate a waiver of requirements outlined in Chapter 5123:2-1 of the Administrative Code that govern the administration and operation of county boards, so long as the requirements are not those of the Revised Code.

Replaces: 5123:2-1-02, 5123:2-1-04, 5123:2-1-06, 5123:2-1-09,
5123:2-4-01, 5123:2-9-04

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
 Statutory Authority: 5123.011, 5123.04, 5123.171, 5123.19, 5126.01,
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 01/01/1998, 04/12/2001, 08/01/2001, 03/21/2002,
 10/16/2003, 12/10/2004

TO BE RESCINDED

5123:2-1-02 **County board administration.**

(A) Purpose. This rule directs the planning and administration of county board of MR/DD services, supports, programs and facilities. Implementation of this rule in county boards will promote the development of uniform policies and procedures which protect the rights of individuals with disabilities and ensure the safe and equitable provision of services and programs to eligible individuals and their families.

(B) Each county board shall develop and adopt an annual action plan which covers at a minimum the following:

(1) A statement of philosophy, an organizational chart, and goals and objectives which shall reflect the major components of the comprehensive program, the administrative personnel in charge of the program(s) and their lines of authority and responsibility, and public access to county board administrative offices.

(2) The results of the assessment of the facility, service, and support needs of eligible people of the county with the mental retardation or other developmental disabilities. The facility, service, and support needs shall be projected over the next year. The assessment results shall include, but not be limited to, the following:

(a) Documentation of input received from people and their families receiving services and supports, local public service agencies, county board staff, developmental centers, residential providers, and other providers of services to people with mental retardation or other developmental disabilities as to the quality of services and supports received, gaps in the services and supports available, and recommendations for change.

(b) The number of people needing to be served and the number of people actually served in each major program and service component of the county board's comprehensive program, including how the board will plan, set priorities, and acquire resources related to waiting lists.

(3) A statement(s) as to how the county board shall address the following service needs of individuals eligible to receive services: service coordination, service monitoring, crisis intervention, and major unusual incident review and assessment; and a statement of how the county board shall address information and referral activities, without regard to eligibility for service.

(4) The county board shall hold a public forum annually to gather public comment

on the action plan. The county board shall provide a thirty-day notice of the date of the public forum and make the plan available for review by interested persons. The information gathered at the public forum shall be considered in final revisions to the plan which shall be available for distribution to staff, people served or their representative parents of a minor or guardians, and the interested public.

(C) Eligibility determination for developmental disabilities or developmental delay

- (1) "Developmental disability" means a severe, chronic disability that is characterized by all of the following:
 - (a) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code;
 - (b) It is manifested before age twenty-two;
 - (c) It is likely to continue indefinitely;
 - (d) It results in one of the following:
 - (i) In the case of a person under age three, at least one developmental delay or an established risk;
 - (ii) In the case of a person at least age three but under six, at least two developmental delays or an established risk;
 - (iii) In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for his age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least age sixteen, capacity for economic self-sufficiency.
 - (e) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

- (2) A substantial functional limitation in a major life area is determined through completion of the "Ohio Eligibility Determination Instrument" (OEDI) and application of criteria found therein.
- (3) For children age six through fifteen, a substantial functional limitation in a major life area is determined through completion of the "Children's Ohio Eligibility Determination Instrument" (COEDI) and application of criteria found therein. The COEDI is used in the eligibility determination process for the county board for all services and supports other than special education services.
- (4) The OEDI and COEDI shall be administered by county board personnel authorized to do so by the department. At the local county board's discretion, other individuals may be authorized by the department to administer the OEDI and COEDI.
- (5) Eligibility may be determined for individuals under the age of six who have an established risk of acquiring a developmental delay, or for individuals who have a biological or environmental risk of acquiring a developmental delay.
- (6) "Developmental delay" means that a child has not reached developmental milestones expected for his chronological age as measured by qualified professionals using appropriate diagnostic instruments and/or procedures.
 - (a) Delay shall be demonstrated in one or more of the following developmental areas: adaptive behavior; physical development or maturation (fine and gross motor skills; growth); cognition; communication; social or emotional development; and sensory development; or
 - (b) An established risk involving early aberrant development related to diagnosed medical disorders, such as infants and toddlers who are on a ventilator, are adversely affected by drug exposure, or have a diagnosed medical disorder or physical or mental condition known to result in developmental delay such as Down syndrome.
 - (c) Depending on the plan and priorities established by the county board, a county board may serve a child who has a condition which has a high probability of resulting in developmental delay if early intervention services are not provided, including the following two categories:
 - (i) Biological risk: history of prenatal, neonatal, and early

developmental events suggestive of biological insult(s) to the developing nervous system.

- (ii) Environmental risk: at risk for delayed development because of limiting early environmental experiences.
- (7) The county board shall complete eligibility determination within forty-five calendar days of the request for services or after all necessary information has been received from the referring party or applicant.
- (8) The county board shall keep on file the documents used to determine eligibility of all persons who apply after July 1, 1991, whether or not such persons are found to be eligible. Information on persons found to be ineligible shall be maintained for five years after such determination is made. Information on persons determined to be eligible for the county board shall be maintained in accordance with this rule.
- (9) When a person who has been determined eligible for a county board after July 1, 1991 moves to or wants to move to another county in Ohio, that person shall be considered to be eligible in the new county. In the case of a person wanting to move into another county, the request shall be reviewed every six months to determine if it is still current. The new county; however, may review the person's eligibility. During the review, the person continues to be eligible to receive services according to the county board's plan and priorities.
- (10) All persons who were eligible for services and receiving services from programs offered by a county board pursuant to Chapter 5126. of the Revised Code on July 1, 1991, shall continue to be eligible for those services and to receive services in those programs as long as they are in need of services.
- (11) All persons who were eligible for case management services and receiving case management services pursuant to Chapter 5126. of the Revised Code on January 10, 1992, shall continue to be eligible for case management services as long as they are in need of services.
- (12) All persons found not to be eligible shall be referred, with their consent, to other agencies or sources of services.

(D) Contracts

- (1) The county board may enter into contracts with other such county boards and with public or private nonprofit or profit-making agencies or organizations of

the same or another county or with an individual to provide the facilities, programs, services, and supports authorized or required upon such terms as may be agreeable, and in accordance with Chapters 3323. and 5126. of the Revised Code and rules adopted thereunder.

- (2) When services and supports are contracted, it shall be the responsibility of the county board initiating the contract to assure that the services and supports being provided are in accordance with the rules of the department. The county board entering into a contract to provide services and supports shall monitor contracted agencies on an ongoing basis to assure compliance.
- (3) Reimbursement shall only be provided for contracted services and supports when individuals receiving such contracted services meet eligibility requirements established by the department.

(E) Waiting lists

The county board shall use the requirements set forth in rule 5123:2-1-08 of the Administrative Code to establish and maintain waiting lists, service substitution lists, and a long-term service planning registry.

- (F) The county board shall develop policies and procedures that ensure, to the extent desired by the individual served and his family, that one process is used to develop the service and support plan, even when the individual is receiving services and supports from more than one county board program component.

(G) Administrative resolution of complaints

The county board shall use the administrative resolution of complaints process established in rule 5123:2-1-12 of the Administrative Code to resolve complaints involving the programs, services, policies, or administrative practices of the county board or the entities acting under contract with the county board.

(H) Volunteers

County boards may administer volunteer service programs and have volunteers as an integral part of the overall service delivery.

- (1) Volunteers shall be used to supplement, not supplant, services and supports provided by qualified personnel.
 - (a) Volunteers shall receive direct supervision and training from qualified staff.

- (b) Volunteers shall work from a written volunteer service plan.
- (2) Written policies concerning recruitment, training, assignments, evaluation, and separation of volunteers shall be established by the county board. These policies shall be available to the entire staff.
- (3) County boards may require background checks on volunteers.
- (4) Volunteers shall not be considered in the calculation of staffing ratios.

(I) Records

All records required by the department shall be kept in the administrative office(s) of the county board.

- (1) The county board shall maintain fiscal records that are in compliance with county and state auditor's requirements in section 149.38 of the Revised Code.
- (2) The county board shall maintain a record of signed statements regarding criminal background checks completed by county board employees in accordance with section 5126.28 of the Revised Code.
- (3) The county board shall adopt policies and have written procedures which address access, duplication, dissemination, and destruction of personnel records.
- (4) The county board shall maintain personnel records which shall include the following:
 - (a) Name, permanent and current address, phone number, and person to notify in case of emergency;
 - (b) Job description which includes the essential functions of the job, requirements for certification, registration or license, civil service classification, and title as established by the department of administrative services if applicable, unless there is a collective bargaining agreement to the contrary;
 - (c) Records of accrued and used sick leave and vacation;

- (d) Record of permanent or temporary certification, license or registration, as applicable;
 - (e) Bus driver annual physical examination form, as applicable;
 - (f) Records of inservice training;
 - (g) Personnel action forms;
 - (h) Annual performance evaluations signed by the immediate supervisor, the superintendent or his designee, and the employee;
 - (i) Payroll information;
 - (j) Record retention information; and
 - (k) Application forms.
- (5) The county board shall maintain in a separate medical file a record of a physical examination current within sixty days of the date of hire (a physical examination completed within one year prior to the date of hire is acceptable). The county board may not require the applicant to pay the cost of a physical examination as a condition of employment.
- (6) Personnel records shall be accessible to department personnel authorized by the director of the department.
- (7) The county board shall adopt policies and have written procedures that address access, duplication, dissemination, and destruction of individual record information for persons served.
- (a) Such policies and procedures shall ensure confidentiality and shall include:
 - (i) Obtaining written permission from the individual or parent of a minor or guardian prior to releasing information to persons not otherwise authorized to receive such information pursuant to applicable state or federal regulations, including Ohio department human services rule 5101:1-1-03 of the Administrative Code when applicable. The permission shall specify the person or

organization to whom the information shall be released and the time period during which the permission is valid.

- (ii) Transmitting information to a requesting person or agency after receiving a properly authorized written request.
 - (iii) The procedures by which information concerning an individual shall be collected, the procedures that shall be used to maintain the confidential nature of the information, its use, the recording procedures, the period for which records will be maintained, the procedures for the destruction of data determined to be no longer necessary to the education, services and supports of the individual, the persons to whom the records will be made available, and the conditions under which confidential information shall be made available.
 - (iv) A statement that lists the types and locations of records maintained that shall be made available to the individual or parent of a minor or guardian on request.
 - (v) The person responsible for ensuring the safekeeping of records and securing them against loss or use by unauthorized persons.
 - (vi) For persons placed by the LEA, confidentiality procedures which shall be in accordance with the rules for the education of handicapped children (rule 3301-51-02 of the Administrative Code).
 - (vii) Written permission of the individual or the parent of a minor or guardian will be obtained prior to destruction of individual record information. Copies of county board generated records shall be offered to the individual or the parent of a minor or guardian.
- (b) Individual records shall be accessible to department personnel authorized by the director of the department, the parents of a minor, the guardian (when within the scope of guardianship authority), or the individual.
- (c) Individual records shall be kept on file in a secure location to assure the permanence of the records for the time during which services are provided and for transmittal to an alternative program when an alternative placement occurs.

- (d) Policies and procedures concerning confidentiality shall be made known to individuals and/or the parent of a minor or guardian of an adult, as applicable, and residential services/supports providers.
 - (e) The county board shall review, not less than once a year, the systems and safeguards employed by the agency and staff to preserve confidentiality of information.
- (8) Records and reports related to the program shall be submitted as requested by the department.

(J) Behavior support policies and procedures

(1) Purpose

- (a) The county board shall develop and implement written policies and procedures that support and assist individuals receiving services from county board programs to manage their own behaviors.
- (b) These policies and procedures shall acknowledge that the purpose of behavior support is to promote the growth, development and independence of those individuals and promote individual choice in daily decision-making, emphasizing self-determination and self-management.
- (c) The county board superintendent shall appoint a committee to implement paragraph (J) of this rule through the development of behavior support policies and procedures.
- (d) The county board shall develop and implement written policies and procedures which shall:
 - (i) Focus on positive teaching and support strategies and encourage use of the least restrictive environment and least intrusive forms of services;
 - (ii) Specify a hierarchy of these teaching and support strategies, ranging from most positive or least intrusive to least positive or most intrusive, including approvals and review procedures; and

- (iii) Be developed in accordance with department guidelines and relevant local, state and federal statutes and regulations.
- (e) As used in paragraph (J) of this rule, "provider" refers to all persons and entities that provide specialized services, as defined in section 5126.281 of the Revised Code, and that are subject to regulation by the department, regardless of source of payment, including:
- (i) A contracting entity of a county board, as defined in section 5126.281 of the Revised Code.
 - (ii) A provider licensed under section 5123.19 of the Revised Code. For the purposes of paragraph (J) of this rule, "provider" does not mean an intermediate care facility for the mentally retarded (ICF/MR) certified under Title XIX of the "Social Security Act."
 - (iii) A provider of supported living under section 5126.431 of the Revised Code.
 - (iv) A provider of respite care certified under sections 5123.171 and 5126.05 of the Revised Code.
 - (v) A provider approved to provide medicaid services under home and community-based services waivers administered by the department.
- (2) The county board shall ensure that:
- (a) Medical factors are considered in the development of behavior support plans.
 - (b) A behavior assessment is completed prior to implementation of any written behavior support plan to help identify the causes for a behavior and to determine the most appropriate teaching and support strategies. The behavior support plan shall be developed to follow the findings of the behavior assessment.
 - (c) Behavior support methods are integrated into individual plans and are designed to provide a systematic approach to helping the individual learn new, positive behaviors while reducing undesirable behaviors.

- (d) Restraint and time-out, as defined in paragraph (J) of this rule, are only used with behaviors that are destructive to self or others and only when all other conditions required by paragraph (J) are met.
- (e) Policies and procedures, including administrative resolution of complaints procedures in accordance with rule 5123:2-1-12 of the Administrative Code, are available to all staff, individuals receiving services from the county board, parents of minor children, legal guardians, and providers.
- (f) Behavior support methods are employed with sufficient safeguards and supervision to ensure that the safety, welfare, due process, and civil and human rights of individuals receiving county board services are adequately protected.
- (g) Aversive behavior support methods are never used for retaliation, for staff convenience, or as a substitute for an active treatment program (interdisciplinary team developed and approved per individual plans).
- (h) Positive and less aversive teaching and support strategies are demonstrated to be ineffective prior to use of more intrusive procedures.
- (i) Standing or as needed programs for the control of behavior are prohibited. A "standing or as needed program" refers to the use of a negative consequence or an emergency intervention as the standard response to an individual's behavior without developing a behavior support plan for the individual as required by paragraph (J) of this rule.
- (j) A behavior support committee reviews and approves or rejects all plans that incorporate aversive methods, including restraint and time-out, and reviews ongoing plans that incorporate aversive methods, including restraint and time-out. The committee shall include persons knowledgeable in behavior support procedures, including administrators and persons employed by a provider who are responsible for implementing behavior support plans, but not those directly involved with the plan being reviewed. The authors of the behavior support plan may attend committee meetings to provide information and to facilitate incorporation of suggested changes.
- (k) A human rights committee reviews and prior approves or rejects all behavior support plans using aversive methods, including restraint and time-out, and those which involve potential risks to the individual's

rights and protections. The human rights committee shall ensure that the rights of individuals are protected. The committee shall include, at least, one parent of a minor or guardian of an individual eligible to receive services from a county board, at least one staff member of the county board or provider convening the committee, an individual receiving services from a county board, qualified persons who have either experience or training in contemporary practices to support behaviors of individuals with developmental disabilities, and, at least, one member with no direct involvement in the county board's programs. One human rights committee may serve more than one county board or provider.

- (l) The behavior support committee and the human rights committee, which reviews the plan, is either those formed by the county board or those formed by the provider. In this situation, representatives of both agencies shall be involved. A county board or provider may establish one multi-purpose committee to fulfill all functions of the behavior support committee and the human rights committee. County boards and/or providers may jointly establish and share the operation of a behavior support committee, a human rights committee, or a multi-purpose committee.
- (m) A behavior support plan includes a case history (including medical information), results of a behavior assessment, baseline data, behaviors to be increased and decreased, procedures to be used, persons responsible for implementation, review guidelines, and signature/date blocks including space for dissenting opinions.
- (n) Training and experience required for staff who develop behavior support plans and for all persons employed by a provider who are responsible for implementing plans are specified and required training is documented.
- (o) Prior documented informed consent is obtained from the individual receiving services from the county board program, or guardian if the individual is eighteen years old or older, or from the parent or guardian if the individual is under eighteen years of age. When informed consent cannot be documented in writing at the time it is obtained, such consent shall be documented in writing within three days of implementation. This written informed consent shall be updated at least annually. Any revisions to a behavior support plan requiring behavior support committee approval shall require written informed consent from the individual receiving services from the county board program, or guardian if the individual is eighteen years old or older, or from the

parent or guardian if the individual is under eighteen years of age. "Informed consent" means an agreement to allow a proposed action, treatment or service to happen after a full disclosure of the relevant facts. The facts necessary to make the decision include information about the risks and benefits of the action, treatment or service; acceptable alternatives to such action, treatment or service; the consequences of not receiving such action, treatment or service; and the right to refuse such action, treatment or service. The behavior support plan shall be presented in a manner that can be understood by the individual or parent of a minor or guardian.

- (p) A regular review of all behavior support plans is held, at least, in conjunction with individual plan updates. Plans that incorporate aversive methods, including restraint and time-out, shall be reviewed as determined by the interdisciplinary team but at least every thirty days. Status reports on a plan that incorporates aversive methods, including restraint and time-out, shall be provided to the individual receiving services from the county board program, or guardian if the individual is eighteen years old or older, or the parent or guardian if the individual is under eighteen years of age. Additionally, for individuals who receive services from a provider, status reports shall be provided to the provider.
- (q) Prohibited actions are reported as major unusual incidents in accordance with rule 5123:2-17-02 of the Administrative Code. Prohibited actions shall include the following:
 - (i) Any physical abuse of an individual such as striking, spitting on, scratching, shoving, paddling, spanking, pinching, corporal punishment or any action to inflict pain.
 - (ii) Any sexual abuse of an individual.
 - (iii) Medically or psychologically contraindicated procedures.
 - (iv) Any psychological/verbal abuse such as threatening, ridiculing, or using abusive or demeaning language.
 - (v) Placing the individual in a room with no light.
 - (vi) Subjecting the individual to damaging or painful sound.

