



H.B. 501

125th General Assembly
(As Introduced)

Reps. Hoops, McGregor, Webster, Aslanides, Combs

BILL SUMMARY

- Requires periodic adjustment of the maximum amount the Ohio Department of Job and Family Services (ODJFS) may expend each year for each individual enrolled in a Medicaid home and community-based services program established to replace the Ohio Home Care Program and the maximum aggregate amount ODJFS may expend each year for all individuals enrolled in those programs.
- Requires the Director of ODJFS to adopt additional rules regarding providers of ODJFS-administered home and community-based services under programs established to replace the Ohio Home Care Program.

CONTENT AND OPERATION

Ohio Home Care Program--replacement program waivers

Background and current law

(R.C. 5111.97)

Under Section 1915(c) of the Social Security Act,¹ the federal government waives certain Medicaid rules. This allows Ohio to operate special programs that help a specified number of eligible individuals with severe disabilities and medically unstable conditions live in their homes and communities instead of nursing homes, hospitals, or facilities intermediate care for persons with mental retardation or other developmental disabilities (ICFs-MR). These special programs are called "home and community-based services" (HCBS) waiver programs.

¹ Section 1915(c) of the Social Security Act is codified as 42 United States Code 1396n(c).

Currently, ODJFS administers programs under the Ohio Home Care Waiver and Transitions Waiver. The Ohio Home Care Waiver allows ODJFS to operate the Ohio Home Care Program. This Program serves three categories of Medicaid recipients: (1) individuals under age 60 whose medical condition or functional abilities would otherwise require them to live in a nursing home, (2) individuals of any age whose chronic, unstable medical condition would otherwise require long-term hospitalization or institutional placement, and (3) individuals of any age who have both a developmental disability and a physical or cognitive impairment that would otherwise require institutional placement. Individuals may be eligible for one of several benefit packages offered by ODJFS depending on the level of care (hours of home care service, number of nursing and skilled therapy visits, and so on) needed per week.² The benefit package for individuals who receive no more than 14 hours of services per week is the Core package. Core Plus provides services to those who receive more than 14 hours per week.

H.B. 95 of the 125th General Assembly authorizes the Director of ODJFS to request a new waiver from the United States Secretary of Health and Human Services under which two Medicaid programs for home and community-based services may be created and implemented to replace the Ohio Home Care Program. The act permits the Director to specify the following regarding the two replacement programs:

(1) That one of the replacement programs will provide home and community-based services to individuals in need of nursing facility care, including individuals enrolled in the Ohio Home Care Program;

(2) That the other replacement program will provide services to individuals in need of hospital care, including individuals enrolled in the Ohio Home Care Program;

(3) That there will be a maximum number of individuals who may be enrolled in the replacement programs in addition to the number of individuals transferred from the Ohio Home Care Program;

(4) That there will be a maximum amount ODJFS may expend each year for each individual enrolled in the replacement programs;

(5) That there will be a maximum aggregate amount ODJFS may expend each year for all individuals enrolled in the replacement programs;

(6) Any other requirement the Director selects for the replacement programs.

² O.A.C. 5101:3-12-03.

ODJFS has renewed the waiver to operate the current Ohio Home Care Program through June 30, 2006. According to Jason Smith, Constituent Inquiry Director--Medicaid, Office of Legislation, ODJFS, the only difference in the Program pre- and post-waiver renewal is that additional slots are now available for more individuals to be served. The waiver to operate the current Ohio Home Care Program is set to expire June 30, 2006.³

The bill

The bill amends the provisions described in (4) and (5), above, to specify that the maximum amount and maximum aggregate amount ODJFS may expend each year for each individual enrolled in the replacement programs and for all individuals enrolled in them, respectively, will be periodically adjusted to reflect changes in the rate of inflation.⁴

Eligible Ohio Home Care Program providers

(O.A.C. 5101:3-12-05 and R.C. 5111.971)

Current rules

ODJFS has specified by rule that the following individuals and entities are eligible to provide services for participants in the Ohio Home Care Program: Medicare-certified home health agencies, other accredited home health agencies, waiver independent daily living aides, waiver independent daily living non-aides, independent home care nurses, ODJFS-administered HCBS waiver providers, durable medical equipment providers, ambulance and ambulette providers, advanced practice nurse providers, and public health clinics (see **COMMENT**).

