

5101:3-41-05

Medicaid service contracting requirements for medicaid local administrative authorities and providers of home and community-based services and habilitation center services.

(A) Purpose

- (1) The purpose of this rule is to establish the standards for a service contract between medicaid local administrative authorities (MLAA) and providers of home and community-based services and habilitation center services. For the purposes of this rule, habilitation center services shall include targeted case management and service coordination services.
- (2) In accordance with section 5111.01 of the Revised Code this rule shall be binding on other agencies that administer components of the medicaid program. In accordance with 42 U.S.C. 1396a(a)(5) as in effect on April 5, 2004, ODJFS as the single state agency is required to ensure the provision of medicaid services to persons determined to be eligible for medicaid in a manner consistent with federal law. Pursuant to 42 U.S.C. 1396a(a)(2) as in effect on April 5, 2004, the state must provide matching funds to pay for medicaid services. Pursuant to 42 U.S.C. 1396a(a)(8) as in effect on April 5, 2004, all medicaid services shall be delivered with reasonable promptness and services shall not be delayed due to administrative procedures. Pursuant to 42 U.S.C. 1396a(a)(23) as in effect on April 5, 2004, any individual eligible for medicaid may obtain medicaid services from any qualified and willing provider. The provisions of this rule shall be construed consistently with these federal mandates, and shall follow nonfederal matching funds requirements set forth in sections 5123.047 and 5126.057 of the Revised Code.

(B) Definitions

- (1) "Aggrieved party" has the same meaning as in section 5126.036 of the Revised Code.
- (2) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.
- (3) "Habilitation center" has the same meaning as in section 5111.041 of the Revised Code.
- (4) "Home and community-based services" has the same meaning as in section 5126.01 of the Revised Code.
- (5) "MLAA" means a county board that has medicaid local administrative authority pursuant to section 5126.055 of the Revised Code.
- (6) "ODJFS" means the Ohio department of job and family services as established by section 121.02 of the Revised Code.

- (7) "ODMRDD" means the Ohio department of mental retardation and developmental Disabilities as established by section 121.02 of the Revised Code.
- (8) "Provider" has the same meaning as in section 5126.035 of the Revised Code.
- (9) "Service contract" has the same meaning as in section 5126.035 of the Revised Code.

(C) Contracting for home and community-based services and habilitation center services

- (1) A service contract for home and community-based services and/or habilitation center services existing between the MLAA and a provider prior to the effective date of this rule is subject to the following provisions:
 - (a) Upon expiration, amendment, renewal, or termination of a prior existing service contract for home and community-based services and/or habilitation center services, the parties may only enter into a new service contract for such services in accordance with this rule.
 - (b) If ODJFS determines that a prior existing service contract for home and community-based services and/or habilitation center services does not comply with federal and state laws, including but not limited to, section 5126.035 of the Revised Code, then ODJFS shall require the parties to enter into a new service contract for such services in accordance with this rule.
- (2) When a county board is the provider of home and community-based services and/or habilitation center services, but the county board is not acting as the MLAA, the county board shall enter into a service contract for such services pursuant to this rule with the appropriate entity pursuant to section 5126.056 of the Revised Code.
- (3) When a county board is the provider of home and community-based services and/or habilitation center services and is also acting as the MLAA, the county board is not required to enter into a service contract for such services pursuant to this rule with itself.
- (4) When a county board is the provider of home and community-based services and/or habilitation center services and is also acting as the MLAA and is subcontracting with another entity, the county board is not required to enter into a service contract for such services pursuant to this rule with the subcontracting entity.
- (5) Upon the request of a provider, the MLAA shall enter into a service contract for home and community-based services and/or the habilitation center services

and shall extend or renew such a service contract in accordance with this rule if the provider has a medicaid provider agreement with ODJFS for the services to be provided and is certified by ODMRDD to provide such services. The MLAA shall not require a provider that meets the requirements of paragraph (C)(5) of this rule that seeks a service contract for home and community-based services and/or habilitation center services with the MLAA pursuant to this rule to subcontract with the MLAA in lieu of such service contract.

(6) A service contract for home and community-based services and/or habilitation center services shall comply with federal and state laws, including but not limited to, section 5126.035 of the Revised Code.

(7) The MLAA may terminate a service contract for home and community-based services and/or habilitation center services only if the medicaid provider agreement between the provider and ODJFS for the services is terminated or the provider loses its required certification by ODMRDD for the services.

(8) ODJFS and ODMRDD may review any service contract for home and community-based services and/or habilitation center services to ensure that the service contract complies with federal and state laws, including, but not limited to, section 5126.035 of the Revised Code.

(a) If either ODJFS or ODMRDD determines that any term or condition of a service contract for home and community-based services and/or habilitation center services does not comply with federal and state laws, including, but not limited to, section 5126.035 of the Revised Code, the department that made the determination shall require the parties to amend the service contract to remove the non-compliant term or condition or provide the parties an opportunity to renegotiate the service contract to make the term or condition compliant.