- (vii) Denial of breakfast, lunch or dinner.
- (viii) Squirting an individual with any substance as a consequence for a behavior.
- (ix) Time-out in a time-out room exceeding one hour for any one incident and exceeding more than two hours in a twenty-four hour period. Use of a time-out room requires the additional oversight specified in paragraphs (J)(3) and (J)(4) of this rule and the following safeguards:
 - (a) A time-out room shall not be key locked, but the door may be held shut by a staff person or by a mechanism that requires constant physical pressure from a staff person to keep the mechanism engaged.
 - (b) The room must be adequately lighted and ventilated, and provide a safe environment for the individual.
 - (c) An individual in a time-out room must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, or unprotected electrical outlets.
 - (d) The individual must be under constant visual supervision by staff at all times.
 - (e) A record of time-out activities must be kept.
 - (f) Emergency placement (i.e., without a written plan) of an individual in a time-out room is not allowable.
- (x) Systematic, planned intervention using manual, mechanical, or chemical restraints, except when necessary to protect health, safety, and property and only when all other conditions required by paragraph (J) of this rule are met.
- (xi) Medication for behavior control, unless it is prescribed by and under the supervision of a licensed physician who is involved in the interdisciplinary planning process.

- (r) Behavior support policies and procedures adopted by the county board or the provider:
 - (i) Promote the growth, development and independence of the individual;
 - (ii) Address the extent to which individual choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;
 - (iii) Specify the individual's conduct to be allowed or not allowed;
 - (iv) Be available to all staff, the individual, parents of minor children, legal guardians, and providers;
 - (v) To the extent possible, be formulated with the individual's participation; and
 - (vi) Ensure that an individual must not discipline another individual, except as part of an organized system of self-government.

- (s) The climate for behavior support is characterized by:
 - (i) Interactions and speech that reflect respect, dignity, and a positive regard for the individual;
 - (ii) The setting of acceptable behavioral limits for the individual;
 - (iii) The absence of group punishment;
 - (iv) The absence of demeaning, belittling or degrading speech or punishment;
 - (v) Staff speech that is even-toned made in positive and personal terms and without threatening overtones or coercion;
 - (vi) Conversations with the individual rather than about the individual while in the individual's presence;

- (vii) Respect for the individual's privacy by not discussing the individual with someone who has no right to the information; and
- (viii) The use of people-first language instead of referring to the individual by trait, behavior, or disability.

(3) Requirements for restraint and time-out

- (a) The use of restraint and time-out, because of their possible adverse effects on health and safety, shall require additional oversight by the department. As used in paragraph (J) of this rule, the following definitions shall apply:

- (i) "Restraint" means any one of the following:

- (a) "Chemical restraint," which means a prescribed medication for the purpose of modifying, diminishing, controlling, or altering a specific behavior. "Chemical restraint" does not include the following:

- (i) Medications prescribed for the treatment of a diagnosed disorder as found in the current version of the American psychiatric association's "Diagnostic and Statistical Manual" (DSM);

- (ii) Medications prescribed for treatment of a seizure disorder.

- (b) "Emerging methods and technology," which means new methods of restraint or seclusion that create possible health and safety risks for the individual, including methods or technology that were not developed prior to the effective date of this rule.

- (c) "Manual restraint," which means a hands-on method that is used to control an identified behavior by restricting the movement or function of the individual's head, neck, torso, one or more limbs or entire body, using sufficient force to cause the possibility of injury.

- (d) "Mechanical restraint," which means a device that restricts an

individual's movement or function applied for purposes of behavior support, including a device used in any vehicle, except a seat belt of a type found in an ordinary passenger vehicle or an age-appropriate child safety seat.

- (ii) "Time-out," which means confining an individual in a room and preventing the individual from leaving the room by applying physical force or by closing a door or other barrier, including placement in such a room when a staff person remains in the room with the individual.
- (b) Prior approval from the director must be obtained before using the following methods of restraint:
- (i) Any emerging methods and technology designated by the director as requiring prior approval; or
 - (ii) Any other extraordinary measures designated by the director as requiring prior approval, including brief application of electric shock to a part of the individual's body following an identified behavior.
- (c) Restraint or time-out shall be discontinued if it results in serious harm or injury to the individual or does not achieve the desired results as defined in the behavior support plan.
- (d) Any use of restraint or time-out in an unapproved manner or without obtaining required consent, approval, or oversight shall be reported as a major unusual incident pursuant to rule 5123:2-17-02 of the Administrative Code.
- (e) Any use of restraint or time-out that results in an injury that meets the definition of a major unusual incident or an unusual incident shall be reported as such pursuant to rule 5123:2-17-02 of the Administrative Code.
- (f) Within five working days after local approval of a behavior support plan using restraint or time-out, the county board or provider shall notify the department by facsimile or other electronic means in a format prescribed by the department. Upon request by the department, the county board or provider shall submit any additional information regarding the use of the restraint or time-out.

(4) Department oversight of behavior support plans

- (a) The department shall provide oversight of behavior support plans, policies, and procedures as deemed necessary to ensure individual rights and the health and safety of the individual.
- (b) The department shall select a sample of behavior support plans for additional review to ensure that the plans are written and implemented in a manner that adequately protects individuals' health, safety, welfare, and civil and human rights. These reviews may be conducted by department staff designated by the director or by any qualified entity selected by the department.
- (c) The department shall take immediate action, as necessary, to protect the health and safety of individuals served. Such action may include, as appropriate, the following:
 - (i) Suspension of any behavior support plan(s) not developed, implemented, documented, or monitored in accordance with paragraph (J) of this rule or where significant trends and patterns in data suggest the need for further review. When a behavior support plan is suspended, the department shall ensure that a new behavior support plan is developed and implemented in accordance with paragraph (J) of this rule.
 - (ii) Technical assistance in the development of a new behavior support plan.
 - (iii) Referral to the major unusual incident, licensure, or accreditation units of the department or to other state agencies or licensing bodies.
- (d) The department shall compile information about the use of behavior supports throughout the state and share the results with county boards, providers, advocates, family members, and other interested parties. The department shall use the information to study and report on patterns and trends in the use of behavior supports, including strategies for addressing problems identified.
- (e) By the effective date of this rule, the department shall establish a behavior support advisory committee made up of persons knowledgeable about behavior support and representatives of groups that have expressed an

interest in the application of behavior support as specified in paragraph (J) of this rule. The behavior support advisory committee shall advise the department in the following matters:

- (i) Trends and patterns in behavior support methods reported to the department;
- (ii) Technical assistance needs throughout the state;
- (iii) Behavior support issues raised by or referred to divisions or units of the department;
- (iv) Plans for improving the quality of behavior support throughout the state;
- (v) Any other pertinent issues related to implementation of this rule.

(K) Safety

- (1) The design and maintenance of program facilities and equipment shall be in conformance with all applicable laws, including the Americans with Disabilities Act and Section 504 - Rehabilitation Act of 1973 and any reauthorization of these acts by the federal government.
- (2) Each program facility owned, leased, or operated by the county board shall be inspected annually by the local fire marshal or designee to ensure compliance with fire safety practices.
- (3) If the county board provides a swimming program, regardless of location, a person shall be present who has a current water safety instructor certificate, or a senior lifesaving certificate, or an adapted aquatics certificate.
- (4) The county board shall develop written building emergency plans, which include procedures for fire, tornado, and other emergencies. These building emergency plans shall be available to and communicated in writing to all members of the staff, including volunteers.
- (5) The building emergency plans shall include procedures for emergency closing of all program components operated in county board facilities as well as notification of families receiving home-based services and persons in other sites receiving or providing services.

- (6) The building emergency plans shall include provisions for dealing with bomb threats, medical emergencies, power failures, and natural disasters.
- (7) The building emergency plans shall provide for the training of at least one staff member in each building in techniques of fire suppression.
- (8) The building emergency plans shall include procedures for reporting all accidents or injuries within twenty-four hours of the occurrence. Such report shall include recommendations for prevention at a future time. Information concerning health and special job considerations shall be communicated to appropriate supervisory personnel.
- (9) The building emergency plans shall require all of the following:
 - (a) Emergency fire drills shall be conducted not less than once a month in each building and shall be recorded.
 - (b) Tornado drills shall be conducted monthly during the tornado season of April, May, June and July.
 - (c) A written analysis of the conduct and effectiveness of each fire drill and tornado drill shall be prepared by a designated staff member and submitted to the superintendent or designee.
 - (d) The evacuation plan for fire and tornado drills and other emergencies shall be posted in each room or special area of the facility.
 - (e) Fire extinguishers, fire gongs, and alarms shall be properly located, identified, and kept in good working order.
 - (f) Storage areas for combustible or flammable materials shall be effectively separated from all rooms and work areas in such a way as to minimize and inhibit the spread of a fire.
 - (g) All hallways, entrances, ramps, and corridors shall be kept clear and unobstructed at all times.
 - (h) Power equipment, fixed or portable, should include operating safeguards as required by the division of safety and hygiene, bureau of worker's compensation.

(L) Health

- (1) County board policies and procedures regarding health shall be written, shall ensure the general health and well-being of all individuals and shall include the following:
 - (a) Reporting of all accidents and incidents to the parents of a minor or guardian and, when appropriate, other persons having care of the individual including residential services/supports providers, and maintaining a record of any such incident on file. The accident or incident record shall be initiated within twenty-four hours of when the accident or incident occurred.
 - (b) Providing first aid and emergency treatment.
 - (c) Securing emergency squad or ambulance services or the services of the individual's personal physician.
 - (d) Providing first aid and CPR training to appropriate county board registered, certified and licensed personnel by a person who has a valid training certificate in first aid and CPR.
 - (e) Providing suitable first-aid facilities, equipment, and supplies.
 - (f) Providing training to county board personnel in the recognition and reporting of abuse and neglect.
 - (g) Providing for the management of communicable diseases including temporary exclusion from the program for health reasons, handling of illness on-site and return to the program after an illness or other health condition. These procedures shall not exclude an individual from services for a handicapping condition, such as AIDS. These procedures shall include providing training to all county board personnel in the use of universal precautions.
 - (h) Posting emergency numbers by each telephone.
- (2) These written policies and procedures shall be communicated to all personnel, persons served, parents of a minor or guardian, and residential services/supports providers, and shall be available in each county board program facility upon request.

- (3) All medication shall be pharmacy-labeled to indicate owner, contents, required dosage and schedule. Such medication shall be secured in a locked cabinet and removed by designated staff persons.
- (4) The county board shall adopt a policy concerning administration of medications.
- (5) A health record shall be on file within thirty days of enrollment for each individual which contains ongoing pertinent health information, including authorization for emergency medical treatment, a record of current immunizations, a list of any medications, and a list of any allergies and treatments.

(M) Food service

All programs providing food service shall:

- (1) Have on file in the administrative office, written evidence of an annual inspection of food preparation, storage, and serving areas by the local department of health; and
- (2) Have on display all required permits in keeping with state department of health regulations and shall employ food handlers who meet all state and local health requirements.

(N) State reporting and subsidy

- (1) The county board shall comply with reporting procedures and schedules requested by the director of the department.
- (2) Subsidy from the department shall, subject to the approval of the director, be withdrawn or reduced in programs which:
 - (a) Employ staff who fail to meet certification, registration or licensing requirements as established by the department;
 - (b) Fail to comply with the minimum program and operating requirements as established by the department or do not have approved written plans for compliance, which include timelines and an outline of how minimum compliance will be reached. Such plans of compliance shall be approved by the department and be used by the county board in the

development, review, and modification of its annual action plan; and

(c) Do not provide services and supports to former individuals of state mental retardation facilities on a nondiscriminatory basis.

(O) Each county board shall have a copy of Chapter 5126. of the Revised Code and the administrative rules of the department and shall make pertinent information available to administrative staff. The department will provide updated administrative rules.

(P) Waiver procedures

The county board or the department may initiate a request for approval by the department for a waiver of compliance regarding requirements outlined in the rules under Chapter 5123:2-1 of Administrative Code that govern the operation of county board programs and services, so long as the requirements are not those of the Ohio Revised Code.

Effective:

R.C. 119.032 review dates: 08/18/2014

Certification

Date

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TO BE RESCINDED

5123:2-1-04 **Early intervention.**

(A) Purpose

The purpose of this rule is to direct the county board in the provision of services and supports to infants and toddlers birth through age two with or at-risk for developmental delays or disabilities and their families. County board early intervention shall be part of a comprehensive, collaborative, coordinated, and family-centered system. Early intervention services are designed to meet the needs of the family related to enhancing the child's development and to meet the developmental needs of young children.

(B) Definitions

- (1) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code or a regional council of government formed under section 5126.13 of the Revised Code by two or more county boards.
- (2) "Department" means the Ohio department of mental retardation and developmental disabilities established by section 121.02 of the Revised Code.
- (3) "Developmental delay" means developmental milestones expected for a child's chronological age have not been achieved as measured by qualified professionals using appropriate diagnostic instruments and/or procedures.
- (4) "Developmental disability" means a severe, chronic disability that is characterized by all of the following:
 - (a) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code;
 - (b) It is manifested before age twenty-two;
 - (c) It is likely to continue indefinitely; and
 - (d) It results in at least one developmental delay or a condition known to result in a delay in accordance with section 5126.01 of the Revised Code.

- (5) "Early intervention" means services and supports provided as early as possible to enhance the family's ability to meet the developmental needs of their child. Early intervention services and supports are designed to identify the presence of a disability, delay, or risk-factors which may lead to a delay, and provide interventions responsive to the preferences of the family that maximize the child's optimal growth and development. Early intervention services and supports may include any of the types of services listed under the "Individuals with Disabilities Education Act" (IDEA), Part C system, Title 34 of the Code of Federal Regulations, sections (c) and (d) of 303.12 (revised as of July 1, 2002). The identification of a need for any specific early intervention service or support results from the comprehensive, ongoing assessment of the child and family.
- (6) "Early intervention specialist" means a professional, certified by the department in accordance with rule 5123:2-5-05 of the Administrative Code, trained to develop and implement strategies and interventions, which may include, but are not limited to, the special instruction identified in IDEA, Part C as follows:
- (a) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
 - (b) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's IFSP;
 - (c) Providing families with information, skills and support related to enhancing the skill development of the child; and
 - (d) Working with the child to enhance the child's development.
- (7) "Family and children first council" means the council established pursuant to section 121.37 of the Revised Code at state and local levels with a stated purpose of helping families seeking government services by streamlining and coordinating existing services and supports for children birth through twenty-one years of age.
- (8) "HMG" means "Help Me Grow," an Ohio family and children first initiative directed by the Ohio department of health and coordinated on the county level by the family and children first council. HMG is Ohio's birth through two system designed to create, nourish and maintain a coordinated,

community-based infrastructure that promotes transdisciplinary, family-centered services and supports to eligible expectant parents, newborns, infants and toddlers, and their families.

- (9) "IFSP" means individualized family service plan, a written plan for providing early intervention services to a child eligible under IDEA, Part C. The IFSP may serve to authorize CAFS services in accordance with rule 5123:2-15-18 of the Administrative Code if the requirements of that rule are met with respect to such services. In Ohio, an IFSP is also written for a child in the HMG system at-risk for delays.
- (10) "Lead agency " means the agency legislated or designated by the governor as responsible for the administration of the "Individuals with Disabilities Education Act" (IDEA), Part C. In Ohio, the department of health is the lead agency for Part C of IDEA and the HMG statewide system.
- (11) "Parent" means a parent, guardian, person acting as a parent of a child, or surrogate parent who has been appointed in accordance with the Ohio department of health. "Parent" does not include the state if the child is a ward of the state.
- (12) "Part C" means the section of the "Individuals with Disabilities Education Act" (IDEA), under Title 34 of the Code of Federal Regulations, Part 303 (revised as of July 1, 2002), which regulates the early intervention program for infants and toddlers with disabilities.

(C) Description of services

The county board shall describe in writing its role in the county's comprehensive early intervention system of services and supports. The county board shall base this description on the county family and children first council's governance of their HMG system, the plan and priorities developed under section 5126.04 of the Revised Code, and the availability of funds. This description should identify how the county board will provide choices and options to families that enhance quality outcomes for the child and family. The county board shall communicate this to families, county agency partners, and regulatory bodies for the purpose of clarifying the board's role within the HMG system. This description shall include but not be limited to:

- (1) How the county board, as an integral part of the system that serves children birth through age two, provides year-round services and supports to children with developmental delays and disabilities, and may provide services to children at-risk for developmental delays or disabilities, and their families,

based on the county board's plans, priorities, and availability of funds; and

- (2) What the county board's role is in the provision of the HMG program components:
 - (a) Outreach/child find/intake/procedural safeguards;
 - (b) Prenatal visits;
 - (c) Newborn home visits;
 - (d) Ongoing home visiting services;
 - (e) Service coordination/individualized family service plan development, implementation, and review;
 - (f) Family support services;
 - (g) Evaluation to determine eligibility and ongoing assessment;
 - (h) Specialized services in everyday routines, activities, and places.

