



Sub. H.B. 405

127th General Assembly
(As Passed by the General Assembly)

Reps. Bacon, Setzer, Zehringer, Hughes, J. McGregor, Wagoner, Fessler, Evans, Boyd, Schindel, Uecker, Mecklenborg, DeBose, Fende, Webster, Batchelder, Bolon, Brady, Brown, Budish, Celeste, Chandler, Collier, Domenick, Dyer, Flowers, Hite, Jones, Koziura, Letson, Mallory, Patton, Peterson, Sayre, Schlichter, D. Stewart, Ujvagi, Wachtmann, Yuko

Sens. Wagoner, Coughlin, Fedor, Harris, D. Miller, Morano, Niehaus, Roberts, Sawyer, Seitz, Spada, Mason

Effective date: September 1, 2008

ACT SUMMARY

- Eliminates a limit under which no more than 400 individuals may receive priority for home and community-based services administered by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) during the 2008 and 2009 biennium on the basis of being less than age 22 and having at least one service need that is unusual in scope or intensity.
- Eliminates a limit under which no more than 40 nursing facility residents who choose to move to another setting may receive priority for ODMR/DD-administered home and community-based services for each year this priority policy is implemented.
- Eliminates the December 31, 2009, termination of administrative rules that establish criteria a county board of mental retardation and developmental disabilities (county MR/DD board) may use in determining the order in which individuals on waiting lists for ODMR/DD-administered home and community-based services will be offered the services.
- Eliminates the authority of county MR/DD boards to establish service substitution lists.

- Provides that an individual placed on a county MR/DD board's service substitution list before the act's effective date for the purpose of obtaining ODMR/DD-administered home and community-based services is deemed to have been placed on the board's waiting list for the services on the date the individual made a request to the board that the individual receive ODMR/DD-administered home and community-based services.
- Eliminates the requirement that county MR/DD boards maintain long-term service planning registries for individuals who wish to record their intention to request a service in the future.

CONTENT AND OPERATION

County MR/DD board waiting lists

Background

Continuing law requires a county board of mental retardation and developmental disabilities (county MR/DD board) to create waiting lists for the services it offers if the demand for the services exceeds available resources. Separate waiting lists must be created for specified services listed in the Revised Code, such as residential services and supported living. A separate waiting list must be created for other services that are not listed but are determined necessary and appropriate for individuals with mental retardation or a developmental disability according to their individual habilitation or service plans.

Continuing law requires a county MR/DD board to establish four priority policies for its waiting lists.¹ No priority policy, however, may give an individual priority for a service over another individual placed on the waiting list on an emergency status.² The following are the four required priority policies:

¹ A county MR/DD board is permitted to establish other priority policies for making placements on its waiting lists according to an individual's emergency status.

² Continuing law defines "emergency" as any situation that creates for an individual with mental retardation or developmental disabilities a risk of substantial self-harm or substantial harm to others if action is not taken within 30 days. An emergency may include (1) loss of present residence for any reason, (2) loss of present caretaker for any reason, (3) abuse, neglect, or exploitation of the individual, (4) health and safety conditions that pose a serious risk to the individual or others of immediate harm or death, and (5) change in the emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker. (R.C. 5126.042(A).)

(1) For the purpose of obtaining additional federal Medicaid funds for home and community-based services under an Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD)-administered waiver program, an individual who is eligible for ODMR/DD-administered home and community-based services, is age 22 or older, and receives supported living or family support services must be given priority over other individuals on a waiting list for ODMR/DD-administered home and community-based services that include supported living, residential services, or family support services.

(2) Also for the purpose of obtaining such additional Medicaid funds, an individual who is eligible for ODMR/DD-administered home and community-based services, resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services, and receives adult services from the county MR/DD board must be given priority over other individuals on a waiting list for ODMR/DD-administered home and community-based services that include adult services.

(3) As federal Medicaid funds become available pursuant to implementation of the first two priority policies, an individual who is eligible for ODMR/DD-administered home and community-based services must be given priority for such services over other individuals on a waiting list, if the individual meets one of the following requirements: (a) does not receive residential services or supported living, needs services in the individual's current living arrangement or will need services in a new living arrangement, and has a primary caregiver who is age 60 or older, (b) is less than age 22 and has at least one service need that is unusual in scope or intensity,³ or (c) is age 22 or older, does not receive residential services or supported living, and is determined by the county MR/DD board to have intensive needs for ODMR/DD-administered home and community-based services on an in-home or out-of-home basis.