(b) If either ODMRDD or ODJFS determines that a service contract for home and community-based services and/or habilitation center services does not comply with federal and state laws, including, but not limited to, section 5126.035 of the Revised Code, because the service contract is missing a required term or condition, the department that made the determination shall require the parties to amend the service contract to include the required term or condition prescribed by the department or provide the parties an opportunity to renegotiate the service contract to include the required term or condition using their own language.

(D) Mediation/arbitration of disputes regarding a service contract

An aggrieved party that seeks to require the other party to take or cease an action under a service contract that causes the aggrieved party to be aggrieved, a person or

government entity aggrieved by the refusal of the MLAA to enter into a service contract with the person or government entity, or a person or government entity aggrieved by the MLAA's termination of a service contract between the person or government entity and the MLAA and the other party shall follow the mediation and arbitration procedures contained in section 5126.036 of the Revised Code.

(E) Process for medicaid reimbursement in the absence of a service contract

(1) In the case of a qualified, willing and chosen, non-public medicaid provider that is unable to enter into a services contract as specified in paragraph (C) of this rule, that provider may request reimbursement for medicaid covered services directly from ODJFS in accordance with division-level designation 5101:3 of the Administrative Code. In order for a provider to obtain direct reimbursement from ODJFS, all of the following requirements must be met:

(a) The service for which reimbursement is requested was a medicaid covered service, that was a medically necessary service that is covered by the medicaid program; and, was delivered by a provider that held a medicaid provider agreement at the time of service delivery; and, the provider was chosen by the recipient to deliver the service;

(b) The service received by the medicaid recipient was not a nursing facility service;

(c) The provider requested an MLAA to enter into a service contract in accordance with section 5126.035 of the Revised Code prior to the date of service delivery;

(d) The MLAA failed to or refused to enter into the requested service contract with the provider;

(e) The provider must initiate mediation and arbitration under section 5126.036 of the Revised Code prior to requesting reimbursement under this rule; and

(f) The request for reimbursement submitted by the provider must include all of the following:

(i) Written documentation specifying the medicaid covered services provided;

(ii) Written documentation of the request for mediation specified in paragraph (E)(1)(e) of this rule; and

(iii) Written documentation of a plan of services approved and agreed upon by the medicaid recipient or their authorized representative.

- (2) Reimbursement shall not be provided if ODJFS determines that denial of a service contract was proper under the laws governing the medicaid program.
- (3) Reimbursement shall be available only for services rendered between the date of the request for the service contract specified in paragraph (E)(1)(c) of this rule, and the date of the implementation of any final adjudication or court order that results from proceedings initiated under section 5126.036 of the Revised Code.
- (4) Reimbursement for home and community-based waiver services shall be based upon the statewide average rate for services. The statewide average rate shall be determined for each service in each of the home and community-based services programs administered by ODMRDD and shall be based on rates paid in the state fiscal year that was in effect three years prior to the date of service indicated on the claim submission.
- (5) Reimbursement for habilitation center services, including targeted case management services, and service coordination services, shall be in accordance with rule 5101:3-38-10 of the Administrative Code.
- (6) In accordance with paragraph (A) of this rule and as required by sections 5123.047 and 5126.057 of the Revised Code, ODMR/DD shall credit to ODJFS by means of intrastate transfer voucher (ISTV) issued by ODJFS to ODMRDD an amount equal to the nonfederal portion of the cost for all services that ODJFS makes direct reimbursement for under this rule. If ODJFS does not receive funds from ODMRDD within ninety days of the ISTV issued by ODJFS then ODJFS shall deduct the amount from funds otherwise due to ODMRDD.
- (7) All reimbursement provided under authority of this rule shall be subject to prepayment and post payment review by ODJFS.
- (8) ODJFS may recover any payment for claims that are determined to be non-allowable under the laws governing the Medicaid program.
- (9) Eligibility for continuing reimbursement under this rule shall end if the time limits set forth in section 5126.036 of the Revised Code are exceeded.
- (10) Providers are not eligible for reimbursement under this rule for services provided pursuant to contracts with ODMRDD as set forth in paragraph (C) of rule 5101:3-38-03 of the Administrative Code.
- (11) Providers are not eligible for reimbursement under this rule for services for which a school district is required to pay the non-federal share of medicaid expenditures as set forth in paragraph (E) of rule 5101:3-38-03 of the Administrative Code.

(F) ODMRDD authority

Nothing in this rule shall be construed to limit the authority of ODMRDD provided under section 5123.0411 of the Revised Code and section 5126.057 of the Revised Code.

Effective:

R.C. 119.032 review dates:

WITHDRAWN ELECTRONICALLY

Certification

04/16/2004

Date

Promulgated Under: 119.03
Statutory Authority: 5111.01, 5111.041, 5111.85
Rule Amplifies: 5111.01, 5111.041, 5111.85,
5123.047, 5126.057
Prior Effective Dates: Not Applicable