(D) Personnel qualifications

- (1) Employees of county boards or contracting entities who are hired to work as early intervention specialists, program assistants, or supervisors, shall hold applicable registration or certification in accordance with rule 5123:2-5-05 of the Administrative Code.
- (2) A person who substitutes in any one assigned early intervention specialist's position for more than sixty consecutive working days shall obtain either a substitute grade or temporary grade early intervention specialist level certification. A person who substitutes in any one assigned early intervention specialist's position for sixty or fewer consecutive working days is not required to hold a credential issued by the department.
- (3) A person employed on or before December 4, 1992 as a supervisor of an early intervention program for less than .5 F.T.E. (full-time equivalent) is not required to hold a credential issued by the department. A person newly employed after December 4, 1992 as a supervisor of an early intervention program for less than .5 F.T.E. (full-time equivalent) shall possess:

- (a) Early intervention supervisor level certification issued by the department;
or
 - (b) A currently valid Ohio department of education provisional certificate in supervision with validation in early education of the handicapped or special education for children with disabilities; or
 - (c) A master's degree in a related field (e.g., audiology, education, family therapy, medicine, nursing, nutrition, occupational therapy, orientation and mobility, pediatrics, physical therapy, psychology, social work, special education, or speech and language pathology) from an approved educational institution, and five years related paid work experience in early intervention, birth through two, two of which are within the last five years.
- (4) Employees of county boards or contracting entities providing services and supports to infants and toddlers and their families shall possess a currently valid Ohio license, certificate, or credential issued by the appropriate professional licensing, certifying, or credentialing entity that governs requirements for the respective service provided.
- (5) Employees of county boards or contracting entities who are hired to provide services solely to the HMG system, (e.g. family support specialists, HMG project directors, service coordinators) shall meet Ohio department of health policies on personnel standards, and are not required to hold a credential issued by the department.

(E) Eligibility for children with developmental delays or disabilities

(1) Eligibility definition

County boards shall provide services and supports to children under three years of age with developmental delays or disabilities and their families. To be eligible for HMG services and supports provided by a county board, an infant or toddler shall:

- (a) Have a developmental delay in one or more of the following areas, as measured by a research-based developmental evaluation tool and informed clinical opinion as defined by the lead agency:
 - (i) Cognitive development,

- (ii) Physical development, including vision, hearing and nutrition,
 - (iii) Communication development,
 - (iv) Social or emotional development,
 - (v) Adaptive development (self-help); or
- (b) Have a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay or disability that is based on a written medical report; or
- (c) Have already been determined Part C eligible in the state of Ohio.

(2) Eligibility criteria

To determine if an infant or toddler has a developmental delay or disability, the evaluation to determine eligibility shall:

- (a) Be preceded by a developmental screening, unless the child has a diagnosed physical or mental condition. The developmental screening must be completed and shared with the family within forty-five calendar days of referral to the HMG system.
- (b) Be completed by a developmental evaluation team, which includes the parents, and at least two appropriately licensed or certified professionals from two different disciplines, one of whom may be the service coordinator. It is recommended that one member of the evaluation team have specialized training or expertise with the child's suspected need or primary area of delay.
- (c) Be based on at least one research-based developmental evaluation tool and informed clinical opinion. If a delay is not confirmed using a developmental evaluation tool, then informed clinical opinion can be used by the members of the developmental evaluation team to determine a delay.
- (d) Include the five developmental areas specified in paragraph (E)(1)(a) of this rule with a focus on the child's unique strengths and needs in each domain.

- (e) Include a vision, hearing, and nutrition screening completed by qualified personnel.
- (f) Be provided at no cost to the family.
- (g) Include a review of pertinent records related to the child's health, developmental and medical history. If a child has already had an evaluation in all or some of the domains including a medical evaluation within the past ninety days, this information must be used as part of the developmental evaluation.
- (h) Be preceded by informed, written parental consent for the screening and evaluation.
- (i) Be conducted in collaboration with the family in settings and at times that are selected by families.
- (j) Be administered in the primary language of the child and family or other mode of communication unless it is clearly not feasible to do so.
- (k) Be selected and administered so as not to be racially or culturally discriminatory.
- (l) Be coordinated by the family's service coordinator.
- (m) Be written and include the date or dates of the evaluation, evaluation method, summary of the child's unique strengths and needs in each domain, statement of eligibility, identification of the domains that are delayed, and each evaluator's agency, degree, certification and/or professional license.
- (n) Be completed and a copy of the report shared with the family within forty-five calendar days of the initial referral to the system for a suspected delay. If the child is eligible, the IFSP is developed and signed within the same forty-five calendar days and without undue delay. If the family disagrees with the eligibility determination, their rights shall be explained and, upon consent, the appropriate referral made. In the event of exceptional family circumstances, which make it impossible to complete the developmental evaluation within forty-five calendar days, the service coordinator shall document the exceptional circumstances and that the parents were informed and understood that

there is an alternative timeline and are in agreement.

- (3) If the county board is not involved in the evaluation to determine eligibility for HMG as described in paragraphs (E)(1) and (E)(2) of this rule, the county board shall request a copy of the written evaluation report for the child's record and shall maintain documentation that a request was made if the information is not available.

(F) Eligibility for children who are at-risk for developmental delays or disabilities

County boards may provide services and supports to children under three years of age who are at-risk for developmental delays or disabilities and their families as determined by the county board through the board's plan and priorities developed under section 5126.04 of the Revised Code.

(1) Eligibility definition

If the county board has determined through its planning process to serve children who are at-risk for developmental delays or disabilities, the infant or toddler shall:

- (a) Meet the definition of at-risk for developmental delay as defined by the lead agency; and
- (b) Have had a screening indicating no delay is suspected.

(2) Eligibility criteria

- (a) The developmental screening must be completed and shared with the family within forty-five calendar days of referral.
- (b) The service coordinator assigned to the family shall verify the family has four or more risk factors, which lead to eligibility for the infant or toddler. When the service coordinator is not a county board employee, the county board shall request a copy of the eligibility determination for the child's record and shall maintain documentation that a request was made if the information is not available.

(G) Ongoing family and child assessment

- (1) Children who are eligible for HMG services and supports and their families shall receive ongoing family and child assessments. Within forty-five

calendar days of the initial referral to the system, the first family and child assessment shall be completed to gather information on the strengths, needs and choices of the child and family for the purpose of program planning.

- (2) Ongoing assessments for program planning shall be completed by qualified personnel and shall be summarized, documented, and provide detailed strength-oriented information on the child's abilities and recommended approaches for future interventions. This information shall be provided to parents and other team members as parental consent allows. The family shall be provided every opportunity to take an active role in the assessment process. For children receiving ongoing county board services, the team members must review all current existing developmental and family information so that duplication of information gathering does not occur.

(H) Intake and referral

Policies and procedures for intake and referral into the HMG system shall include the following:

- (1) Upon receipt of a referral from the family or other source, the county board shall immediately refer the family to the centralized intake and referral system. Communication to the centralized intake and referral system shall include the date and time the initial referral was received by the county board to ensure that verbal or written contact can be made with the family within two working days after the initial referral.
- (2) The county board may assume the responsibility for intake as part of the HMG system. When the county board receives the initial referral and proceeds with intake, the county board shall:
 - (a) Complete an intake form that includes the minimum requirements of the lead agency;
 - (b) Make verbal or written contact with the family within two working days after the initial referral;
 - (c) Ensure assignment of a service coordinator for that family and inform them that there must be only one service coordinator per family for the HMG system;
 - (d) Inform families that family support services are available, as ensured by the county family and children first council, as well as the opportunity to receive services from the family support specialist in the county;

- (e) Provide data according to the data collection procedures of the county HMG system;
- (f) Obtain written parent consent for release of all personally identifiable data, including medical diagnosis, to anyone other than the lead agency;
- (g) Provide written follow-up to the referral source within forty-five days of the initial referral date, including information regarding the status of the referral; and
- (h) Maintain intake records per the lead agency's "Client Records Policy."

(I) Child records

- (1) For each child birth through two years of age enrolled in the county board to receive early intervention services and supports or service coordination from the county board, the following information shall be compiled and kept on file:
 - (a) Verification of birth. Acceptable documents which may be copied and kept on file include: a passport or attested transcript of a passport filed with a registrar of passports at a point of entry of the United States showing the date and place of birth of the child, an attested transcript of the certificate of birth, an attested transcript of the certificate of baptism or other religious record showing the date and place of birth of the child, an attested transcript of a hospital record showing the date and place of birth of the child, or a birth affidavit.
 - (b) Documents used to determine eligibility, including a record of four risk factors, the written report of the developmental evaluation, or the written medical report.
 - (c) Documentation verifying the date of request for or referral to services in the HMG system and the date of initial contact with the county board if the county board is assisting in the initial evaluation/assessment process.
 - (d) Any ongoing assessments of the child and family.
 - (e) A health record that contains ongoing pertinent health information, which includes a record of current immunizations or the exemption or waiver

where an immunization is medically contraindicated, a list of medications, a list of any allergies and treatments, and authorization for emergency medical treatments.

- (f) Unusual incident and major unusual incident forms.
 - (g) Center-based attendance, home and other community based visitation records, and ongoing, systematic program data. Documentation by each county board provider shall include date, duration, frequency, intensity and specific type of service provided, and outcomes in accordance with the IFSP. A summary of this data shall form the basis for the one-hundred-twenty-day progress report and be used to measure progress on the outcomes identified on the IFSP.
 - (h) Current IFSP, subsequent reviews, written notices regarding meetings, and other related correspondence with the family.
 - (i) Signed written consents and releases including, but not limited to, informed written consent for the developmental screening, developmental evaluation, family assessments, and ongoing services.
 - (j) Documentation that a request for a copy of any required information was made, but the information was not available.
- (2) For each child birth through two years of age who is not enrolled in the county board for early intervention services and supports or for whom services are provided by an employee of the county board hired solely to assist the HMG system, the lead agency client records policy applies.

(J) IFSP and service coordination through the IFSP process

- (1) The child's service coordinator is responsible to ensure the development, implementation, review and monitoring of the IFSP and its timelines. If the county board provides service coordination for an eligible child throughout the IFSP process, the service coordinator shall:
 - (a) Ensure all sections of the statewide IFSP form are completed.
 - (b) Ensure that written notice of all IFSP meetings is provided to families and providers.

- (i) Meeting arrangements shall be made with, and written notices provided to, the family and other providers by the family's service coordinator early enough before the meeting date to ensure they will be able to attend.
 - (ii) IFSP meetings shall be conducted in settings and at times convenient to families and in the native language of the family or other mode of communication used by the family unless it is clearly not feasible to do so.
- (c) Ensure required participation in and scheduling and facilitation of IFSP meetings and reviews. Facilitation includes coordinating a meeting time and location that results in the participation of as many service providers involved with the family as possible.
- (i) Each initial IFSP meeting shall include the following participants:
 - (a) The parent or parents of the child;
 - (b) The service coordinator;
 - (c) A person or persons directly involved in conducting the evaluations and assessments;
 - (d) Persons who will be providing services to the child or family, as appropriate;
 - (e) Other family members, as requested by the parent, if feasible to do so;
 - (f) An advocate or person outside of the family, if the parent requests that person's participation;
 - (g) If a person or persons directly involved in conducting the evaluation and assessment or who will be providing services to the child or family is unable to attend a meeting, arrangements must be made for the person's involvement through other means.
 - (ii) Each review shall:

- (a) Provide for the participation of persons in paragraphs (J)(1)(c)(i)(a) to (J)(1)(c)(i)(d) of this rule. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (J)(1)(c)(i) of this rule.
 - (b) Be conducted every one hundred twenty days or more frequently if conditions warrant or if the family or IFSP team member requests such a review.
 - (c) Determine the degree to which progress toward achieving the outcomes is being made, whether modifications or revisions of the outcomes or services are necessary, and include progress information from the child's parent(s) and service provider(s) identified by the family.
- (iii) Each annual meeting to evaluate the IFSP shall:
 - (a) Include the participants listed in paragraphs (J)(1)(c)(i)(a) to (J)(1)(c)(i)(g) of this rule; and
 - (b) Be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family and, as appropriate, to revise its provisions. The results of any current evaluations and other information available from the ongoing assessment of the child's family must be used to update the IFSP and determine what services are needed and will be provided.
- (d) Ensure the following components of the IFSP are completed:
 - (i) The IFSP must include a statement of the child's present levels of development: cognitive, physical (including vision hearing and nutrition), communication, social or emotional, and adaptive. This information must be based on objective criteria and include parent input.
 - (ii) With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child.

- (iii) A statement of the major outcomes expected to be achieved for the child and family.
 - (iv) The criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary.
 - (v) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes including:
 - (a) The frequency, intensity, duration, location, and method of delivering the services.
 - (b) The natural environment, to the extent possible, including home and other community-based settings in which children without disabilities participate. If early intervention services cannot be achieved satisfactorily in the natural environment, a justification of the extent, if any, to which the services will not be provided in a natural environment.
 - (c) The payment arrangements, if any.
 - (vi) Medical and other services the child needs, including the funding sources to be used, dates for initiation, and the anticipated duration of those services.
 - (vii) The name of the service coordinator. This person will be responsible to ensure the implementation of the IFSP and coordination with other agencies and persons.
- (e) Address transition throughout the IFSP process, particularly by providing support and information specific to the transition of the child at age three or from the HMG system at anytime.
- (i) The transition planning process shall be completed:
 - (a) For program and service setting changes under the age of three, such as from the hospital to home, or from an early intervention program to a preschool program for children

with or without special needs;

- (b) At termination of early intervention services and supports; and
 - (c) For program and service setting changes for the child turning age three, preparation for the transition planning conference shall begin one hundred eighty days prior to the child's third birthday. The transition planning conference shall occur one hundred twenty days prior to the child's third birthday and shall be preceded by written notice of the conference in sufficient time to ensure attendance. This conference can occur at a scheduled one-hundred-twenty-day IFSP review.
- (ii) All records shall be maintained in the child's file to document that mandated steps have been completed according to the Ohio department of health and the Ohio department of education transition guidelines.
 - (iii) The steps to be taken to support transition of the child and family to preschool special education services or other appropriate services shall include:
 - (a) Discussions with and training of parents regarding program and service options for which the child might be eligible, financial resources as they relate to the transition of the child.
 - (b) Procedures to prepare the child for changes in service delivery, including steps to help the child and family adjust to and function in a new setting.
 - (c) The transmission of information about the child to the receiving agency to ensure continuity of services, including evaluation and assessment information, copies of IFSPs that have been developed and implemented, and other relevant data, per written parental consent.
- (f) Ensure team members present at the IFSP meeting sign the signature page documenting attendance at the meeting.
 - (g) Ensure written consent from the parent is obtained before any ongoing services listed on the IFSP may begin.

- (h) Ensure families receive a signed copy of the IFSP within five business days of the meeting. This copy shall include documentation of all changes and updates at the conclusion of the meeting.
 - (i) Ensure, with parent consent, a copy of the IFSP is sent to the child's primary care physician (i.e., medical home) and all service providers listed on the outcome page of the IFSP.
 - (j) Provide service coordination to a weighted caseload of no more than forty-five children.
 - (k) Receive eight hours clinical supervision per month from a clinical supervisor who meets lead agency requirements. Personnel who are less than full-time equivalent must receive a proportionate amount of clinical supervision.
 - (l) Gather and submit data, including information for early track.
 - (m) Comply with the lead agency's policy on service coordination.
- (2) Providers of services and supports to eligible children and their families shall participate in the development, implementation, review, and monitoring of the IFSP and its timelines. If the county board is participating in any part of the IFSP process, but is not providing service coordination for an eligible child, the county board shall:
- (a) Use the statewide IFSP form made available through the Ohio department of health.
 - (b) Participate with the parent and other service providers in the development of one IFSP only, including attending the initial, review, and annual IFSP meetings as requested by the service coordinator or family.
 - (c) Provide information related to the IFSP process to the child's service coordinator, the IFSP team, or the parent, as appropriate, including evaluation or assessment information if the provider is directly involved and unable to attend a meeting.
 - (d) Supply required information for the IFSP when the county board or contract agency is requested to provide or fund a service or support leading to accomplishment of a child or family outcome. The county

board must consent to the provision or funding of that service or support before it is listed on and obligated by the IFSP.

- (e) Participate in data collection and ongoing assessment related to the accomplishment of child and family outcomes for the IFSP review at least every one hundred twenty days and for the annual meeting to evaluate the IFSP and to revise its provisions as needed.
- (f) Participate in transition planning as requested by the service coordinator or parent six months prior to the child's third birthday or when the child exits the system at any other time.

(K) Parents' rights and procedural safeguards

For infants and toddlers in the HMG system, the lead agency has established parents' rights and procedural safeguards that protect the rights of parents and their eligible children. The lead agency, in partnership with the state and county family and children first councils, is responsible for assuring effective implementation of these parents' rights and procedural safeguards by each local agency that is involved in the provision of early intervention services.

(1) For all infants and toddlers served by the county board, the county board shall:

- (a) Ensure that parents are informed of their rights as outlined in the "Parents Rights in Help Me Grow" brochure and document that the parent has received a copy exists.
- (b) Give annual notification of the availability of a procedure based on the resolution of complaints and due process under rule 5123:2-1-12 of the Administrative Code. The procedure must include timelines that ensure the process is completed within thirty days as stipulated by the lead agency.

(2) For all Part C eligible infants and toddlers served by the county board, the county board shall:

- (a) Comply with the Ohio department of health's "Ohio Procedural Safeguards" policy;
- (b) Ensure that parents are informed of these procedural safeguards afforded under the lead agency, provide a copy upon receipt of a complaint and upon request, and ensure that families are aware that they may file a

complaint with the lead agency at any time;

(c) Ensure parents are afforded all requirements under section 5123.63 of the Revised Code, distribution of the "Bill of Rights."

(3) The county board shall ensure that parents of all children eligible and served by the county board are annually informed of the complaint resolution process through the county board. Upon entrance into the county board, the county board shall ensure that parents have been informed of their procedural safeguards through the Ohio department of health and the county family and children first council, and that they have been given a copy of the Ohio department of health's "Parents Rights in Help Me Grow" brochure.