(4) An individual who is eligible for ODMR/DD-administered home and community-based services, resides in a nursing facility, and chooses to move to

³ The individual must have at least one of the following service needs that are unusual in scope or intensity: (1) severe behavior problems for which a behavior support plan is needed, (2) an emotional disorder for which anti-psychotic medication is needed, (3) a medical condition that leaves the individual dependent on life-support medical technology, (4) a condition affecting multiple body systems for which a combination of specialized medical, psychological, educational, or habilitation services are needed, or (5) a condition the county MR/DD board determines to be comparable in severity to any of the previously listed conditions and places the individual at significant risk of institutionalization (R.C. 5162.042(D)(2)(b)).

another setting with the help of such services must be given priority over other individuals who are on a waiting list for the services and do not meet these criteria. This priority policy is to be implemented beginning on a date specified in rules ODMR/DD must adopt and is to continue for a number of years, not exceeding five, as specified in the rules.

Limitations on priorities

Prior law established a limit on part of the third priority policy (the policy of giving certain individuals priority for ODMR/DD-administered home and community-based services as federal Medicaid funds become available pursuant to implementation of the first two priority policies). Under the limitation, no more than 400 individuals could receive priority during the 2008 and 2009 biennium on the basis of being less than age 22 and having at least one service need that was unusual in scope or intensity. The act eliminates this limitation. (R.C. 5126.042(G)(2).)

Prior law also established a limit on the fourth priority policy (the policy of giving an individual who is eligible for ODMR/DD-administered home and community-based services, resides in a nursing facility, and chooses to move to another setting with the help of such services priority for the services). Under the limitation, no more than 40 individuals could receive such priority for each year the policy is implemented. The act eliminates this limitation. (R.C. 5126.042(G)(4).)

Order individuals receive services when multiple persons have priority

Continuing law requires ODMR/DD to adopt rules establishing criteria a county MR/DD board may use in determining the order in which individuals with priority for ODMR/DD-administered home and community-based services will be offered the services if two or more individuals on a waiting list have priority for the services. The rules must also specify conditions under which a county MR/DD board may offer services to an individual on a waiting list who does not have priority, if there is no individual with priority available and appropriate for the services. Under prior law, the rules were to cease to have effect December 31, 2009, at which time county MR/DD boards were no longer permitted to use the criteria. The act eliminates the scheduled termination of the rules and permits county MR/DD boards to continue using the criteria specified in the rules beyond December 31, 2009. (R.C. 5126.042(F) and (K)(2).)

Removal of obsolete priority

The act eliminates provisions of prior law referring to a fifth priority policy that applied only in fiscal years 2002 and 2003. Under the new obsolete policy,

county MR/DD boards were required to give a total of not more than 75 individuals priority for ODMR/DD-administered home and community-based services over other individuals on waiting lists for the services. To receive priority, an individual had to have been eligible for the services, resided in an intermediate care facility for the mentally retarded or nursing facility, chosen to move to another setting with the help of the services, and been determined by ODMR/DD to be capable of residing in the other setting. ODMR/DD was required to identify the individuals to receive priority, assess their needs, and notify county MR/DD boards. A county MR/DD board, as part of its Medicaid local administrative authority, was required to assist ODMR/DD in expediting the identified individuals' transfer to ODMR/DD-administered home and community-based services. (R.C. 5126.042(D)(3) and (G)(3) and 5126.055(A)(2).)

Service substitution lists

Under prior law, a county MR/DD board was prohibited from placing an individual on a waiting list if the individual was already receiving a service but wanted to change to another service. Instead, the individual was to be placed on a service substitution list. A county MR/DD board was required to work with the individual, service providers, and all appropriate entities to facilitate the change in service as expeditiously as possible. A county MR/DD board was permitted to establish priorities for making placements on its service substitution lists according to an individual's emergency status.

The act repeals the law governing service substitution lists, thereby ending the authority of county MR/DD boards to establish the lists. The act provides that an individual placed on a service substitution list before the act's effective date for the purpose of obtaining ODMR/DD-administered home and community-based services is deemed to have been placed on the county MR/DD board's waiting list for the services on the date the individual made a request to the board that the individual receive ODMR/DD-administered home and community-based services instead of the services the individual was receiving at the time the request was made. (R.C. 5126.042(A)(2) and (B).)

Long-term service planning registries

Prior law required each county MR/DD board to maintain a long-term service planning registry for individuals who wished to record their intention to request a service in the future. The law specified that the purpose of the registry was to enable the board to document requests and plan appropriately. An individual could not be placed on the registry if the individual was eligible for the services on an emergency basis.

The act repeals the law governing the long-term service planning registries. As a result, county MR/DD boards are not required to maintain the registries. (R.C. 5126.042(B).)

HISTORY

ACTION	DATE
Introduced	12-04-07
Reported, H. Health	01-31-08
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