

FREE CHOICE OF PROVIDER

I. POLICY

It shall be the policy of the Erie County Board of Mental Retardation and Developmental Disabilities (ECBMRDD) to ensure that procedures for individuals to choose qualified and willing providers of Medicaid and non-Medicaid home and community-based services (HCBS) are provided in accordance with provisions set forth in sections 5126.046 and 5123.044 of the Revised Code. Section 5123:2-9-11 of the Ohio Administrative Code (OAC) and this policy describe the ECBMRDD's role in assuring that the free choice of provider processes are adhered to and emphasize the right of individuals to choose any qualified provider of home and community-based services.

II. APPLICATION

- A. This policy applies to all of the following:
1. persons responsible for service and support administration (SSA), in accordance with section 5126.15 of the Revised Code, when assisting eligible individuals to select providers;
 2. all other ECBMRDD staff
 3. qualified and willing providers of service
 4. qualified providers of HCBS when these services are provided in a facility licensed by the Department in accordance with section 5123.19 of the Revised Code. The requirements of rule 5123:2-9-11 supersede the requirements contained in paragraphs (C) (4), (C) (5), (C) (6), (C) (7) and (G) (1) (a) of rule 5123:2-3-05 of the Administrative Code.
- B. Notwithstanding paragraph (D) (1) of this policy, the SSA shall follow the provider choice process set forth in paragraphs (E) and (F) of this policy for each service specified in an ISP, at the time of an individual's enrollment in a home and community-based services program, annually at the time of re-determination, and at any other time the individual/guardian expresses an interest in or makes a request to choose a new, different, or additional provider.

III. PROCEDURES

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

3. An individual or an individual's guardian may designate another person, including a member of the individual's family, to participate in the process of making decisions regarding free choice of providers in accordance with paragraph (P) of rule 5123:2-1-11 of the Administrative Code.
4. No county board employee shall attempt to influence an individual's decisions regarding their free choice of provider.

B. Provider Lists

1. The Ohio Department of MR/DD shall create and maintain on its website lists of all certified providers of home and community-based Medicaid services and Supported Living. The Department shall update the list at least monthly. Providers shall update their information at the frequency and in the manner determined by the Department.
2. The ECBMRDD will create and maintain lists of qualified and willing providers for service areas not maintained by the Department. The ECBMRDD shall update the list as providers request to be included. These lists will include, but are not limited to:
 - a. Supported Employment (non-waiver)
 - b. Activities
 - c. Sheltered Employment
 - d. Early Childhood Services
 - e. Transportation
3. The SSA shall utilize the lists of providers created by the Board and Department to assist the individual in identifying potential providers, in accordance with paragraph (H) of this rule.
4. The Clearwater Council of Governments will maintain list of HCBS Waiver providers until such time that an ODMR/DD website is in place which is accurate and complete.

C. Notification Process

1. Annually, the county board shall provide to each individual, guardian, and/or person designated by the individual the following information in writing and in a form and manner the individual can understand:
 - a. A description of the individual's right to choose any qualified provider from among all those available statewide and not limited to those who provide services currently in a given county.
 - b. Procedures the SSA will follow, in accordance with paragraph (E) of this policy, to assist an individual/guardian in the selection of providers of Medicaid and non-Medicaid home and community-based services.

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- c. A description of information available on the Department's website pertaining to providers of home and community-based services and instructions to access the information.
- d. A description of the individual's hearing rights pursuant to section 5101.35 of the Revised Code that are contained in a handbook developed and approved by the Department and ODJFS.
2. The county board shall maintain documentation to verify compliance with the requirements of paragraph (C)(1) of this policy, including the list of individuals contacted, the date(s) on which the notification occurred, and the text of the notification.

D. Provider Choice Options Available to an Individual

1. When an individual/guardian identifies and/or chooses a qualified provider who is also willing to provide Medicaid and/or non-Medicaid home and community-based services to the individual, the SSA shall honor the individual's/guardian's request and shall not utilize the provider selection process set forth in paragraphs (E) and (F) of this policy. The SSA shall document this selection.
2. An individual/guardian may choose homemaker/personal care service providers under the home and community-based services waivers through two options:
 - a. If an individual currently resides in a facility licensed by the Department in accordance with section 5123.19 of the Revised Code in which the operator is certified to provide home and community-based services, or desires to reside in a licensed facility in the future, the individual/guardian is choosing both the place of residence and the homemaker/personal care services provider. To change providers of homemaker/personal care services, with assistance provided by the SSA, the individual/guardian shall:
 - i. Obtain the agreement of the licensee to permit another provider of homemaker/personal care services to provide services within the licensed home; or
 - ii. Relocate from the licensed home.
 - b. If the individual resides in any other setting in which it is permissible to receive home and community-based services, the individual/guardian may choose any qualified and willing provider using the processes described in this rule.

