

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 405

Representative Bacon

**Cosponsors: Representatives Setzer, Zehringer, Hughes, McGregor, J.,
Wagoner, Fessler, Evans, Boyd**

—

A B I L L

To amend sections 5126.042 and 5126.055 of the 1
Revised Code to eliminate the requirement that 2
each county board of mental retardation and 3
developmental disabilities maintain a service 4
substitution list and long-term service planning 5
registry and revise the law governing county 6
boards' waiting lists. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5126.042 and 5126.055 of the Revised 8
Code be amended to read as follows: 9

Sec. 5126.042. (A) As used in this section, ~~"emergency:~~ 10

(1) "Emergency" means any situation that creates for an 11
individual with mental retardation or developmental disabilities a 12
risk of substantial self-harm or substantial harm to others if 13
action is not taken within thirty days. An "emergency" may include 14
one or more of the following situations: 15

~~(1)~~(a) Loss of present residence for any reason, including 16
legal action; 17

~~(2)(b)~~ Loss of present caretaker for any reason, including 18
serious illness of the caretaker, change in the caretaker's 19
status, or inability of the caretaker to perform effectively for 20
the individual; 21

~~(3)(c)~~ Abuse, neglect, or exploitation of the individual; 22

~~(4)(d)~~ Health and safety conditions that pose a serious risk 23
to the individual or others of immediate harm or death; 24

~~(5)(e)~~ Change in the emotional or physical condition of the 25
individual that necessitates substantial accommodation that cannot 26
be reasonably provided by the individual's existing caretaker. 27

(2) "Service substitution list" means a service substitution 28
list established by a county board of mental retardation and 29
developmental disabilities before the effective date of this 30
amendment pursuant to division (B) of this section as this section 31
existed on the day immediately before the effective date of this 32
amendment. 33

(B) If a county board of mental retardation and developmental 34
disabilities determines that available resources are not 35
sufficient to meet the needs of all individuals who request 36
programs and services and may be offered the programs and 37
services, it shall establish waiting lists for services. The board 38
may establish priorities for making placements on its waiting 39
lists according to an individual's emergency status and shall 40
establish priorities in accordance with divisions (D) and (E) of 41
this section. 42

The individuals who may be placed on a waiting list include 43
individuals with a need for services on an emergency basis and 44
individuals who have requested services for which resources are 45
not available. 46

~~Except for an individual who is to receive priority for 47
services pursuant to division (D)(3) of this section, an 48~~

~~individual who currently receives a service but would like to 49
change to another service shall not be placed on a waiting list 50
but shall be placed on a service substitution list. The board 51
shall work with the individual, service providers, and all 52
appropriate entities to facilitate the change in service as 53
expeditiously as possible. The board may establish priorities for 54
making placements on its service substitution lists according to 55
an individual's emergency status. 56~~

~~In addition to maintaining waiting lists and service 57
substitution lists, a board shall maintain a long term service 58
planning registry for individuals who wish to record their 59
intention to request in the future a service they are not 60
currently receiving. The purpose of the registry is to enable the 61
board to document requests and to plan appropriately. The board 62
may not place an individual on the registry who meets the 63
conditions for receipt of services on an emergency basis. 64~~

An individual placed on a county board's service substitution 65
list before the effective date of this amendment for the purpose 66
of obtaining home and community-based services shall be deemed to 67
have been placed on the county board's waiting list for home and 68
community-based services on the date the individual was placed on 69
the service substitution list. 70

(C) A county board shall establish a separate waiting list 71
for each of the following categories of services, and may 72
establish separate waiting lists within the waiting lists: 73