(L) Staffing ratios

The county board shall determine a methodology to ensure a reasonable child-to-early intervention specialist and support staff ratio and shall review caseloads at least annually. Procedures shall be written and shall ensure the county board will be able to provide services and supports to families and children as determined by the IFSP team. Some variables that may affect the ratio and be incorporated into the procedures include:

- (1) The extent and intensity of the family supports provided;
- (2) The extent and intensity of the child's needs;
- (3) Location of services and supports including travel time for home-based services;
- (4) The extent and time required to ensure completion of service coordination responsibilities, if applicable;
- (5) The involvement and assistance of other services, supports, and agencies;
- (6) The participation of age-eligible, typically developing children in center-based programming; and
- (7) The resources available within the county board and the community.

(M) Program facility, materials and equipment

The county board shall ensure that sufficient facilities, materials and equipment are

available to address the programmatic needs of young children and families enrolled in the county board.

(N) Calendar

In conjunction with the county family and children first council's comprehensive year-round HMG system, the county board shall ensure and make available early intervention services and supports on a year-round basis for a minimum of two hundred thirty-two days based on the availability of funds.

(O) Reporting and monitoring requirements

To establish and maintain standards for early intervention services and supports offered by county boards, the county board shall:

- (1) Participate in the department's monitoring system through the accreditation process established pursuant to section 5126.081 of the Revised Code and rule 5123:2-4-01 of the Administrative Code; and
- (2) Provide information requested by the lead agency for the purpose of monitoring for compliance with Ohio department of health policies or Part C federal regulations.

(P) "Help Me Grow" (HMG) policies

A copy of the Ohio department of health's policies on the HMG system (final - October 2002) is available on the department's web site at <http://odmrdd.state.oh.us>. This information is also available on the "Help Me Grow" web site at <http://www.ohiohelpmegrow.org/>.

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5123:2-1-06 **Adult services.**

(A) Guiding principles

- (1) Persons with developmental disabilities have the right to receive the full range of supports and services they need to be participating members of their communities. Employment services, continuing education, transportation services, technological supports, and therapeutic services should be available to individuals dependent upon their choices, desires and preferences.
- (2) Employment options include but are not limited to community competitive employment, supported employment, mobile work crews, enclaves, entrepreneurship and sheltered employment. Regardless of the individual's choice of a work site, adults should have access to the supports necessary to be successful and should receive the benefits provided to other workers in the same setting.
- (3) Individuals should have supports as needed to have access to retirement, recreational, social and employment activities. Services may be provided in an individual's home if appropriate. Individuals for whom work is not a priority have the right to spend their days involved in activities of interest and personal benefit in integrated, community-based settings. The county board shall plan and set priorities for services based on available resources.

(B) Personnel qualifications

Staff employed by the county board in adult services shall comply with rules 5123:2-5-01 and 5123:2-5-02 of the Administrative Code.

- (C) County boards of MR/DD participating in the community alternative funding system or under the jurisdiction of other licensing or certifying bodies must comply with additional requirements as outlined in rules governing those programs.

(D) Eligibility

- (1) Each county board shall have on file written procedures regarding entry into the program. This information shall be disseminated to the applicant, the applicant's legal guardian, staff and others upon request and reviewed annually. Information about the mission, programs and services of the county board shall be provided to the individual requesting services and, if appropriate family and friends, in a format that can be easily understood by the individual.

- (2) To be eligible for adult services, an individual shall:
- (a) Be sixteen years of age or older;
 - (b) Have a developmental disability as defined in section 5126.01 of the Revised Code; and
 - (c) If applicable, be placed into the program by the school district of residence as the least-restrictive environment in accordance with rule 3301-51-02 of the Administrative Code.
- (3) Notwithstanding the definitions of "developmental disability" and "developmentally disabled person" in section 5126.01 of the Revised Code, all persons who were eligible for services and participated in programs offered by a county board of MR/DD on July 1, 1991, shall continue to be eligible for those services and to participate in those programs as long as they are in need of services.
- (4) The county board shall ensure that eligibility determinations on behalf of an applicant be conducted in a timely manner and within forty-five calendar days after all information necessary to make the determination has been received from the referring party or applicant.
- (5) The superintendent or his designee shall have the authority to make the final decision regarding eligibility of the individual.
- (6) Individuals determined ineligible for county board of MR/DD services shall be afforded due process rights pursuant to rule 5123:2-1-02 of the Administrative Code. Records of individuals determined ineligible shall be maintained for five years after determination has been made. Individuals determined ineligible for county board services shall be referred to other appropriate community agencies.

(E) Assessment of an individual's desires and preferences

- (1) Each county board of MR/DD shall develop a functional assessment process for each individual to determine his or her choices, desires and preferences in home, vocational and community environments.
- (2) If services or supports are requested, the assessment shall commence within sixty calendar days from the date that eligibility is established. This time

frame may be extended based upon extenuating circumstances and with agreement from the individual. The assessment process is ongoing.

- (3) The initial assessment shall begin with a review of available information to determine if supplemental situational and/or other formal or informal evaluations should occur.
- (4) A written assessment plan shall be developed in conjunction with the applicant, the applicant's legal guardian and, if desired, the advocate of the applicant's choice. The results of the plan shall be used for the provision and/or coordination of services.
- (5) A medical examination current within six months from the date that eligibility was established shall be available or be completed.
- (6) Participation in adult services or placement onto a waiting list shall take place within thirty calendar days from the date that the initial assessment begins. Individuals placed on a waiting list shall be referred to other community service and support providers as appropriate.
- (7) The start date for participation in the program may be postponed based upon extenuating circumstances and with agreement of the individual requesting services.

(F) Waiting lists

When it is necessary to establish waiting lists for services, records shall be maintained in accordance with rule 5123:2-1-02 of the Administrative Code.

(G) Individual plan (IP)

Each individual shall have a written plan. The individual plan (IP) outlines the services, supports, education and training program that will be provided and coordinated for the individual by various agencies and persons.

- (1) A certificated staff member of the county board shall serve as an individual plan coordinator. The meeting to develop the IP shall include at a minimum, the individual, the individual's legal guardian, a certificated staff member of the county board and, if desired, the individual's advocate or friend. The individual plan coordinator in conjunction with the individual and/or his representative shall determine which other people shall be present at the meeting. The individual plan coordinator shall be responsible for the development of the IP and shall ensure that services, goals and objectives

implemented are not conflicting with each other. The provision of adult services is contingent upon the consent of the individual or legal guardian. Such consent may be modified or withdrawn at any time. The individual plan coordinator shall advise and present options in an appropriate manner to the individual so the individual may have a voice in matters pertaining to his life. A written summary of the meeting which includes any dissenting opinions of those present shall be made and entered into the individual's permanent record.

- (2) The adult services provider team may vary in size and composition according to the needs and preferences of the individual. The team shall include those persons directly providing services to the individual, and it shall meet on a formal or informal basis as needed. Members of the team assist the individual in determining the services, supports, goals, methodologies and procedures contained within the plan. Members do not need to attend the IP development meeting to be part of the individual's team.
- (3) The initial IP shall be developed within a maximum of thirty calendar days after entry of the individual into adult services. An IP shall be maintained for all individuals. This time frame may be extended based upon extenuating circumstances and with agreement from the individual.
- (4) After the initial plan is developed for an individual, appropriate team members shall meet at least annually to review, revise, and/or redevelop the IP or whenever a major change in training, continuing education, services, employment or supports is proposed.
- (5) The IP shall be signed by each adult services provider and persons who participated in the development of the IP.
- (6) The IP is to be a working document. The individual plan coordinator shall be responsible for assuring that the individual receives services required by the IP that are identified as the responsibility of the county board and for assuring that copies of applicable portions of the IP shall be in the possession of appropriate adult service providers. Confidentiality shall be maintained. An IP shall be given to the individual, legal guardian, person responsible for the plan, and other designated people involved in the individual's plan.
- (7) The county board shall assure that the IP shall be developed and implemented in coordination with other appropriate service providers or agencies.
- (8) Appropriate signed and dated notations in the record shall verify that the individual being served has received all services to which he has been

referred or explanations of why services have not been provided.

- (9) The IP shall be based on priorities identified in the current assessment of choices, desires and preferences. The IP shall include opportunities:
- (a) For the individual to control his life through informed choices;
 - (b) For developing significant social relationships within the community;
 - (c) For working and participating in the life of his community;
 - (d) That are in accordance with the individual's selected lifestyle;
 - (e) That support each individual's choices, desires and preferences leading to interdependence and full community inclusion;
 - (f) That address how services/supports will follow the individual into activities that take place in the community; and
 - (g) That enable the individual to fulfill his lifelong plans.
- (10) The training, continuing education or therapeutic components of the IP shall include at a minimum:
- (a) Goals;
 - (b) Measurable objectives for each goal;
 - (c) The goal and objective review schedule;
 - (d) Frequency, duration and location of continuing education and therapeutic components or training;
 - (e) Implementation strategies and methodologies and the person responsible for the implementation; and
 - (f) A statement regarding the frequency and type of documentation that should be maintained.
- (11) The services/supports component of the IP shall include:

- (a) A statement of services/supports to be provided;
- (b) Frequency and duration of services/supports;
- (c) Identification of the adult services provider;
- (d) A statement regarding the frequency and type of documentation that should be maintained; and
- (e) The frequency at which the services/supports should be reviewed for effectiveness.

(H) Operating requirements

- (1) The county board shall adopt a policy regarding staffing requirements for adult services. The staffing requirements shall be based upon individual plans and resulting outcomes of the provision of services/supports for individuals for all programs available. The policy shall be reviewed annually.
- (2) Adult services shall be in operation a minimum of two hundred thirty-two days. An individual's needs may require more or fewer days of employment, continuing education, training, services and/or supports.
- (3) The county board shall prepare information on the program and distribute this information to all individuals participating in the program and to all legal guardians. This information shall include at least the following:
 - (a) A description of adult services;
 - (b) Eligibility criteria;
 - (c) Transportation policies and procedures;
 - (d) Payroll procedures and applicable fringe benefits;
 - (e) Explanation of attendance policies;
 - (f) Grievance procedures;

- (g) Work hours and breaks; and
 - (h) Individual rights, confidentiality, and due process information.
- (4) Each county board shall adopt a policy regarding behavior management and confidentiality of records as outlined in rule 5123:2-1-02 of the Administrative Code.
- (5) A committee shall be formed of representatives of management and individuals participating in the program for the purpose of discussing matters of mutual concern, including aspects of the adult services operation. Meetings shall be held at least quarterly during the year.
- (6) All applicable components of adult services shall be in compliance with the regulations of the United States department of labor, wage and hour division, 29 C.F.R. 525.
- (7) Individuals engaged in paid work shall be provided coverage under the bureau of workers' compensation or its equivalent.

(I) Records

- (1) Records shall be maintained in a confidential manner and in a secure manner and include:
- (a) Initial date of inquiry and date individual begins participation in adult services;
 - (b) Verification of age;
 - (c) Emergency contact sheet;
 - (e) Medical report;
 - (f) Assessment of preferences, strengths, and needs;
 - (g) Special job accommodations;
 - (h) A copy of the current IP;

- (i) Evidence of IP or IP reviews and revisions;
 - (j) Incident reports;
 - (k) Accident reports;
 - (l) Medication reports;
 - (m) Other reports;
 - (n) Attendance records; and
 - (o) Individual production and payroll records.
- (2) Designated staff shall review semiannually a representative sample of the records to measure their adequacy and fulfillment of record-keeping requirements.
 - (3) Unusual incidents and medical emergencies shall be reported as soon as possible and within twenty-four hours of occurrence and in compliance with major unusual incident procedures as in accordance with rule 5123:2-17-02 of the Administrative Code.
 - (4) There shall be a written procedure for reporting all accidents with recommendations regarding the safety program and handling of accidents and injuries. Information concerning health, safety and special job considerations shall be clearly communicated to appropriate staff.
 - (5) Closure and transfer summaries shall be recorded within two weeks following the individual's exit from the program.

(J) Physical facilities

- (1) Program facilities owned or leased by the county board shall be in compliance with state and local building and mechanical codes with respect to the design, construction, and equipment applicable to the occupancy classification.
- (2) Adult services sites shall be in compliance with the "Ohio Fire Code" as administered by the state or local fire official.

- (3) Plumbing and sanitary installation shall be in compliance with the Ohio and local plumbing codes as administered by the Ohio health department or the local official having jurisdiction.
- (4) Facilities having food preparation areas shall have a valid food service license issued by the local health authorities having jurisdiction.
- (5) Breakrooms, restrooms, and dining areas shall be maintained in an orderly and sanitary manner.
- (6) Power equipment, fixed or portable, should include operating safeguards as required by the division of safety and hygiene, bureau of workers' compensation.

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Certification

Date

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TO BE RESCINDED

5123:2-1-09 **Family support services.**

(A) Purpose. This rule establishes guidelines for the implementation of a family support services program through a county board of mental retardation and developmental disabilities. A family support services program assists a family who keeps at home a family member with mental retardation and/or a developmental disability. The program promotes the unity of the family by assisting it to meet the special needs of the individual with mental retardation and/or a developmental disability. It also assists the individual to maximize self-sufficiency and prevent inappropriate institutionalization. The objectives of the family support services program are:

- (1) To enable individuals with mental retardation and/or developmental disabilities to return to their families from developmental centers which are under the managing responsibility of the department;
- (2) To enable individuals found to be subject to institutionalization by court order under section 5123.76 of the Revised Code to remain with their families with the aid of reimbursable services; and
- (3) To provide reimbursable services to families of eligible children and adults living at home who may or may not be currently receiving services from the county board.
- (4) To further the unity of the family by enabling the family to meet the special needs of the individual and to live as much like other families as possible.

(B) Applicability. This rule does not apply to family support services that are funded under the state medicaid plan as either home and community-based services or habilitation center services.

(C) As part of the county board's overall philosophy, each county board shall have a written philosophy for the family support services program which shall include, but not be limited to, the following premises:

- (1) All individuals with mental retardation and/or developmental disabilities have a right to live in a stable home, enjoy membership in a family, have access to the array and quantity of supports needed to enable them to participate in the life of their communities to the degree they choose, and experience enduring relationships with brothers, sisters, other family members, and friends committed to their welfare.

- (2) Reimbursable service and supports through the family support services program

shall be tailored to the unique needs of individuals with mental retardation or other developmental disabilities and their families and shall be defined in accordance with section 5126.11 of the Revised Code and this rule.

(3) Family support services should:

- (a) Seek and nurture partnerships between family members, other supportive people, and the professionals who serve both these individuals and their families;
- (b) Build on the unique strengths and characteristics of each family;
- (c) Utilize the resources in each family's social network and home community; and
- (d) Respect the beliefs, values and structures of each family.

(D) Family eligibility. "Family," as stated in this rule, means parent(s), brother(s), sister(s), spouse(s), son(s), daughter(s), grandparent(s), aunt(s), uncle(s), cousin(s), or guardian(s) of the individual with mental retardation or developmental disabilities and includes the individual with mental retardation or developmental disabilities. "Family" also means person(s) acting in a role similar to those specified in this paragraph even though no legal or blood relationship exists if the individual with mental retardation or developmental disabilities lives with the person(s) and is dependent on the person to the extent that if the supports were withdrawn another living arrangement would have to be found. The person(s) shall verify the relationship by signature.

(1) Planned service. A family shall be eligible for reimbursement of family support services if it includes a family member who resides at home and has been determined eligible for the county board according to section 5126.01 of the Revised Code.

(2) Emergency services. The following families shall be considered eligible for reimbursement according to the county board policy on emergencies in accordance with section 5126.042 of the Revised Code.

- (a) A family that includes an individual living at home who is eligible for services from county board according to section 5126.01 of the Revised Code; and
- (b) Other families that include an individual living at home with mental

retardation and/or a developmental disability who is not receiving services from the county board but is determined by the superintendent or designee of the county board as eligible for family support services.

- (3) If resources are not available, the county board shall place the family on a waiting list for family support services in accordance with rule 5123:2-1-08 of the Administrative Code.

(E) Request process

- (1) The request for services shall be initiated by a family. The family's request for family support services shall be honored if funds and services are available and consistent with the family support services section of the county board's plan as outlined in paragraph (G) of this rule and the written philosophy in paragraph (C) of this rule and if the requirements of this rule and section 5126.11 of the Revised Code are met. The county board shall work with the family to obtain supports and services. At the family's request, the county board shall assist families in developing individual plans and strategies for family supports. Family support services shall be considered a component of the individual planning process in accordance with rules adopted by the department.
 - (a) Family support services may be provided in a county other than the one in which the reimbursing county board is located. The reimbursing county board is responsible for determining that providers meet the requirements of this rule.
 - (b) Family support services may be provided by agencies or persons other than the county board including, but not limited to, generic agencies or service providers in the community.
 - (c) The county board may contract with another agency to administer all or a portion of the family support services program. The county board shall ensure that any contract agency administering family support services adheres to the administrative rules governing the program.
- (2) The family may request a list of certified respite care providers from the county board before deciding on a provider, or the family may recommend a provider to the county board.
- (3) To be assured of reimbursement, the family shall obtain the estimated cost and prior approval of the expenditure from the county board before agreeing to

services or signing a contract with a provider.

- (4) The county board shall respond to an eligible family's request for reimbursement within seven working days after receiving the request. The request shall be reviewed based only on the following criteria:
 - (a) The family is eligible according to paragraph (D) of this rule;
 - (b) Funds are available according to the county board's plan and administrative procedures;
 - (c) The requested service is directly related to improving the living environment or facilitating the care of the individual with mental retardation and/or a developmental disability; and
 - (d) Compliance with the requirements of this rule and section 5126.11 of the Revised Code.
- (5) Payments may be made for the following services:
 - (a) Respite care, in or out of the home;
 - (b) Counseling, supervision, training and education of the individual, the individual's caregivers, and members of the individual's family that aid the family in providing proper care for the individual, provide for the special needs of the family, and assist in all aspects of the individual's daily living;
 - (c) Special diets, purchase or lease of special equipment or modifications of the home, if such diets, equipment, or modifications are necessary to improve or facilitate the care and living environment of the individual;
 - (d) Providing support necessary for the individual's continued skill development, including such services as development of interventions to cope with unique problems that may occur within the complexity of the family, enrollment of the individual in special summer programs, provision of appropriate leisure activities, and other social skills development activities;
 - (e) Any other services that are consistent with the purposes specified in paragraph (A) of this rule and specified in the individual's service plan.