The bill

The bill specifies that *in addition to* the current rules regarding ODJFS-administered home and community-based services programs,⁵ ODJFS must adopt rules in accordance with the Ohio Administrative Procedure Act⁶ and federal

³ Telephone interview with Jason Smith, Constituent Inquiry Director - Medicaid, Office of Legislation, Ohio Department of Job and Family Services (June 14, 2004).

⁴ The bill does not define "periodically" or indicate how changes in the rate of inflation would be measured.

⁵ Current rulemaking authority with respect to ODJFS-administered home and community-based services programs is in R.C. 5111.01, 5111.02, and 5111.85.

⁶ R.C. Chapter 119.

requirements⁷ establishing all of the following regarding the Ohio Home Care Program and the programs that will replace it:

(1) Standards and procedures for issuing, denying, renewing, and terminating provider agreements under the programs;

(2) Standards and procedures for collecting and maintaining statistical records regarding the provider agreements;

(3) Requirements that a provider must meet to attain and maintain eligibility to provide services under the programs, including specific conditions for participation that apply to all providers;

(4) A process for determining whether a provider meets the eligibility requirements to provide services under the programs;

(5) Health care service specifications that a provider or individual used by a provider must follow, based on the professional and educational qualifications of the provider or individual performing the service;

(6) Standards and procedures for evaluating the quality of services provided under the programs;

(7) A process by which the director may take disciplinary and enforcement measures against the providers;

(8) Other standards and procedures the director considers necessary and appropriate for the administration of the programs.

COMMENT

To be eligible to provide services under the Ohio Home Care Program, an individual or entity must have the following qualifications:

(1) Medicare-certified home health agencies. These entities, agencies, or organizations must maintain Medicare certification as home health agencies. They are eligible to participate in the Medicaid program as "Medicare-certified home health agencies" after executing Medicaid provider agreements. They must provide services in accordance with the Medicare conditions of participation set forth in federal regulations.⁸ They may also be eligible to provide specific

⁷ As noted above, home and community-based services waivers are authorized by Section 1915(c) of the Social Security Act, 42 U.S.C. 1396n(c).

⁸ 42 Code of Federal Regulations 484.

ODJFS-administered HCBS waiver services if they meet requirements established by ODJFS in rules.⁹

(2) Other accredited home health agencies. These entities, agencies, and organizations must maintain accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Community Health Accreditation Program (CHAP) for the provision of home health care services and personal care and support services. They are eligible to participate in the Medicaid program as "other accredited home health agencies" after executing Medicaid provider agreements. They may also be eligible to provide specific ODJFS-administered HCBS waiver services if they meet requirements established by ODJFS in rules.¹⁰

(3) Waiver independent daily living aides. These individuals must meet one or more of the minimum requirements established in rules adopted by ODJFS:¹¹

- May not provide services to a family member¹² or to foster children.
- Must successfully complete a criminal records check conducted by the superintendent of Ohio's Bureau of Criminal Identification and Investigation (BCII). This check must be equivalent to those conducted by BCII under Ohio law for individuals under final consideration for employment with a home health agency.¹³
- Must successfully complete the nurse aide competency evaluation program conducted by the Ohio Department of Health.

⁹ *Ohio Administrative Code § 5101:3-12-06(I)(3)(a) to (f).*

¹⁰ *O.A.C. 5101:3-12-06(I)(3)(a) to (f).*

¹¹ *O.A.C. 5101:3-12-05(E)(1)(a) to (E)(1)(c) and (G).*

¹² *A family member is a consumer's or provider's immediate relative or family member, including husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, stepsister, half brother, or half sister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild (O.A.C. 5101:3-12-01(O)).*

¹³ *R.C. 3701.881.*

- Must successfully complete and pass a home health aide competency evaluation as specified in federal regulations.¹⁴
- Must comply with all standards under the "patients rights" Medicare condition of participation as found in federal regulations.¹⁵
- Must attend all required ODJFS-sponsored provider training sessions.
- Must submit written notification to the consumer and ODJFS or its designee at least 30 calendar days prior to the last date of service if terminating the provision of home care services.