(1) Early childhood services; 74

(2) Educational programs for preschool and school age 75
children; 76

(3) Adult services; 77

(4) Service and support administration; 78

(5) Residential services and supported living;	79
(6) Transportation services;	80
(7) Other services determined necessary and appropriate for persons with mental retardation or a developmental disability according to their individual habilitation or service plans;	81 82 83
(8) Family support services provided under section 5126.11 of the Revised Code.	84 85
(D) Except as provided in division (G) of this section, a county board shall do, as priorities, all of the following in accordance with the assessment component, approved under section 5123.046 of the Revised Code, of the county board's plan developed under section 5126.054 of the Revised Code:	86 87 88 89 90
(1) For the purpose of obtaining additional federal medicaid funds for home and community-based services and medicaid case management services, do both of the following:	91 92 93
(a) Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under division (C) of this section for home and community-based services that include supported living, residential services, or family support services:	94 95 96 97 98 99
(i) Is twenty-two years of age or older;	100
(ii) Receives supported living or family support services.	101
(b) Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under division (C) of this section for home and community-based services that include adult services:	102 103 104 105 106
(i) Resides in the individual's own home or the home of the individual's family and will continue to reside in that home after	107 108

enrollment in home and community-based services;	109
(ii) Receives adult services from the county board.	110
(2) As federal medicaid funds become available pursuant to	111
division (D)(1) of this section, give an individual who is	112
eligible for home and community-based services and meets any of	113
the following requirements priority for such services over any	114
other individual on a waiting list established under division (C)	115
of this section:	116
(a) Does not receive residential services or supported	117
living, either needs services in the individual's current living	118
arrangement or will need services in a new living arrangement, and	119
has a primary caregiver who is sixty years of age or older;	120
(b) Is less than twenty-two years of age and has at least one	121
of the following service needs that are unusual in scope or	122
intensity:	123
(i) Severe behavior problems for which a behavior support	124
plan is needed;	125
(ii) An emotional disorder for which anti-psychotic	126
medication is needed;	127
(iii) A medical condition that leaves the individual	128
dependent on life-support medical technology;	129
(iv) A condition affecting multiple body systems for which a	130
combination of specialized medical, psychological, educational, or	131
habilitation services are needed;	132
(v) A condition the county board determines to be comparable	133
in severity to any condition described in divisions (D)(2)(b)(i)	134
to (iv) of this section and places the individual at significant	135
risk of institutionalization.	136
(c) Is twenty-two years of age or older, does not receive	137
residential services or supported living, and is determined by the	138

county board to have intensive needs for home and community-based 139
services on an in-home or out-of-home basis. 140

~~(3) In fiscal years 2002 and 2003, give an individual who is 141
eligible for home and community based services, resides in an 142
intermediate care facility for the mentally retarded or nursing 143
facility, chooses to move to another setting with the help of home 144
and community based services, and has been determined by the 145
department of mental retardation and developmental disabilities to 146
be capable of residing in the other setting, priority over any 147
other individual on a waiting list established under division (C) 148
of this section for home and community based services who does not 149
meet these criteria. The department of mental retardation and 150
developmental disabilities shall identify the individuals to 151
receive priority under division (D)(3) of this section, assess the 152
needs of the individuals, and notify the county boards that are to 153
provide the individuals priority under division (D)(3) of this 154
section of the individuals identified by the department and the 155
individuals' assessed needs. 156~~

(E) Except as provided in division (G) of this section and 157
for a number of years and beginning on a date specified in rules 158
adopted under division (K) of this section, a county board shall 159
give an individual who is eligible for home and community-based 160
services, resides in a nursing facility, and chooses to move to 161
another setting with the help of home and community-based 162
services, priority over any other individual on a waiting list 163
established under division (C) of this section for home and 164
community-based services who does not meet these criteria. 165

(F) If two or more individuals on a waiting list established 166
under division (C) of this section for home and community-based 167
services have priority for the services pursuant to division 168
(D)(1) or (2) or (E) of this section, a county board may use, 169
~~until December 31, 2009,~~ criteria specified in rules adopted under 170

division (K)(2) of this section in determining the order in which 171
the individuals with priority will be offered the services. 172
Otherwise, the county board shall offer the home and 173
community-based services to such individuals in the order they are 174
placed on the waiting list. 175

(G)~~(1)~~ No individual may receive priority for services 176
pursuant to division (D) or (E) of this section over an individual 177
placed on a waiting list established under division (C) of this 178
section on an emergency status. 179

~~(2) No more than four hundred individuals in the state may 180
receive priority for services during the 2008 and 2009 biennium 181
pursuant to division (D)(2)(b) of this section. 182~~