- (6) Reimbursement/payment for services shall be made by the county board using one of the following procedures:
- (a) Upon approval of the request for family support services, the county board shall give the family a voucher in the amount of the approved service provider payment. The family shall present the voucher and the family's share of the cost of the service to the provider when the service has been received or at such time as mutually agreed. The provider shall redeem the voucher through the county board. The county board shall redeem the voucher within forty-five days after the provider submits it; or
 - (b) Upon approval of the request for family support services, the county board shall give the family a written statement of the amount of approved reimbursement. The family shall present a receipt for approved incurred cost to the county board. The county board shall reimburse the family within forty-five days after the family submits the receipt; or
 - (c) The county board may develop a reimbursement/service provider payment system that meets county auditor requirements and is responsive to family needs.
- (7) At the time of initial application, the family support services coordinator shall inform the family of their informal complaint resolution and due process rights under rule 5123:2-1-12 of the Administrative Code. This information shall be presented in the native language of the family or other mode of communication used by the family unless it is clearly not feasible.

(F) Reimbursement

- (1) Maximum annual reimbursement. The maximum annual reimbursement to each family shall be determined through the family support services component of the county board's annual plan. The plan shall allow for flexibility in tailoring the level of reimbursement to the unique needs of families.
- (2) Copayment schedule
 - (a) The copayment schedule for a family shall be based on the family's taxable income as certified by signature. Income shall be based on the federal taxable income (after applicable deductions). The individual and/or family shall be responsible for reporting any changes in income.

(b) The board may consider extenuating circumstances in the determination of copayment.

(c) The percentage of each family support service that the family pays shall be determined according to the following income schedule:

Income Schedule

Income	Percentage of Contribution
\$27,258 or less	0%
\$27, 259 - \$37,759	10%
\$37,760 - \$48,260	30%
\$48,261 - \$62,261	50%
\$62,262 - \$79,762	75%
\$79,763 and over	100%

(G) Planning process

(1) The family support services component of the county board's annual plan shall include, but not be limited to:

(a) The procedures for, and the results of, the assessment of the family support services funding needs of the families of residents of the county with mental retardation and/or a developmental disability.

(i) The number of eligible families projected to need family support services funding;

(ii) The amount of family support services funds available to each family for the year addressed in the plan; and

(iii) The number of eligible families currently receiving family support services funds.

(b) The projected number of families to be served each year.

- (c) Prioritization of funding, with corresponding justification, shall include:
 - (i) Comprehensive family support services funding to relatively few families who have extensive needs;
 - (ii) Limited family support services funding to a broad base of families.
 - (d) Collaborative county board linkage with needed programs or services from other community agencies.
 - (e) The commitment of funds to the family support services program.
 - (f) The projected amount and percentage of the county board's allocation of state funds to be used for routine services and the amount and percentage to be used for emergencies shall be determined through the county board planning process. The percentage to be used for emergencies shall not exceed twenty-five per cent of the total dollar amount committed to the family support services program.
 - (g) The organizational structure for implementing the family support services program.
 - (h) An evaluation of the family support services program annually on the basis of data collected from the individuals served, families and providers and the direct monitoring of providers.
 - (i) A description of the procedures and schedule of events used to make families and other agencies in the community aware of the family support services program and planning process.
- (2) County board administrative procedures. The county board shall have procedures for:
- (a) Identifying other resources that the family could use to pay for the family support services.
 - (b) Determining that the family has exhausted all other sources.
 - (c) Identifying and developing providers.

- (d) Certifying the individual respite provider or administering agency when applicable. In certifying the provider, the county board shall use standards which include those in paragraph (H) of this rule.
 - (e) Direct monitoring of county board certified providers.
 - (f) Reimbursing families for services:
 - (i) Estimating the amount of funds needed to reimburse families between regular meetings of the county board, encumbering those funds and authorizing expenditures;
 - (ii) Reimbursing families in a timely manner, no later than forty-five days after the family has notified the county board that the expense has been incurred; and
 - (iii) Redeeming vouchers for providers within forty-five days after the county board receives them.
 - (g) Maintaining a list of certified respite care providers as a guide to families. The list shall include available respite beds in community facilities that are funded according to section 5123.18 of the Revised Code or Title XIX of the Social Security Act, if the department provides that information to the county board.
 - (h) Assuring that no reimbursement is made on behalf of an individual who is living in a residential facility that is providing services that are funded according to section 5123.18 of the Revised Code or Title XIX of the Social Security Act or by a county board.
 - (i) Assuring that funds appropriated for the family support services program and allocated to the county board for this purpose shall not be used to reimburse families for respite care or other family support services that are provided in a bed in a facility if that bed is funded according to section 5123.18 of the Revised Code or Title XIX of the Social Security Act.
- (3) Additional provisions applicable to county boards
- (a) No more than seven per cent of the county board's allocation may be used for the administrative cost of the county board.

- (b) The county board shall not be required to make reimbursements at a level of funding that exceeds available state and federal funds for this purpose.
 - (c) The county board shall not use funds allocated for family support services to replace existing locally funded programs other than family support services or for any purpose other than family support services.
 - (d) The county board may support the family support services with additional locally generated funds.
 - (e) The county board may use the funds allocated for the family support services program as match for appropriate federal funds. When family support services is used to match federal funds, no copayment will be assessed to families for services provided through those federal funds.
- (4) Standards for supervision. The county board shall supervise the family support services program and shall be responsible for the following:
- (a) The approval of services and costs prior to the provision of services; and
 - (b) The enforcement of ceilings on reimbursement to a family based on income.
- (H) Certification of respite providers
- (1) Family selected respite providers. Respite providers selected by families need not be county board certified. When using a family selected provider, the family shall sign an assurance assuming responsibility that the health and safety needs of the individual will be met and that no liability shall be incurred by the county board.
 - (2) Non-family selected respite providers. The county board shall maintain a list of trained and certified respite providers.
 - (a) Board certified respite providers shall receive up to forty hours of training which shall include but not be limited to:
 - (i) Practicum (supervised);

- (ii) Time spent with individuals with mental retardation and/or developmental disabilities and their families;
 - (iii) CPR; and
 - (iv) First aid.
- (b) This training may be waived by the superintendent or designee if the provider has experience with individuals with mental retardation and/or developmental disabilities. Respite providers that are board certified prior to September 18, 1992 shall continue to be certified.
- (c) The county board shall perform a criminal background check on all non-family selected, certified respite providers.
- (d) County board certified providers of out-of-home respite shall be subject to the provisions of rule 5123:2-12-01 ("Supported Living Quality Assurance Standards") of the Administrative Code as follows to promote conditions that consider the health and safety of the individual:
 - (i) Housing. The individual has housing that meets local requirements for residential homes, is secure, and has adequate heating, water, and electricity. The individual has the basic furnishings necessary for daily living including, but not limited to, a bed, chairs, table, kitchen facilities, and lighting.
 - (ii) Health. The individual's health is maintained through adequate hygiene, nutrition, exercise, safe behavior, medical and dental monitoring, and appropriate medications when needed. The individual receives prompt and up-to-date treatment for physical problems.
 - (iii) Safety. Potential dangers in the environment are minimized. The individual has access to prompt and appropriate emergency services, when needed, such as police, fire department, ambulance, and crisis line.
 - (iv) Major unusual incidents shall be reported in compliance with rule 5123:2-17-02 of the Administrative Code.
- (e) The county board shall assure quality control of the county board certified

providers of respite through:

- (i) An initial on-site visit before providing certification of out-of-home respite providers.
 - (ii) A periodic on-site visit at least annually to each out-of-home provider in the county by county board personnel.
 - (iii) Structured, written feedback from a significant sample of respite sessions completed by the family and the county board certified respite provider. The sample shall include the first respite session by each newly certified provider.
- (3) The family, provider, and any applicable agency shall plan the continuation of school, workshops, or other habilitation programs during respite care.

(I) County board reports and evaluation

Upon the department's request, the county board shall submit in a format specified by the department written reports related to the family support services program.

(J) Department responsibilities

- (1) The department shall allocate funds to the county boards operating under this rule as follows:
- (a) To receive the annual family support services allocation, the county board shall submit reports required under paragraph (I) of this rule.
 - (b) Allocation shall be determined according to a formula established by the department and reviewed and disseminated annually to the county board at the beginning of each fiscal year. The allocation of family support services funds to county boards is based according to a formula based equally on the following three factors:
 - (i) The number of enrollees in the county board programs;
 - (ii) The population of the county; and
 - (iii) The number of people in the county whose income falls below the poverty level as determined by the Ohio department of job and

family services.

- (2) As part of the department's annual report, the status of the family support services program shall be included.

Effective:

R.C. 119.032 review dates: 08/18/2014

Certification

Date

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Statutory Authority: 5123.04, 5123.171, 5126.05, 5126.08, 5126.082, 5126.11, section 71.02 of A.S.H.B. 95 of the 125th General Assembly
Rule Amplifies: 5123.04, 5123.171, 5126.01, 5126.03, 5126.042, 5126.05, 5126.08, 5126.082, 5126.11, 5126.281, section 71.02 of A.S.H.B. 95 of the 125th General Assembly
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5123:2-2-06

Behavioral support strategies that include restrictive measures.(A) Purpose

This rule limits the use of and sets forth requirements for development and implementation of behavioral support strategies that include restrictive measures for the purpose of ensuring that:

- (1) Restrictive measures are used only when necessary to keep people safe;
- (2) Individuals with developmental disabilities are supported in a caring and responsive manner that promotes dignity, respect, and trust and with recognition that they are equal citizens with the same rights and personal freedoms granted to Ohioans without developmental disabilities;
- (3) Services and supports are based on an understanding of the individual and the reasons for his or her actions; and
- (4) Effort is directed at creating opportunities for individuals to exercise choice in matters affecting their everyday lives and supporting individuals to make choices that yield positive outcomes.

(B) Scope

- (1) This rule applies to persons and entities that provide specialized services regardless of source of payment, including but not limited to:
 - (a) County boards of developmental disabilities and entities under contract with county boards;
 - (b) Residential facilities licensed pursuant to section 5123.19 of the Revised Code, including intermediate care facilities;
 - (c) Providers of supported living certified pursuant to section 5123.161 of the Revised Code; and
 - (d) Providers of services funded by medicaid home and community-based services waivers administered by the department.
- (2) Individuals receiving services in a setting governed by the Ohio department of education shall be supported in accordance with administrative rules and policies of the Ohio department of education.

(C) Definitions

- (1) "County board" means a county board of developmental disabilities.
- (2) "Department" means the Ohio department of developmental disabilities.

- (3) "Director" means the director of the Ohio department of developmental disabilities or his or her designee.
- (4) "Individual" means a person with a developmental disability.
- (5) "Individual plan" or "individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (6) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner the individual or his or her guardian understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; alternatives to the action, treatment, or service; consequences of not receiving the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual or his or her guardian, as applicable, may revoke informed consent at any time.
- (7) "Intermediate care facility" means an intermediate care facility for individuals with intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative Code.
- (8) "Prohibited measure" means a method that shall not be used by persons or entities providing specialized services. "Prohibited measures" include:
- (a) Prone restraint. "Prone restraint" means a method of intervention where an individual's face and/or frontal part of his or her body is placed in a downward position touching any surface for any amount of time.
 - (b) Use of a manual restraint or mechanical restraint that has the potential to inhibit or restrict an individual's ability to breathe or that is medically contraindicated.
 - (c) Use of a manual restraint or mechanical restraint that causes pain or harm to an individual.
 - (d) Disabling an individual's communication device.
 - (e) Denial of breakfast, lunch, dinner, snacks, or beverages.
 - (f) Placing an individual in a room with no light.
 - (g) Subjecting an individual to damaging or painful sound.
 - (h) Application of electric shock to an individual's body.
 - (i) Subjecting an individual to any humiliating or derogatory treatment.

(j) Squirting an individual with any substance as an inducement or consequence for behavior.

(k) Using any restrictive measure for punishment, retaliation, instruction or teaching, convenience of providers, or as a substitute for specialized services.

(9) "Provider" means any person or entity that provides specialized services.

(10) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 as in effect on the effective date of this rule.

(11) "Restrictive measure" means a method of last resort that may be used by persons or entities providing specialized services only when necessary to keep people safe and with prior approval by the human rights committee in accordance with paragraph (F) of this rule. "Restrictive measures" include:

(a) Manual restraint. "Manual restraint" means use of a hands-on method, but never in a prone restraint, to control an identified action by restricting the movement or function of an individual's head, neck, torso, one or more limbs, or entire body, using sufficient force to cause the possibility of injury and includes holding, blocking, or disabling an individual's wheelchair or other mobility device. An individual in a manual restraint shall be under constant visual supervision by staff. Manual restraint shall cease immediately once risk of harm has passed. "Manual restraint" does not include a method that is routinely used during a medical procedure for patients without developmental disabilities.

(b) Mechanical restraint. "Mechanical restraint" means use of a device, but never in a prone restraint, to control an identified action by restricting an individual's movement or function. Mechanical restraint shall cease immediately once risk of harm has passed. "Mechanical restraint" does not include:

(i) A seatbelt of a type found in an ordinary passenger vehicle or an age-appropriate child safety seat;

(ii) A medically-necessary device (such as a wheelchair seatbelt or a gait belt) used for supporting or positioning an individual's body; or

(iii) A device that is routinely used during a medical procedure for patients without developmental disabilities.

(c) Time-out. "Time-out" means confining an individual in a room or area and

preventing the individual from leaving the room or area by applying physical force or by closing a door or constructing another barrier, including placement in such a room or area when a staff person remains in the room or area.

(i) Time-out shall not exceed thirty minutes for any one incident nor one hour in any twenty-four hour period.

(ii) A time-out room or area shall not be key-locked, but the door may be held shut by a staff person or by a mechanism that requires constant physical pressure from a staff person to keep the mechanism engaged.

(iii) A time-out room or area shall be adequately lighted and ventilated and provide a safe environment for the individual.

(iv) An individual in a time-out room or area shall be protected from hazardous conditions including but not limited to, sharp corners and objects, uncovered light fixtures, or unprotected electrical outlets.

(v) An individual in a time-out room or area shall be under constant visual supervision by staff.

(vi) Time-out shall cease immediately once risk of harm has passed or if the individual engages in self-abuse, becomes incontinent, or shows other signs of illness.

(vii) "Time-out" does not include periods when an individual, for a limited and specified time, is separated from others in an unlocked room or area for the purpose of self-regulating and controlling his or her own behavior and is not physically restrained or prevented from leaving the room or area by physical barriers.

(d) Chemical restraint. "Chemical restraint" means a medication prescribed for the purpose of modifying, diminishing, controlling, or altering a specific behavior. "Chemical restraint" does not include medications prescribed for the treatment of a diagnosed disorder identified in the "Diagnostic and Statistical Manual of Mental Disorders" (fifth edition) or medications prescribed for treatment of a seizure disorder.

(e) Restriction of an individual's rights as enumerated in section 5123.62 of the Revised Code.

(12) "Risk of harm" means there exists a direct and serious risk of physical harm to the individual or another person. For risk of harm, the individual must be

capable of causing physical harm to self or others and the individual must be causing physical harm or very likely to begin causing physical harm.

(13) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.

(14) "Specialized services" means any program or service designed and operated to serve primarily individuals with developmental disabilities, including a program or service provided by an entity licensed or certified by the department. If there is a question as to whether a provider or entity under contract with a provider is providing specialized services, the provider or contract entity may request that the director of the department make a determination. The director's determination is final.

(15) "Team," as applicable, has the same meaning as in rule 5123:2-1-11 of the Administrative Code or means an interdisciplinary team as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

(D) Development of a behavioral support strategy that includes restrictive measures

(1) A behavioral support strategy shall never include prohibited measures.

(2) A behavioral support strategy may include manual restraint, mechanical restraint, time-out, or chemical restraint only when an individual's actions pose risk of harm.

(3) A behavioral support strategy may include restriction of an individual's rights only when an individual's actions pose risk of harm or are very likely to result in the individual being the subject of a legal sanction such as eviction, arrest, or incarceration. Absent risk of harm or likelihood of legal sanction, an individual's rights shall not be restricted (e.g., by imposition of arbitrary schedules or limitation on consumption of food, beverages, or tobacco products).

(4) The focus of a behavioral support strategy shall be creation of supportive environments that enhance the individual's quality of life. Effort is directed at:

(a) Mitigating risk of harm or likelihood of legal sanction;

(b) Reducing and ultimately eliminating the need for restrictive measures; and

(c) Ensuring individuals are in environments where they have access to preferred activities and are less likely to engage in unsafe actions due to boredom, frustration, lack of effective communication, or unrecognized

health problems.

(5) A behavioral support strategy that includes restrictive measures requires:

- (a) Documentation that demonstrates that positive and non-restrictive measures have been employed and have been determined ineffective; and
- (b) An assessment conducted within the past twelve months that clearly describes:
 - (i) The behavior that poses risk of harm or likelihood of legal sanction;
 - (ii) The level of harm or type of legal sanction that could reasonably be expected to occur with the behavior;
 - (iii) When the behavior is likely to occur; and
 - (iv) The individual's interpersonal, environmental, medical, mental health, and emotional needs and other motivational factors that may be contributing to the behavior.