E. Responsibilities of the County Board in the Choice Process

1. Home and Community Based Waiver Services
Except as provided in paragraph (D)(1) of this policy, the county board shall adhere to the following processes to assist an individual/guardian to choose qualified providers of home and community-based waiver services:

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- a. The county board shall inform the individual/guardian of the Department's website containing the list of providers qualified to provide home and community-based waiver services.
 - b. The county board shall assist the individual/guardian to access the website, if assistance is needed.
 - c. The county board shall assist the individual/guardian, if requested by the individual/guardian, to obtain outcomes of past internal and/or external monitoring reviews of home and community-based services provided.
 - d. Following the individual's/guardian's review of the list of qualified providers and identification of the individual's/ guardian's preliminary consideration of a qualified provider, the county board shall complete the Individual Profile/Request for Interest form. If the individual receives waiver services, the Board shall forward this request form to the Clearwater COG who shall notify all requested providers of the individuals/guardians request to have them as a HCBS waiver provider. The Board shall contact all non-waiver providers directly.
 - e. This contact shall be made within five working days following the county board's receipt of the preliminary provider selections by the individual/guardian, unless the individual/ guardian or a person designated by the individual/guardian wishes to contact the provider(s) directly.
2. Other Service Areas
 - a. The ECBMRDD shall inform the individual/guardian about the availability of lists of qualified and willing providers for service areas identified in section (III)(B)(2) of this policy.
 - b. The county board shall assist the individual/guardian, if requested by the individual/guardian, to obtain outcomes of past internal and/or external monitoring reviews of services provided or other quantitative information available.

F. Responsibilities of the SSA, Provider, and Individual in the Choice Process

1. Home and Community Bases Waiver Services
 - a. If at any time during the process protected health information is requested, the SSA shall obtain a HIPAA-compliant release of information from the individual/guardian before such information shall be provided.
 - b. At the time of the initial contact with the provider(s) who is the preliminary choice of the individual, the SSA shall describe the services and supports desired by the individual and the anticipated frequency, duration, and location of the services to be delivered using the ECBMRDD Request for Interest form

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- c. The provider shall inform the SSA of the provider's preliminary determination to proceed with the selection process within two working days following this initial contact by the SSA.
- d. In each instance when the provider has indicated a preliminary interest in providing waiver services to the individual, the SSA shall assure that the individual/guardian is aware of his/her opportunity to meet with the provider. If the individual/guardian indicates the desire for this meeting, if requested, the SSA shall assist the individual/guardian to meet with the provider at a place and time acceptable to both parties.
- e. When an agency provider has agreed to be available for consideration by an individual/guardian, if requested by the individual/guardian, the agency shall make available:
 - 1. Description of all home and community-based services the provider is certified to provide;
 - 2. Qualifications of the chief executive officer of the agency;
 - 3. Written policies and procedures related to the provision of the home and community-based services desired by the individual; and
 - 4. Additional information the provider elects to make available, including outcomes of past internal and/or external monitoring reviews of the home and community-based services provided.
- f. When an individual provider has agreed to be available for consideration by an individual/guardian, if requested by the individual/guardian, the provider shall make available:
 - 1. A description of all home and community-based services the provider is certified to provide; and
 - 2. Additional information the provider considers to be relevant, including past experiences providing services and supports.
- g. Unless the individual/guardian does not desire to have a meeting, within three working days following the meeting with the individual/guardian, the provider shall inform the county board whether the provider is interested in pursuing the referral.
- h. If the provider is not interested in pursuing the referral, the county board shall notify the individual/guardian within two working days and resume the provider choice process with an alternative provider.
- i. Nothing in this policy shall be construed to prohibit an individual/guardian from engaging simultaneously in the provider selection process with more than one provider.
- j. If the provider is interested in pursuing the referral, the county board shall forward sufficient information to the provider to enable the provider to determine whether he/she can provide the desired services and meet the health and welfare needs of the individual

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within the standards governing payment for the home and community-based services. This information shall be released within three working days following the county board's receipt of an indication of interest by the provider and only upon consent from the individual/guardian.

1. When the potential provider indicates that supplemental information and/or assessments are needed to enable the provider to evaluate the service delivery strategy that will best support the individual and reach a conclusion concerning the provider's willingness to serve the individual, based upon the reasonableness of the request, the individual/guardian shall determine the type and extent of supplemental information to be provided.
 2. The county board shall obtain the individual's consent to obtain the supplemental information. When consent is obtained, the county board shall initiate activities needed to obtain the information. In no instance shall the county board forward the supplemental material to the provider more than twenty working days following the date on which the individual's/guardian's consent was obtained.
- k. The potential provider shall inform the individual/guardian and the county board of the provider's determination to serve or not to serve the individual within five working days following receipt of the information described in paragraph (F)(1) (j) of this policy or receipt of the supplemental information authorized for release, as described in paragraphs (F)(1)(j)(1) and (F)(1)(j)(2) of this policy, whichever is the later date. This communication shall be made in a form and manner the individual can understand. The notification also shall be made in writing to the county board.
- l. Any timelines contained in paragraphs (E) and/or (F) of this policy may be extended with the written consent of the individual/guardian, county board and the involved waiver service provider.
- m. The county board shall utilize all elements of the checklist described in Appendix A to this rule to document compliance with the activities and timelines contained in paragraphs (D) to (F) of this rule. The checklist shall be completed in each instance when an individual engages in the free choice of a provider process, as described in section (II)(B) of this policy. The county board shall retain completed checklists as a part of the individual's service record.