They are eligible to participate in the Medicaid program as independent daily living aides after executing Medicaid provider agreements.

(4) Waiver independent daily living non-aides. These individuals must meet the minimum requirements established in rules adopted by ODJFS:¹⁶

- May not provide services to family members.
- Must successfully complete a BCII criminal records check. The check must be equivalent to those conducted by BCII under Ohio law for individuals under final consideration for employment with a home health agency.
- Must be at least 18 years old.
- Must provide ODJFS or its designee with the name of the consumer who has chosen the individual to provide services.
- Must comply with all standards under the "patients rights" Medicare condition of participation as found in federal regulations.¹⁷
- Must attend all required ODJFS-sponsored provider training sessions.

¹⁴ 42 C.F.R. 484.

¹⁵ *Id.*

¹⁶ O.A.C. 5101:3-12-05(F)(2).

¹⁷ 42 C.F.R. 484.

- Must submit written notification to the consumer and ODJFS or its designee at least 30 calendar days prior to the last date of service if terminating the provision of home care services.

They are eligible to participate in the Medicaid program as independent daily living non-aides after executing Medicaid provider agreements.

(5) Independent home care nurses. These individuals must meet the minimum requirements established in rules adopted by ODJFS:¹⁸

- Must be registered nurses or licensed practical nurses working under the supervision of a registered nurse practicing within the nurse's scope of license.
- Must successfully complete a BCII criminal records check. The check must be equivalent to those conducted by BCII for individuals under final consideration for employment with a home health agency pursuant to Ohio law.¹⁹
- May not use or disclose any information concerning a consumer, for any purposes not directly connected with the administration or provision of covered core home care services, except with the written consent of the consumer or other authorized representative.
- Must attend all required ODJFS-sponsored provider training sessions.
- Must submit written notification to the consumer and ODJFS or its designee at least 30 calendar days prior to the last date of service if terminating the provision of home care services.
- Must comply with conditions of participation found in federal regulations.²⁰
- May not provide services to a family member.

They are eligible to participate in the Medicaid program as independent home care nurses after executing Medicaid provider agreements.

¹⁸ O.A.C. 5101:3-12-05(H)(2).

¹⁹ R.C. 3701.881.

²⁰ 42 C.F.R. 484.

(6) ODJFS-administered HCBS waiver providers. These entities or organizations must meet the requirements established in rules adopted by ODJFS.²¹ They are eligible to participate in the Medicaid program as ODJFS-administered HCBS waiver providers after executing Medicaid provider agreements.

(7) Durable medical equipment (DME) providers. These providers are eligible to provide supplemental adaptive and assistive devices and emergency response systems covered under the ODJFS-administered waiver benefit package if they certify that they meet the criteria established by ODFJS in rules.²²

(8) Ambulance or ambulette providers. These providers are eligible to provide supplemental transportation services covered under the ODJFS-administered waiver benefit package if they certify that they meet the requirements established by ODJFS in rules.²³

(9) Advanced practice nurse providers. These providers are eligible to provide nursing services covered under the Core-plus and ODJFS-administered waiver benefit package if they meet the requirements established by ODJFS in rules.²⁴

(10) Public health clinics. These clinics are eligible to provide home delivered meal services covered under the ODJFS-administered waiver benefit package if they have an appropriate food vendor license and certify that they meet the requirements established by ODJFS in rules.²⁵

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-20-04	p. 1939

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²¹ O.A.C. 5101:3-12-05(I)(2) and (3).

²² O.A.C. 5101:3-12-07(E) and (G).

²³ O.A.C. 5101:3-12-07(D).

²⁴ O.A.C. 5101:3-12-06(H)(2).

²⁵ O.A.C. 5101:3-12-07(B).