(6) Persons who conduct assessments and develop behavioral support strategies that include restrictive measures shall:

- (a) Hold professional license or certification issued by the Ohio board of psychology; the state medical board of Ohio; or the Ohio counselor, social worker, and marriage and family therapist board; or
- (b) Hold a certificate to practice as a certified Ohio behavior analyst pursuant to section 4783.04 of the Revised Code; or
- (c) Hold a bachelor's or graduate-level degree from an accredited college or university and have at least three years of paid, full-time (or equivalent part-time) experience in developing and/or implementing behavioral support and/or risk reduction strategies or plans.

(7) A behavioral support strategy that includes restrictive measures shall:

- (a) Be designed in a manner that promotes healing, recovery, and emotional wellbeing based on understanding and consideration of the individual's history of traumatic experiences as a means to gain insight into origins and patterns of the individual's actions;
- (b) Be data-driven with the goal of improving outcomes for the individual over time and describe behaviors to be increased or decreased in terms of baseline data about behaviors to be increased or decreased;

- (c) Recognize the role environment plays in behavior;
 - (d) Capitalize on the individual's strengths to meet challenges and needs;
 - (e) Delineate measures to be implemented and identify those who are responsible for implementation;
 - (f) Specify steps to be taken to ensure the safety of the individual and others;
 - (g) As applicable, identify needed services and supports to assist the individual in meeting court-ordered community controls such as mandated sex offender registration, drug-testing, or participation in mental health treatment; and
 - (h) As applicable, outline necessary coordination with other entities (e.g., courts, prisons, hospitals, and law enforcement) charged with the individual's care, confinement, or reentry to the community.
- (8) When a behavioral support strategy that includes restrictive measures is deemed necessary by the individual and his or her team, the qualified intellectual disability professional or the service and support administrator, as applicable, shall:
- (a) Ensure the strategy is developed in accordance with the principles of person-centered planning and incorporated as an integral part of the individual plan or individual service plan.
 - (b) Submit to the human rights committee a written rationale based upon the assessment that clearly indicates risk of harm or likelihood of legal sanction described in observable and measurable terms and ensure the strategy is reviewed and approved by the human rights committee in accordance with paragraph (F) of this rule prior to implementation and whenever the behavioral support strategy is revised to add restrictive measures, but no less than once per year.
 - (c) Secure informed consent of the individual or the individual's guardian, as applicable.
 - (d) Provide an individual or the individual's guardian, as applicable, with written notification and explanation of the individual's or guardian's right to seek administrative resolution if he or she is dissatisfied with the strategy or the process used for its development.
 - (e) Ensure the strategy is reviewed by the individual and the team at least every ninety days to determine and document the effectiveness of the strategy and whether the strategy should be continued, discontinued, or

revised. A decision to continue the strategy shall be based upon review of up-to-date information which indicates risk of harm or likelihood of legal sanction is still present.

(E) Implementation of behavioral support strategies with restrictive measures

- (1) Restrictive measures shall be implemented with sufficient safeguards and supervision to ensure the health, welfare, and rights of individuals receiving specialized services.
- (2) Each person providing specialized services to an individual with a behavioral support strategy that includes restrictive measures shall successfully complete training in the strategy prior to serving the individual.

(F) Human rights committees

- (1) Each county board, or county board jointly with one or more other county boards, or county board jointly with one or more providers, and each intermediate care facility shall establish a human rights committee to safeguard individuals' rights and protect individuals from physical, emotional, and psychological harm. The human rights committee shall:
 - (a) Be comprised of at least four persons;
 - (b) Include at least one individual who receives or is eligible to receive specialized services;
 - (c) Include qualified persons who have either experience or training in contemporary practices for behavioral support; and
 - (d) Reflect a balance of representatives from each of the following two groups:
 - (i) Individuals who receive or are eligible to receive specialized services or family members or guardians of individuals who receive or are eligible to receive specialized services; and
 - (ii) County boards or providers.
- (2) All information and documents provided to the human rights committee and all discussions of the committee shall be confidential and shall not be shared or discussed with anyone other than the individual and his or her guardian and the individual's team.
- (3) The human rights committee shall review, approve or reject, monitor, and reauthorize strategies that include restrictive measures. In this role, the human rights committee shall:

- (a) Ensure that the planning process outlined in this rule has been followed and that the individual or the individual's guardian, as applicable, has provided informed consent and been afforded due process;
 - (b) Ensure that the proposed restrictive measures are necessary to reduce risk of harm or likelihood of legal sanction;
 - (c) Ensure that the overall outcome of the behavioral support strategy promotes the physical, emotional, and psychological wellbeing of the individual while reducing risk of harm or likelihood of legal sanction;
 - (d) Ensure that a restrictive measure is temporary in nature and occurs only in specifically defined situations based on risk of harm or likelihood of legal sanction;
 - (e) Verify that any behavioral support strategy that includes restrictive measures also incorporates actions designed to enable the individual to feel safe, respected, and valued while emphasizing choice, self-determination, and an improved quality of life; and
 - (f) Communicate the committee's determination in writing to the qualified intellectual disability professional or service and support administrator submitting the request for approval.
- (4) Members of the human rights committee shall receive department-approved training within three months of appointment to the committee in: rights of individuals as enumerated in section 5123.62 of the Revised Code, person-centered planning, informed consent, confidentiality, and the requirements of this rule.
- (5) Members of the human rights committee shall annually receive department-approved training in relative topics which may include but are not limited to: self-advocacy and self-determination; role of guardians and section 5126.043 of the Revised Code; effect of traumatic experiences on behavior; and court-ordered community controls and the role of the court, the county board, and the human rights committee.

(G) Use of a restrictive measure without prior approval by the human rights committee

- (1) A restrictive measure used in a crisis situation (e.g., to prevent an individual from running into traffic) without prior approval by the human rights committee shall be reported as an unapproved behavior support major unusual incident in accordance with rule 5123:2-17-02 of the Administrative Code.
- (2) Nothing in this rule shall be construed to prohibit or prevent any person from

intervening in a crisis situation as necessary to ensure a person's immediate health and safety.

(H) Reporting of behavioral support strategies that include restrictive measures

After securing approval by the human rights committee and prior to implementation of a behavioral support strategy that includes restrictive measures, the county board or intermediate care facility shall notify the department in a format prescribed by the department.

(I) Recording use of restrictive measures

Each provider shall maintain a record of the date, time, duration, and antecedent factors regarding each use of a restrictive measure other than a restrictive measure that is not based on antecedent factors (e.g., bed alarm or locked cabinet). The provider shall share the record with the individual and the individual's team whenever the individual's behavioral support strategy is being reviewed or reconsidered.

(J) Analysis of behavioral support strategies that include restrictive measures

(1) Each county board and each intermediate care facility shall compile and analyze data regarding behavioral support strategies that include restrictive measures and furnish the data and analyses to the human rights committee. Data compiled and analyzed shall include, but are not limited to:

(a) Nature and frequency of risk of harm or likelihood of legal sanction that triggered development of strategies that include restrictive measures;

(b) Nature and number of strategies reviewed, approved, rejected, and reauthorized by the human rights committee;

(c) Nature and number of restrictive measures implemented;

(d) Duration of strategies that include restrictive measures implemented; and

(e) Effectiveness of strategies that include restrictive measures in terms of increasing or decreasing behaviors as intended.

(2) County boards and intermediate care facilities shall make the data and analyses available to the department upon request.

(K) Department oversight

(1) The department shall take immediate action as necessary to protect the health and welfare of individuals which may include, but is not limited to:

- (a) Suspension of a behavioral support strategy not developed, implemented, documented, or monitored in accordance with this rule or where trends and patterns of data suggest the need for further review;
 - (b) Provision of technical assistance in development or redevelopment of a behavioral support strategy; and
 - (c) Referral to other state agencies or licensing bodies, as indicated.
- (2) The department shall compile and analyze data regarding behavioral support strategies for purposes of determining methods for enhancing risk reduction efforts and outcomes, reducing the frequency of restrictive measures, and identifying technical assistance and training needs. The department shall make the data and analyses available.
- (3) The department may periodically select a sample of behavioral support strategies for review to ensure that strategies are developed, implemented, and monitored in accordance with this rule.
- (4) The department shall conduct reviews of county boards and providers as necessary to ensure the health and welfare of individuals and compliance with this rule. Failure to comply with this rule may be considered by the department in any regulatory capacity, including certification, licensure, and accreditation.

(L) Waiver of provisions of this rule

For adequate reasons and when requested in writing by a county board or provider, the director may waive a condition or specific requirement of this rule except that the director shall not permit use of a prohibited measure as defined in paragraph (C)(8) of this rule. The director shall grant or deny a request for a waiver within ten working days of receipt of the request or within such longer period of time as the director deems necessary and put whatever conditions on the waiver as are determined to be necessary. Approval to waive a condition or specific requirement of this rule shall not be contrary to the rights, health, or safety of individuals receiving services. The director's decision to grant or deny a waiver is final and may not be appealed.

Replaces: 5123:2-3-25, part of 5123:2-1-02

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
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05/28/1996, 07/12/1997, 08/01/2001, 03/21/2002

TO BE RESCINDED

5123:2-3-25 **Discipline, restraint, behavior modification, and abuse of residents.**

(A) All employees of every residential care facility shall treat each resident with kindness, consistency, and respect.

(B) The residential care facility shall have written policies and procedures available to the residents and to parents and guardians. If appropriate, residents shall participate in formulating these policies and procedures. The written policies and procedures shall include, but not be limited to, enforcement of the following:

(1) Control and discipline. The residential care facility shall use only constructive methods of discipline. The residential care facility may not allow:

(a) Corporal punishment of a resident;

(b) A resident to discipline another resident; or

(c) A resident to be placed alone in a locked room.

(2) Chemical and physical restraints

(a) Each resident shall be free from chemical and physical restraints unless the restraints are:

(i) Authorized by a physician in writing for a specified period of time;

(ii) Used in an emergency under the following conditions:

(a) The use is necessary to protect the resident from injuring himself or others;

(b) The use is authorized by a professional staff member identified in the written policies and procedures of the residential care facility as having authority to do so; and

(c) The use is reported promptly to the resident's physician by that staff member; or

(iii) Used during a behavior modification session for a resident who has

mental retardation or other developmental disabilities under the following conditions:

(a) The use is authorized in writing by a physician; and

(b) The parent or legal guardian of the resident gives his informed consent to the use of restraints or aversive stimuli.

(b) Physical restraints

(i) Except as provided for in behavior modification programs, the residential care facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others.

(ii) The residential care facility may not use physical restraint:

(a) As punishment;

(b) For convenience of staff; or

(c) As a substitute for activities or treatment.

(iii) The residential care facility shall have a written policy which specifies:

(a) How and when physical restraints may be used;

(b) The staff member who must authorize its use; and

(c) The method for monitoring and controlling its use.

(iv) An order for physical restraint may not be in effect longer than twelve hours.

(v) Appropriately trained staff shall check a resident placed in a physical restraint at least every thirty minutes and keep a record of these checks.

(vi) A resident who is in physical restraint shall be given an opportunity

for motion and exercise for a period of not less than ten minutes during each two hours of restraint.

(vii) Mechanical devices used for physical restraint shall be designed and used in a way that causes the resident no physical injury and the least possible physical discomfort.

(viii) A totally enclosed crib or a barred enclosure is a physical restraint.

(ix) Mechanical supports used to achieve proper body position and balance are not physical restraints. However, mechanical supports shall be designed and applied under the supervision of a qualified professional and in accordance with the principles of good body alignment, concern for circulation, and allowance for change of position.

(c) Chemical restraints. The residential care facility may not use chemical restraint:

(i) Excessively;

(ii) As punishment;

(iii) For the convenience of the staff;

(iv) As a substitute for activities or treatment; or

(v) In quantities that interfere with a resident's habilitation program.

(3) Behavior modification programs

(a) Behavior modification programs involving the use of aversive stimuli or timeout devices shall be:

(i) Reviewed and approved by the interdisciplinary team or a QMRP;

(ii) Conducted only with the consent of the affected resident's parents or legal guardian; and

- (iii) Described in written plans that are kept on file in the residential care facility.
 - (b) A physical restraint used as a timeout device may be applied only during behavior modification exercises and only in the presence of the trainer.
 - (c) For timeout purposes, timeout devices and aversive stimuli may not be used for longer than one hour and then only during the behavior modification program and only under the supervision of the trainer.
- (4) Abuse. Each resident shall be free from mental and physical abuse. No operator, administrator, employee, or other person shall fail to report within twenty-four hours any suspected, alleged, observed, or reported abuse or neglect of any resident to the local law enforcement authority, the county welfare department with children's protective services, or the children's services board and board of mental retardation and developmental disabilities, the licensure office, and, in the case of children, the county welfare department with children's protective services or the county children's services board.

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TO BE RESCINDED

5123:2-4-01 **County board accreditation.**

(A) The purpose of this rule is to define the procedures the department will follow to implement an accreditation system as required by section 5126.081 of the Revised Code. Implementation of the accreditation system is intended to ensure that county boards are in compliance with federal and state statutes and rules.

(B) Definitions

- (1) "Accreditation requirements" and "requirements for accreditation" mean the criteria adopted by the department that measure county boards' compliance with federal and state statutes and rules.
- (2) "Accredited" means the department has conducted and completed an on-site review of the board and has determined the board to be in compliance with the requirements for accreditation.
- (3) "Administrative receiver" means an entity designated by the department to administer the board's programs and services.
- (4) "Board" or "county board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.
- (5) "Comprehensive review" means an on-site review conducted by representatives of the department at the board and includes every program and service provided directly or through contract by the board. The purpose of the review is to measure the board's compliance with the department's requirements for accreditation.
- (6) "Contractor" means an entity under contract with the board to administer the board's programs or services.
- (7) "Day" means a calendar day, unless otherwise identified as a business day. A "business day" means Monday through Friday, excluding any days designated as a state holiday.
- (8) "Department" means the Ohio department of mental retardation and developmental disabilities.
- (9) "Domain" means a compilation of requirements that are categorically similar in

their management and implementation.

- (10) "Draft interim summary" means the report sent by the department to the superintendent of the county board and the board president that identifies the areas of noncompliance as identified by the accreditation team during the pre-survey and on-site review.
- (11) "Interim review" means a review of a board conducted by representatives of the department during the effective dates of the accreditation period.
- (12) "Plan of correction" means the county board's written response to the items of noncompliance identified through the department review process and submitted to the county board in the review report. The plan of correction will identify the methods, responsible parties, and timelines within which these items will be addressed and/or corrected.
- (13) "Qualified entity" means a person or organization other than the affected county board that has demonstrated the necessary knowledge and skills to effectively manage areas out of compliance that were identified by the accreditation team.
- (14) "Review report" means the official description of the county board's status in relation to its compliance with accreditation requirements as determined through a review process.

(C) Accreditation domains and requirements

The following criteria comprise the domains that will determine the compliance of county boards with accreditation requirements:

- (1) Health, safety, and welfare domain and requirements
 - (a) The county board ensures the compliance of board-operated services and those provided by contract agencies with all applicable health and safety requirements in federal and state statutes and rules.
 - (b) The county board ensures that employees of the board and their contract agencies are appropriately registered, certified, and/or licensed in accordance with all applicable federal and state statutes and rules.
 - (c) The county board ensures compliance with all applicable federal and state statutes and rules regarding background investigation requirements for

any applicant for employment with the board in any position and for persons employed in direct service positions by contract agencies of the county board.

- (d) The county board ensures compliance with all applicable requirements in federal and state statutes and rules permitting board workers to perform delegated nursing tasks, inclusive of giving or applying prescribed medications.
- (e) The county board implements a system of reporting, investigating, tracking, and monitoring all major unusual incidents and unusual incidents in accordance with all applicable federal and state statutes and rules.
- (f) In accordance with all applicable federal and state statutes and rules, the county board develops and implements written policies and procedures that:
 - (i) Support and assist individuals receiving services from the county board or its contract agencies;
 - (ii) Reduce behaviors that place individuals or others at physical risk; and
 - (iii) Protect individuals from harm to self or others by creating safeguards for their health and safety and the health and safety of others.

(2) Rights domain and requirements

In accordance with all applicable federal and state statutes and rules,

- (a) The county board uses an administrative resolution of complaints process to resolve complaints involving the programs, services, policies, or administrative practices of the county board or the agencies acting under contract with the board;
- (b) The county board implements a system and safeguards to preserve confidentiality of information for individuals served.
- (c) The county board ensures the provision and documentation of case management and service coordination; and

- (d) The county board promotes the dignity and protects the rights of individuals served.

(3) Service planning and delivery domain and requirements

In accordance with all applicable federal and state statutes and rules,

- (a) The county board maintains, lists, and verifies the changing needs and preferences of individuals waiting for all services, programs, and supports offered to eligible individuals by the board or its contract agencies when resources are lacking to meet these needs;
- (b) The county board provides early intervention services to eligible individuals;
- (c) The county board ensures the provision of supported living to eligible individuals;
- (d) The county board ensures the provision of services and supports to eligible adults;
- (e) The county board complies with all home and community-based services (HCBS) waiver requirements and assurances;
- (f) The county board ensures that transportation services and options are available to all eligible individuals; and
- (g) The county board uses a planning process to identify service needs and to determine program goals.

(4) Administration domain and requirements

- (a) The county board utilizes the Ohio eligibility determination instrument (OEDI) or the children's Ohio eligibility determination instrument (COEDI) for the purpose of determining the eligibility of individuals for services provided directly by the board or its contract agencies in accordance with all applicable federal and state statutes and rules.
- (b) The county board members serve in accordance with all applicable federal and state statutes and rules.