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2. Other Service Areas

- a. If at any time during the process protected health information is requested, the SSA shall obtain a HIPAA-compliant release of information from the individual/guardian before such information shall be provided.
- b. The SSA shall assist the individual/guardian to contact potential providers if requested.
- c. The SSA shall assist the individual/guardian to conduct interviews/meetings with potential provider if requested.
- d. The SSA is available to assist in gathering objective data about a potential provider OR they may assist to identify references that can give the individual/guardian specific information about the potential provider. However, the SSA is not able to recommend, choose, or influence the choice of a specific provider.

G. Initiating Services

1. The SSA shall assist the individual in making arrangements for initiation of services with the chosen provider.
2. The SSA shall document the chosen provider and the type, frequency, duration, and location of services on the individual's ISP. The ISP shall indicate ratios at which services are to be delivered when individuals share services.

H. Due Process and Appeal Rights for Individuals

1. Any recipient or applicant for home and community-based services may utilize the process set forth in section 5101.35 of the Revised Code, in accordance with division-level designation 5101:6 of the Administrative Code, for any purpose authorized by that statute and the rules implementing the statute, including being denied the choice of a provider who is qualified and willing to provide a home and community-based service. The process set forth in section 5101.35 of the Revised Code is available only to applicants, recipients, and their lawfully 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. The county board shall inform the individual or guardian, in writing and in a manner the individual can understand, of the individual's right to request a hearing in accordance with division-level designation 5101:6 of the Administrative Code.
4. The county board shall immediately implement any final state hearing decision or administrative appeal decision relative to free choice of provider for HCBS waiver services issued by ODJFS, unless a court of

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competent jurisdiction modifies such a decision as the result of an appeal by the Medicaid applicant or recipient.

5. Any recipient of a non-Medicaid service shall utilize the Board's Due Process/Complaint Resolution Policy.

I. Assistance to Parties Interested in Becoming Providers

1. The ECBMRDD shall refer all parties interested in becoming a provider of HCBS waiver or supported living services to the Department's website and/or the Clearwater COG.
2. The Department shall include on the website a description of the entire certification process including an application for certification as a home and community-based waiver and/or supported living service provider.
4. The ECBMRDD and/or the Clearwater COG shall not require current or potential providers of home and community-based or supported living services to meet standards and/or training expectations that exceed or are separate from the provider certification requirements adopted by the Department and contained in the OAC.

V. IMPLEMENTATION

This directive becomes effective on the board-approved date indicated below and rescinds all previous directives and memoranda on the subject.

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Provider indicates
 Yes No
informs individual & county board
(5 working days after interview) _____

OR

Provider desires supplemental information _____

If supplemental information is requested, county board
gains release; authorizes activities to gather information
& forwards supplemental information to provider
(20 working days after consent) _____

Provider indicates
 Yes No
informs individual & county board
(5 working days after supplemental information received) _____

If no, reason given _____

Timeline extensions noted (attach verification)

Print Full Legal Name of Individual

Date of Birth

Social Security Number

I authorize the _____ County Board of MR/DD and the Clearwater Council of Governments to obtain from, release to, and exchange information with Agencies/Individuals that provide ___ I.O. ___ SL ___ LEVEL 1 services for the purpose of procuring a new provider.

Individual/Parent/Guardian

Date

Witness (if applicable)

Date

11/18/2005 (jc)

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Individual Profile**

Name: _____ **Address:** _____ **County:** _____
Date of Birth: _____ **Age:** _____ **Male/Female** _____ **Level of MR/DD:** _____
General Diagnosis: _____
Expected Start Date: _____
Guardian: Advocate/Parent: _____
Current Living Status: _____
Plans to Move: _____

Proposed Living Arrangement: IO Licensed IO Community Level 1 Supported Living

Describe the individual as accurately as you can. Include person-centered dreams, hopes, likes, dislikes and strengths to provide a balanced and positive picture of the individual.

Type of Day Program/Job and Schedule:

Service(s) being requested: _____
(List requested services. For example HPC, transportation, day habilitation, etc)

Anticipated Level of Required Supervision: _____

Number of hours per week: _____ **Staffing Ratio of hours:** _____ : awake

Typical Schedule of hours per week:

Overnight hours: _____

Reserve hours _____ **times number of days** _____ **for closings, illness, calamity =** _____

Location of Services: _____

Describe assistance needed in the following areas:

Medication Administration:

Medical Appointments:

Behavioral:

Adaptive Equipment:

Activities of Daily Living:

Transportation (i.e. Is a handicapped accessible vehicle needed?)

Provider Expectations: (Include any specific services or skill developments are needed and/or specialized training required by the provider.)

Additional Comments:

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