- (c) In accordance with all applicable federal and state statutes and rules, the county board monitors contract agencies providing services and supports to ensure their compliance with all applicable federal and state statutes and rules.
- (d) In accordance with all applicable federal and state statutes and rules, the county board reports accurate information in response to the department's requests, including completion of individual information forms.
- (e) The county board establishes an ethics council or policy to address direct service contracting issues in accordance with all applicable federal and state statutes and rules.
- (f) The county board seeking reimbursement from the community alternative funding system (CAFS) adheres to all applicable federal and state statutes and rules.
- (g) The county board ensures that family resource services are available to assist individuals and families in accordance with all applicable federal and state statutes and rules.
- (h) The county board complies with all applicable Title XX requirements in federal and state statutes and rules.
- (i) The county board completes preadmission screening and resident review for mental retardation and developmental disabilities (PASRR-MR/DD) evaluations and submits data to the department in a timely manner, provides specialized services to eligible residents of nursing facilities, and arranges for the relocation of eligible individuals who are placed inappropriately in nursing facilities in accordance with all applicable federal and state statutes and rules.

(D) Accreditation reviews

- (1) The department shall conduct reviews of the county boards to determine compliance with department accreditation requirements.
 - (a) Following initial accreditation, the department shall conduct a comprehensive review not less than one time prior to the date the board's accreditation is scheduled to expire.

- (b) The department may conduct other reviews and investigations as necessary to ensure compliance with accreditation requirements.
 - (c) The department may conduct interim reviews of any new program or service initiated by the board after its most recent review.
- (2) The department shall notify the board prior to conducting any type of review unless serious health and safety issues, as defined by the department, exist within the programs and services offered by the board.
 - (a) The notification for a comprehensive review will include a list of documents to be submitted by the board to the department and timelines for their submittal prior to the scheduled review date.
 - (b) Failure of the board to provide requested documents to the department in accordance with identified timelines may result in a finding of noncompliance with the related requirement(s).
 - (c) The department shall notify the board at least forty-five days prior to initiating a comprehensive review and no less than forty-eight hours prior to initiating an interim review.
 - (d) The department shall invite the submission of comments by constituents and contracting entities regarding the board's efficiency and effectiveness in complying with the requirements for accreditation.
- (3) An exit conference may be held on-site at the conclusion of a comprehensive review but shall be held no more than five business days following the completion of the on-site review. By mutual agreement between the department and the superintendent of the board, the exit conference may be scheduled more than five business days after completion of the on-site review.
 - (a) Exit conferences shall be conducted by the department with the president of the board or another board member serving as the president's designee, the superintendent of the board, and any other staff members and/or officials the board invites.
 - (b) The purpose of the exit conference is to provide the board with an oral summary of the board's compliance status with the requirements for accreditation. Any finding(s) of noncompliance with accreditation

requirements shall be presented at the exit conference.

- (4) The department shall order the board to immediately correct any issues determined by the department to represent a serious threat to the health and safety of individuals participating in the programs and services offered by the board. If the board fails to correct health and safety violations identified, the department may implement administrative intervention, including appointment of an administrative receiver.
- (5) The department shall provide, by certified mail, a draft interim summary of its findings to the superintendent and the board president no later than thirty days following the exit conference.

(E) Noncompliance with accreditation requirements

- (1) The department shall identify violations of specific requirements in the draft interim summary and the review reports prepared for the board.
- (2) The board shall have the opportunity to dispute any of the information contained in the draft interim summary. Disputes must be in writing and sent by the board to the department within ten days by certified mail following receipt of the draft interim summary. The draft interim summary shall remain a draft and not a public record under section 149.43 of Revised Code until the review report is released in accordance with paragraph (D)(3) of this rule.
 - (a) The board shall submit to the department the specific items in the draft interim summary that are disputed, the reason for the board's disagreement, and any substantiating information.
 - (b) The department shall respond in writing to the superintendent and the board president by certified mail within fifteen days following receipt of the disputed findings and shall indicate the disposition of the contested citations.
 - (c) The department's response shall be reflected in the review report.
- (3) The department shall send the review report to the board president and the superintendent within sixty days of the exit conference when the draft interim summary is not disputed, or within seventy-five days of the exit conference when responding to contested citations contained in the draft interim summary.

- (4) The review report shall contain a recommended term of accreditation, which shall be awarded upon timely and proper submittal of the plan of correction by the board.
- (5) The department may grant the board a decision abeyance of up to ninety days to take appropriate action to correct citations that will prevent the board from achieving a minimum of one year accreditation.
- (6) The county board shall submit to the department the written plan of correction within forty-five days of receipt of the review report. The department may deny accreditation for failure of a board to submit a plan of correction by the specified date contained within the review report.
 - (a) A copy of the board's resolution approving the plan of correction shall be forwarded to the department with the plan of correction. The superintendent shall also sign the resolution as an indication of concurrence.
 - (b) Within thirty days of receipt of the board's plan of correction, the department shall forward to the board written approval or disapproval of the plan of correction.
 - (c) The board shall initiate implementation of the plan of correction immediately upon notification by the department that the plan of correction has been approved.
 - (d) If the entire plan or a portion(s) of the plan of correction developed by the board is disapproved, the department shall inform the board of the reasons for the disapproval. The department shall grant the board an opportunity to submit a revised plan of correction within fifteen days of the board's receipt of rejection of the plan of correction unless the health, safety, and welfare requirements are involved. If the board has not met the requirements contained within the health, safety, and welfare domain, as determined by the department, the department shall issue an order denying accreditation.
 - (e) The department may conduct follow-up reviews to ensure the board's compliance with requirements for accreditation.

(F) Accreditation of a board

- (1) The department shall issue a certificate of accreditation once it is determined that the board is in compliance with the department's accreditation requirements.
- (2) Accreditation may be granted for periods up to five years, and may be renewed.
- (3) The term of accreditation granted to a board shall be dependent upon the degree of compliance with accreditation requirements contained within the domains established by the department's accreditation unit.
 - (a) A board shall be granted a one-year accreditation when compliance with requirements contained within the health, safety and welfare domain are determined by the department to have been achieved.
 - (b) A board shall be granted a two-year accreditation when compliance is determined by the department with requirements identified in paragraph (F)(3)(a) of this rule and also selected requirements within the rights, service planning and delivery, and administration domains.
 - (c) A board shall be granted a three-year accreditation when compliance is determined by the department with requirements identified in paragraphs (F)(3)(a) and (F)(3)(b) of this rule and additional requirements contained within the rights, service planning and delivery, and administration domains not already included in paragraph (F)(3)(b) of this rule.
 - (d) A board shall be granted a four-year accreditation when compliance is determined by the department with requirements identified in paragraphs (F)(3)(a) to (F)(3)(c) of this rule and the remaining requirements not already included in paragraphs (F)(3)(b) and (F)(3)(c) of this rule contained within the rights, service planning and delivery, and administration domains.
 - (e) A board shall be granted a five-year accreditation when the department determines compliance with requirements identified in paragraph (F)(3)(d) of this rule and one of the following:
 - (i) The department determines compliance with best practice standards established by the department in accordance with section 5126.082 of the Revised Code; or

- (ii) The department determines that the board has maintained either accreditation from the commission on accreditation of rehabilitation facilities (CARF) or the accreditation council (AC) for no less than a three-year period prior to the accreditation on-site review in program and service areas designated by the department.

(G) Issuance of an order denying accreditation

- (1) The department shall issue an order proposing to deny or rescind accreditation in conformance with division (D) of section 5126.081 of the Revised Code only after the board has exhausted all opportunities afforded by the department to correct deficiencies as defined in paragraph (E) of this rule.
- (2) Simultaneously, by certified mail, the department shall notify the following officials in the county of its order proposing to deny and/or rescind accreditation: The members of the board of county commissioners, the probate judge, the county auditor, the president of the board or another board member serving as his or her designee, and the superintendent of the board.
- (3) The order shall identify the matters in which the board is not in compliance with accreditation requirements, and the responsibilities of the board to contract under division (E)(1) of section 5126.081 of the Revised Code to have the programs and services administered by another party or become subject to administrative receivership under division (E)(2) of section 5126.081 of the Revised Code.

(H) Appointment of administrative receivers or contractors

- (1) The board shall be given the option by the department of contracting for the administration of programs and services subject to the approval of the director with one or more accredited county board(s) or a qualified entity.
- (2) The board shall execute the contract option with another approved entity within thirty days following receipt of the department's notice of the order proposing to deny or rescind accreditation.
- (3) If a board does not contract the administration of programs and services identified not in compliance with accreditation requirements within thirty days of receiving the order, the department shall take action to appoint an administrative receiver.

- (4) In accordance with division (E)(2) of section 5126.081 of the Revised Code, the department may appoint management personnel from other county boards, employees of the department, or persons from other entities as administrative receiver. Persons from other entities may be appointed only when no qualified department employees or board personnel are available.

(I) Duties of administrative receivers or contractors

- (1) The administrative receiver shall assume full administrative responsibility for the programs and services identified not in compliance with the requirements for accreditation.
- (2) When the board enters into a contract, the board, by formal resolution, shall grant the contractor full administrative authority according to division (E)(1) of section 5126.081 of the Revised Code for the program(s) and service(s) that the contractor will administer.
- (3) The administrative receiver or contractor shall develop a plan of correction to remediate the programs and services identified not in compliance that caused the department to deny or rescind accreditation.
 - (a) Within ninety days of appointment, the administrative receiver or contractor shall submit to the department for review a plan of correction accepted by the board that specifically addresses those areas not in compliance with the requirements for accreditation.
 - (b) The department shall respond in writing within thirty days indicating approval or disapproval of the submitted plan of correction.
 - (c) If the department approves the plan, the administrative receiver or contractor and the board shall commence action to implement the plan immediately.
 - (d) If the plan of correction developed by the administrative receiver or contractor is disapproved, the department shall inform the administrative receiver or contractor and the board of the reasons for the disapproval and may grant the board and administrative receiver or contractor an opportunity to submit a revised plan of correction.
 - (e) If the department grants the board and administrative receiver or contractor an opportunity to submit a revised plan of correction, it shall

be received by the department no later than thirty days following notification of disapproval.

- (4) The administrative receiver or contractor shall report to the department any findings pertaining to issues or circumstances beyond the control of the board and resulting in the likelihood that compliance with the requirements for accreditation cannot be achieved unless the issues or circumstances are remedied.
- (5) The administrative receiver or contractor may at any time request the department to conduct a review to determine:
 - (a) If the board is in compliance with accreditation requirements; and
 - (b) If the board is capable of assuming its duties to administer designated programs and services.
- (6) When, as a result of a review by the department, the board is found to be in compliance with requirements, the department shall reverse its order proposing to deny or rescind accreditation, and issue evidence of accreditation to the board.

(J) Reimbursement of contractor and/or administrative receiver expenses

- (1) The board shall reimburse the contractor or administrative receiver for all reasonable expenses, including amounts for time worked, travel, and related expenses.
 - (2) The board, with department approval, shall negotiate with the contractor to determine allowable costs for services rendered.
 - (3) The department and the administrative receiver shall negotiate to determine allowable costs for services rendered when any administrative receiver is appointed by the department.
 - (4) Department employees shall not be additionally reimbursed by the board for their time worked, if appointed by the department as the contractor or administrative receiver.
- (K) A contractor or administrative receiver that has assumed the administration of a board's programs and services has the right to authorize the payment of bills in the

same manner that a board may authorize payment of bills under Chapter 5126. and section 319.16 of the Revised Code.

(L) Appealing a department decision

- (1) A board may appeal the department's decision regarding a proposed denial or rescission of accreditation or refusal to reverse a denial of accreditation by filing a complaint as outlined under section 5123.043 of the Revised Code and rule 5123:2-17-01 of the Administrative Code.
- (2) All board appeals to the department shall be in writing and shall be submitted within thirty days of the receipt of the department's written notification of intention to issue a denial or rescission of accreditation or refusal to reverse a denial of accreditation.
- (3) Once the department receives an appeal from the board, the procedures and timelines noted in rule 5123:2-17-01 of the Administrative Code shall be followed.
- (4) If in its appeal, the department agrees the board can assume its duties in compliance with the department's requirements for accreditation, the department shall:
 - (a) Reverse its order denying or rescinding accreditation or refusing to reverse a denial of accreditation; and
 - (b) Issue accreditation to the board.
- (5) If the board does not appeal in accordance with paragraphs (L)(1) and (L)(2) of this rule, the department's order proposing to deny or rescind accreditation or refusing to reverse a denial of accreditation shall become effective thirty days after the board receives the department's written notification of the order.
- (6) The department shall issue all notices pertaining to accreditation to the members of the board of county commissioners, the probate judge, the county auditor, the president of the board or another board member serving as his or her designee, and the superintendent of the board.

(M) Board annual self-audits

The board shall conduct annual self-audits using the department's designated format to evaluate its compliance with department standards. Self-audits are subject to

review by the department during the accreditation process.

Effective:

R.C. 119.032 review dates: 08/18/2014

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5123.04, 5126.081
Rule Amplifies: 5123.04, 5126.08, 5126.081, 5126.082
Prior Effective Dates: 04/12/2001

5123:2-9-04

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APPENDIX A

Contract Between

Ohio Department of Mental Retardation and Developmental Disabilities

and

_____ County Board of MR/DD

The parties agree to allow the _____ County Board of MR/DD to administer Home and Community-Based Services within _____ County. The _____ County Board of MR/DD shall administer these services in accordance with rule 5123:2-9-04 of the Administrative Code. The _____ County Board of MR/DD may submit claims for HCBS waiver administrative reimbursement to the Ohio Department of Mental Retardation and Developmental Disabilities. By claiming or receiving federal funds under the Medicaid program the _____ County Board of MR/DD shall be subject to audits by the Ohio Department of Mental Retardation and Developmental Disabilities, and by the Ohio Department of Job and Family Services in accordance with section 5111.85 of the Revised Code.

Approved by:

President
_____ County
Board of MR/DD
[INSERT ADDRESS]

Director
Ohio Department of Mental
Retardation and Developmental
Disabilities
1810 Sullivant Avenue
Columbus, Ohio 43223-1239

TO BE RESCINDED

5123:2-9-04 **Medicaid local administrative authority.**

(A) This rule identifies the duties of the medicaid local administrative authority (MLAA) and serves to outline the requirements for home and community-based services waiver administration by a county board that has MLAA in accordance with section 5126.055 of the Revised Code. Nothing in this rule shall be construed to limit the duties, obligations or requirements imposed on a county board as specified in Chapters 5111., 5123., and 5126. of the Revised Code and the Ohio Administrative Code, including but not limited to sections 5111.041, 5126.055, and 5126.057 of the Revised Code.

(B) Definitions

(1) "Applicable requirements" means:

(a) Federal and state laws and regulations that govern the conduct of the MLAA and/or the provider, including but not limited to Chapters 4723., 5111., 5123., and 5126. of the Revised Code and all administrative rules promulgated under the authority of these statutes.

(b) Requirements set forth in any waiver approved under the authority of section 1915(c) of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 1396n, as amended, under which federal reimbursement is provided for designated home and community-based services to eligible individuals, which is administered by ODMRDD pursuant to an interagency agreement between ODMRDD and ODJFS.

(2) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.

(3) "Home and community-based services (HCBS)" has the same meaning as in section 5126.01 of the Revised Code.

(4) "Individual" means a person with mental retardation or other developmental disability who is eligible to receive HCBS as an alternative to placement in an intermediate care facility for the mentally retarded under the applicable HCBS waiver. A guardian or authorized representative as defined in rule 5101:1-2-01 of the Administrative Code may take any action on behalf of an individual, may make choices for an individual or may receive notice on behalf of an individual to the extent permitted by applicable law.

(5) "Individual service needs addendum" means an individual service needs

addendum as described in section 5126.035 of the Revised Code.

- (6) "ISP" means the individual service plan, a written description of the services, supports, and activities to be provided to an individual.
- (7) "MLAA" means a county board with medicaid local administrative authority pursuant to section 5126.055 of the Revised Code.
- (8) "ODJFS" means the Ohio department of job and family services as established by section 121.02 of the Revised Code.
- (9) "ODMRDD" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (10) "PAWS" means payment authorization for waiver services.
- (11) "Provider" means a person who has a medicaid provider agreement issued by ODJFS and is certified by ODMRDD to provide HCBS.
- (12) "Service and support administration" means the functions listed in section 5126.15 of the Revised Code.
- (13) "Service contract" means a contract for HCBS under section 5126.035 of the Revised Code between the MLAA and the provider.

(C) Duties of MLAA for HCBS

- (1) The MLAA shall perform assessments and evaluations of the individual in accordance with division (A)(1) of section 5126.055 of the Revised Code.
- (2) ISPs shall be developed for each individual in accordance with applicable requirements and shall:
 - (a) Be written.
 - (b) Be developed by the person(s) employed by, or contracting with, the county board that is responsible for service and support administration with the active participation of the individual, other persons chosen by the individual, and, where applicable, the individual's provider in accordance with sections 5126.055 and 5126.15 of the Revised Code.

- (c) Describe, regardless of funding source, medical and other services identified through the assessment process to be furnished to the recipient, the service frequency, the service duration, the type of provider who will furnish each service, and the completion and approval date(s) of the ISP.
 - (d) Be the fundamental tool by which the MLAA and state will ensure the health, safety, and welfare of the individuals served under the waiver. As such, it will be subject to periodic review and update. These reviews will take place to determine the appropriateness and adequacy of the services, and to ensure that the services furnished are consistent with the nature and severity of the individual's disability;
 - (e) Be updated annually. The ISP shall be updated more frequently if there is a change in the individual's condition, if the individual chooses a new provider or types of services. The county board shall convene an ISP meeting within ten working days of a request from an individual for a review of the ISP.
 - (f) Be subject to the approval of ODMRDD and ODJFS in accordance with sections 5111.871 and 5126.055 of the Revised Code.
 - (g) Identify the county board representative(s) responsible for service and support administration.
 - (h) Maximize the use of natural supports and generic resources.
 - (i) Be maintained in accordance with rule 5101:3-1-17.2 of the Administrative Code.
- (3) If the individual has been identified by ODMRDD as an individual to receive priority for HCBS pursuant to division (D)(3) of section 5126.042 of the Revised Code, the MLAA shall assist ODMRDD in expediting the transfer of the individual from an intermediate care facility for the mentally retarded or nursing facility to HCBS.
- (4) In accordance with section 5126.046 of the Revised Code, the MLAA shall assist the individual(s) to choose a qualified and willing provider of the services and, at a hearing under section 5101.35 of the Revised Code, present evidence of the process for appropriate assistance in choosing providers.

- (5) A provider is qualified to provide HCBS to an individual if the following requirements are met:
- (a) The provider is certified by ODMRDD for the services.
 - (b) The provider is eligible to enter into or has entered into a service contract with the MLAA in accordance with rule 5123:2-9-05 of the Administrative Code.
 - (c) The provider has a medicaid provider agreement with ODJFS that covers the services.
- (6) Contract for services
- (a) The MLAA shall contract for services with service providers chosen by the individual in accordance with sections 5126.035 and 5126.055 of the Revised Code and rule 5123:2-9-05 of the Administrative Code.
 - (b) The service contract is a two-party contract between the MLAA and the provider.
 - (c) In the event that an employee of the county board is selected to provide an applicable HCBS waiver service (i.e., homemaker personal care or informal respite) in accordance with the individual options or level one waiver, the provisions of section 5126.033 of the Revised Code must be adhered to and the ethics council of the county board must approve a contract with the employee separate and apart from the employee's employment with the board.
 - (d) Pursuant to section 5126.046 of the Revised Code, the county board may provide any adult service when selected by an individual, including applicable waiver services as included with a waiver and which constitute adult services as defined in section 5126.01 of the Revised Code.
- (7) If the MLAA is a county board that is certified under section 5123.045 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services in accordance with section 5126.046 of the Revised Code, the county board may furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the

individual requires. The ISP shall be the full scope of the contractual requirement for such services and the individual shall have the right to change providers in accordance with section 5126.046 of the Revised Code. Pursuant to division (A)(6) of section 5126.055 of the Revised Code, ODMRDD shall provide monitoring of such services in addition to the monitoring that the board shall do of its own employees pursuant to applicable regulations.

- (8) The MLAA shall monitor the services provided to the individual to ensure the individual's health, safety, and welfare. Monitoring by the MLAA shall include compliance by the provider with quality assurance activities, certification standards and provider adherence to applicable requirements. ODMRDD shall promulgate rules or use existing rules for MLAA monitoring of compliance with standards. Monitoring by the MLAA shall be conducted with strict adherence to rules governing monitoring as established by ODMRDD. If the county board provides the services, then ODMRDD shall also monitor the services provided by the county board.
- (9) The MLAA shall take necessary action, in accordance with applicable requirements, to ensure the health, safety and welfare of individuals served.
- (10) The MLAA shall take action in accordance with rule 5123:2-8-18 of the Administrative Code if it determines that a deficiency or violation of applicable requirements related to provider certification standards has occurred, but has not resulted in, and is not reasonably likely to result in, a risk to the individual's health, safety, or welfare. The MLAA shall conduct quality assurance reviews in accordance with section 5126.431 of the Revised Code and rule 5123:2-12-01 of the Administrative Code for individuals who receive HCBS in accordance with the definition of supported living in section 5126.01 of the Revised Code.
- (11) The MLAA shall have an investigative agent conduct investigations under section 5123.313 of the Revised Code that concern the individual.
- (12) The MLAA shall have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.
- (13) The MLAA shall develop and maintain a file for each individual, which, at a minimum, includes the following information:
 - (a) Copies of required assessments;

- (b) Initial and subsequent ISPs, including evidence of the ISP's approval date;
 - (c) Evidence of ICF/MR level of care determination and redetermination of eligibility at a minimum of each twelve months;
 - (d) ODMRDD's confirmation of PAWS;
 - (e) Patient liability amounts and identification of HCBS provider(s) to whom each amount is assigned in accordance with paragraph (M)(2) of rule 5123:1-2-08, paragraph (L) of rule 5123:1-2-11 of the Administrative Code, paragraph (K)(2) of rule 5123:2-8-16 of the Administrative Code, or paragraph (H)(3) of rule 5123:2-9-06 of the Administrative Code, as applicable.
 - (f) Evidence of an ISP review at a minimum of every twelve months to determine the appropriateness and adequacy of the services, and to ensure that the services furnished will ensure the individual's health, safety and welfare and are consistent with the nature and severity of the individual's disability.
 - (g) Evidence that the individual was provided appropriate prior notice of any action to approve, reduce, deny, or terminate HCBS and notice of an opportunity for a fair hearing in accordance with rule 5101:6-2-04 of the Administrative Code.
 - (h) Identification of the person employed by or under contract with the county board that is responsible for overall service and support administration for the individual.
- (14) The county board shall perform its medicaid local administrative authority in accordance with applicable requirements.
- (15) The MLAA shall abide by all terms and conditions set forth in the federally-approved waiver document, including any appendices and attachments. ODMRDD shall assure that each MLAA has a current copy of the HCBS waivers and shall provide training to the MLAA on the terms, conditions, appendices and attachments of each waiver. ODMRDD shall also make such training available to providers.
- (16) The MLAA shall maintain current knowledge of state and federal requirements related to HCBS waivers, using information as provided by ODMRDD and

ODJFS.

- (17) The MLAA may not delegate its medicaid local administrative authority granted under section 5126.055 of the Revised Code, but may contract with a person or government entity, including a council of governments, for assistance with its medicaid local administrative authority. The MLAA that enters into such a contract shall notify the director of ODMRDD. The notice shall include the tasks and responsibilities that the contract gives to the person or government entity. The person or government entity shall comply in full with all requirements to which the MLAA is subject regarding the person or government entity's tasks and responsibilities under the contract. The MLAA remains ultimately responsible for tasks and responsibilities.
- (18) The MLAA shall, through ODMRDD and ODJFS, reply to, and cooperate in arranging compliance with, a program or fiscal audit or program violation exception that a state or federal audit or review discovers as required by division (F) of section 5126.055 of the Revised Code. The MLAA, in conjunction with ODMRDD, shall cooperate fully with ODJFS and shall timely prepare and send to ODMRDD a written plan of correction or response to any adverse findings. The MLAA is liable for any adverse findings that result from an action that the MLAA takes or fails to take in its implementation of medicaid local administrative authority.
- (19) The MLAA shall correct all deficiencies in the manner and times required by division (G) of section 5126.055 of the Revised Code.
- (20) The MLAA shall pay to ODMRDD an annual fee equal to one per cent of the total value of all medicaid paid claims for home and community-based services for which the MLAA contracts or provides itself as required by section 5123.0412 of the Revised Code. The ODMRDD shall utilize this fee in accordance with section 5123.0412 of the Revised Code.
- (21) A county board that has MLAA shall pay the nonfederal share of HCBS waiver expenditures as required by section 5126.057 of the Revised Code and rule 5123:2-9-02 of the Administrative Code, unless ODMRDD is required to pay the nonfederal share under division (C)(2) of section 5123.047 of the Revised Code.
- (22) The MLAA shall submit a PAWS form to ODMRDD in the format required by ODMRDD within fourteen days of authorization of new services or modification to existing services. Upon receiving confirmation from ODMRDD, the MLAA shall provide a copy of the PAWS to the individual and any service providers that the individual has chosen within fourteen days.

- (23) The MLAA shall issue a notice of hearing rights to an individual in accordance with section 5101.35 of the Revised Code when the MLAA recommends the approval, reduction, denial, or termination of the individual's HCBS and such recommendation is not reversed by ODMRDD or ODJFS.

(D) Responsibilities of the ODMRDD for medicaid waiver administration functions

- (1) ODMRDD shall oversee MLAA activities to ensure compliance with applicable laws. If ODMRDD determines that the MLAA is deficient in its administration of medicaid waiver services, then ODMRDD may take appropriate actions authorized by applicable law including, but not limited to, division (G) of section 5126.055 of the Revised Code or section 5126.056 of the Revised Code to ensure MLAA compliance with applicable laws.

(2)

- (a) If a county board's medicaid local administrative authority for HCBS is terminated in accordance with section 5126.056 of the Revised Code, ODMRDD shall do either of the following:

(i) Contract under section 5126.056 of the Revised Code with another county board that has not had any of its medicaid local administrative authority terminated or another entity to perform waiver administrative activities in accordance with this rule.

(ii) Appoint under section 5126.056 of the Revised Code an administrative receiver to perform waiver administrative activities in accordance with this rule.

- (b) A county board whose medicaid local administrative authority for HCBS has been terminated in accordance with section 5126.056 of the Revised Code shall comply with its duties under that statute.

- (3) ODMRDD and ODJFS shall seek federal financial participation (FFP) at fifty per cent of total cost for HCBS waiver administration provided in accordance with this rule subject to allowance by federal government.

- (a) ODMRDD and ODJFS shall not seek FFP for HCBS waiver administration claims if either agency determines that all or part of the claims do not comply with standards set forth in federal law and OMB circulars and other directives or guidelines issued by the federal

government.

- (b) ODMRDD and ODJFS shall not seek FFP for HCBS waiver administration claims for any county board that does not have a contract with ODMRDD obligating the county board to abide by federal law including but not limited to the requirements set forth in federal law, OMB circulars, and other directives or guidelines issued by the federal government. The contract required shall be in the form as set forth in appendix A to this rule.
- (4) Claims for FFP for HCBS waiver administration activities performed in accordance with this rule shall comply with the following requirements:
- (a) The MLAA shall identify the employees and/or persons paid under contract who perform HCBS waiver administration activities and identify for each whether such activities are one hundred per cent or less than one hundred per cent of their time.
 - (b) The MLAA shall accurately reflect in the employee position description and/or the terms of the contract with the contract entity the HCBS waiver administration activities for which FFP is claimed.
 - (c) The MLAA shall not claim FFP for HCBS waiver administration, activities billed as targeted case management or service coordination according to rules 5123:2-15-41 and 5101:3-37-19 of the Administrative Code.
 - (d) The MLAA shall meet the documentation requirements described in paragraph (E) of this rule and the cost reporting requirements described in paragraph (F) of this rule.
 - (e) The MLAA shall not claim reimbursement as HCBS waiver administration activities functions or services that are not expressly set forth in paragraph (C) of this rule.
 - (f) The superintendent of a county board shall sign a certification with each claim submission that the claim has been reviewed, and that the claim is in compliance with this rule and federal law, OMB circulars, and other directives or guidelines issued by the federal government.
- (5) The MLAA shall be responsible for repayment of any FFP it received for HCBS waiver administration activities if the FFP is required to be repaid to the

federal government as the result of a federal or state audit. The MLAA shall immediately reimburse ODMRDD or ODJFS if either state agency is required to repay FFP to the federal government for incorrect payments to the county board for HCBS waiver administrative activities, or if the claims are otherwise denied or deferred by the federal government.

- (6) ODMRDD shall assure that PAWS forms appropriately submitted by the MLAA are entered into the medicaid payment system within ten working days of receipt from the county board so that providers are able to receive payment in a timely manner.
 - (7) If ODMRDD receives from a provider repayment of payments for HCBS under a service contract, ODMRDD shall refund to or otherwise credit the MLAA with the nonfederal share of the repayment if the MLAA paid the nonfederal share.
- (E) Documentation requirements for MLAAAs for reimbursement of salaries and benefits of persons who perform HCBS waiver administration activities
- (1) "Total salary cost," defined as base wages plus fringe benefits, shall be reimbursed on an ongoing basis in accordance with paragraph (E) of this rule.
 - (2) When MLAA employees and/or persons paid under a contract with a MLAA spend less than one hundred per cent of their time performing HCBS waiver administration activities for which FFP is claimed, each person shall complete a department-approved HCBS waiver activity form. The purpose of the HCBS waiver activity form is to allocate total salary cost between HCBS waiver administration activities and other MLAA activities performed by the person.
 - (3) The MLAA shall select for all persons who spend less than one hundred per cent of their time performing HCBS waiver administration activities either the periodic or continuous methodology to document the amount of time spent in the performance of these activities.
 - (a) A periodic methodology requires HCBS waiver administration activities to be documented for one week each month as specified by the department.
 - (b) A continuous methodology requires HCBS waiver administration activities to be documented on a daily basis.

- (c) The MLAA may elect to change this methodology on January first of each year upon providing written notification to the department.
 - (d) HCBS waiver administration activities provided under these conditions shall be documented in quarter-hour increments.
- (4) Clerical/support staff shall document their performance of HCBS waiver administration activities for which FFP is claimed using the HCBS waiver activity form. Documentation is to be completed following completion of the administration activity.
 - (5) Supporting documentation shall verify that the HCBS waiver administration activity noted on the waiver activity form occurred. The documentation may include, but is not limited to, individual's records, copies of ISPs, employee calendars, appointment schedules, mileage records, copies of letters, and activity check lists.
 - (6) To obtain FFP reimbursement, the MLAA shall submit an invoice, department-approved employee rosters, and supporting activity sheets to the department on a monthly basis.
 - (7) The MLAA shall ensure that all necessary financial and statistical data supporting the claim for reimbursement is made available to ODMRDD, ODJFS, the United States department of health and human services, and any other state or federal agency having audit authority.
 - (8) The MLAA shall maintain all records and forms necessary to fully disclose the extent of services provided and related business transactions for a period of seven years from the date of receipt of payment, or for six years after any initiated audit is completed and adjudicated, whichever is longer.
 - (9) ODMRDD shall provide training, at least annually, to MLAA's on proper methods for documentation and billing of FFP.
- (F) Cost reporting requirement for MLAA's for allowable waiver administration overhead and other costs
- (1) Total overhead and other costs shall be reimbursed on an annual basis in accordance with paragraph (F) of this rule.
 - (a) "Overhead costs" are defined as the approved portion of administration,

capital, and building service costs allocated to HCBS waiver administration activities.

(b) "Other costs" are defined as travel, equipment less than five hundred dollars, equipment repairs, supplies, liability insurance, advertisement, printing, and other miscellaneous expenses directly assignable to HCBS waiver administration activities.

(2) The MLAA shall identify and report all HCBS waiver administration activity costs on the operating and expenditure report submitted to ODMRDD pursuant to section 5126.12 of the Revised Code.

(3) An annual reconciliation shall be performed by ODMRDD for all medicaid allowable overhead costs and other costs as reported for waiver administration activities.

(4) All HCBS waiver administration costs reported shall be subject to audit and final cost settlement. ODMRDD or ODJFS may audit any funds a county board or contractor receives for waiver administration, including any source documentation supporting the receipts and disbursements associated with such funds.

(G) Medicaid recipient and medicaid applicant appeals

(1) Any recipient of or applicant for HCBS may utilize the process set forth in section 5101.35 of the Revised Code for any purpose authorized by that statute or rules promulgated implementing that statute. The process set forth in section 5101.35 of the Revised Code is available only to applicants, recipients, and their lawfully appointed authorized representatives.

(2) Providers shall not utilize, or attempt to utilize, the process set forth in section 5101.35 of the Revised Code. Providers shall not appeal or pursue any other legal challenge to a decision resulting from the process set forth in section 5101.35 of the Revised Code.

(3) Applicants for and recipients of HCBS shall use the process set forth in section 5101.35 of the Revised Code for any challenge to the type, amount, scope or duration of services included or excluded from an ISP or an individual service needs addendum. Providers shall have no standing in an appeal under section 5101.35 of the Revised Code, or in any other forum to challenge the type, amount, scope or duration of services included or excluded from an ISP or an individual service needs addendum.

- (4) The MLAA shall implement any final state hearing decision or administrative appeal decision issued by ODJFS, unless a court of competent jurisdiction modifies such decision as the result of an appeal by the medicaid applicant or recipient.

(H) Provider challenges to the MLAA's actions in the performance of its duties

- (1) Any action proposed or initiated by the MLAA regarding a service contract for non-medicaid services shall not be governed by this rule.
- (2) A provider shall follow the procedures set forth in rule 5123:2-8-18 of the Administrative Code to challenge any recommendations, determinations, or corrective action plans issued by the MLAA resulting from the MLAA's monitoring. Those procedures shall be the exclusive remedies for resolving any such provider challenge.
- (3) Except as provided in paragraphs (H)(2) and (I) of this rule, a provider may follow the procedures set forth in section 5126.036 of the Revised Code to challenge any of the following:
 - (a) Recommendations, determinations, or corrective action plans issued by the MLAA relating to or resulting from any of its duties enumerated in paragraph (C) of this rule.
 - (b) An action the MLAA has taken or has not taken that is required by a service contract for HCBS.
 - (c) The MLAA's refusal to enter into a service contract for HCBS with the provider.
 - (d) The MLAA's termination of a service contract for HCBS between the provider and the MLAA.

(I) Provider certification disputes and medicaid provider agreement disputes

- (1) Providers of HCBS may pursue all remedies for disputes regarding their certification or their medicaid provider agreements available to them under Chapter 119. of the Revised Code as presently authorized by law.
- (2) No action taken by the MLAA shall constitute an adjudication entitling a HCBS

provider with the right to pursue a remedy under Chapter 119. of the Revised Code. Any recommendation by the MLAA for decertification of a provider shall be referred to ODMRDD for any action it determines is necessary.

(J) Immediate corrective action by the MLAA to ensure health, safety, and welfare

The MLAA may take immediate action to ensure the health, safety and welfare of an individual receiving HCBS where there is substantial risk of immediate harm to the individual only as expressly provided for in law. Nothing in this rule shall limit the authority of county boards to take immediate action to ensure an individual's health, safety, and welfare as provided for under law.

(K) Federal financial participation (FFP)

- (1) The MLAA shall not authorize payment for HCBS prior to the approval date of the ISP including approval of emergency services.
- (2) The MLAA shall ensure that FFP is not claimed for the cost of room and board, except when provided as part of respite care in a facility approved by ODMRDD that is not a private residence.
- (3) FFP shall not be claimed for waiver services furnished to recipients while they are inpatients of a hospital, a nursing facility, or an ICF/MR (except for respite or institutional respite appropriately provided in a licensed facility).

Effective:

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Certification

Date

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