~~(3) No more than a total of seventy five individuals in the 183
state may receive priority for services during state fiscal years 184
2002 and 2003 pursuant to division (D)(3) of this section. 185~~

~~(4) No more than forty individuals in the state may receive 186
priority for services pursuant to division (E) of this section for 187
each year that priority category is in effect as specified in 188
rules adopted under division (K) of this section. 189~~

(H) Prior to establishing any waiting list under this 190
section, a county board shall develop and implement a policy for 191
waiting lists that complies with this section and rules adopted 192
under division (K) of this section. 193

Prior to placing an individual on a waiting list, the county 194
board shall assess the service needs of the individual in 195
accordance with all applicable state and federal laws. The county 196
board shall place the individual on the appropriate waiting list 197
and may place the individual on more than one waiting list. The 198
county board shall notify the individual of the individual's 199
placement and position on each waiting list on which the 200
individual is placed. 201

At least annually, the county board shall reassess the service needs of each individual on a waiting list. If it determines that an individual no longer needs a program or service, the county board shall remove the individual from the waiting list. If it determines that an individual needs a program or service other than the one for which the individual is on the waiting list, the county board shall provide the program or service to the individual or place the individual on a waiting list for the program or service in accordance with the board's policy for waiting lists.

When a program or service for which there is a waiting list becomes available, the county board shall reassess the service needs of the individual next scheduled on the waiting list to receive that program or service. If the reassessment demonstrates that the individual continues to need the program or service, the board shall offer the program or service to the individual. If it determines that an individual no longer needs a program or service, the county board shall remove the individual from the waiting list. If it determines that an individual needs a program or service other than the one for which the individual is on the waiting list, the county board shall provide the program or service to the individual or place the individual on a waiting list for the program or service in accordance with the board's policy for waiting lists. The county board shall notify the individual of the individual's placement and position on the waiting list on which the individual is placed.

(I) A child subject to a determination made pursuant to section 121.38 of the Revised Code who requires the home and community-based services provided through a medicaid component that the department of mental retardation and developmental disabilities administers under section 5111.871 of the Revised Code shall receive services through that medicaid component. For

all other services, a child subject to a determination made 234
pursuant to section 121.38 of the Revised Code shall be treated as 235
an emergency by the county boards and shall not be subject to a 236
waiting list. 237

(J) Not later than the fifteenth day of March of each 238
even-numbered year, each county board shall prepare and submit to 239
the director of mental retardation and developmental disabilities 240
its recommendations for the funding of services for individuals 241
with mental retardation and developmental disabilities and its 242
proposals for reducing the waiting lists for services. 243

(K)(1) The department of mental retardation and developmental 244
disabilities shall adopt rules in accordance with Chapter 119. of 245
the Revised Code governing waiting lists established under this 246
section. The rules shall include procedures to be followed to 247
ensure that the due process rights of individuals placed on 248
waiting lists are not violated. 249

(2) As part of the rules adopted under this division, the 250
department shall adopt rules establishing criteria a county board 251
may use under division (F) of this section in determining the 252
order in which individuals with priority for home and 253
community-based services will be offered the services. The rules 254
shall also specify conditions under which a county board, when 255
there is no individual with priority for home and community-based 256
services pursuant to division (D)(1) or (2) or (E) of this section 257
available and appropriate for the services, may offer the services 258
to an individual on a waiting list for the services but not given 259
such priority for the services. ~~The rules adopted under division 260
(K)(2) of this section shall cease to have effect December 31,~~ 261
~~2009.~~ 262

(3) As part of the rules adopted under this division, the 263
department shall adopt rules specifying both of the following for 264
the priority category established under division (E) of this 265

section:	266
(a) The number of years, which shall not exceed five, that the priority category will be in effect;	267 268
(b) The date that the priority category is to go into effect.	269
(L) The following shall take precedence over the applicable provisions of this section:	270 271
(1) Medicaid rules and regulations;	272
(2) Any specific requirements that may be contained within a medicaid state plan amendment or waiver program that a county board has authority to administer or with respect to which it has authority to provide services, programs, or supports.	273 274 275 276
Sec. 5126.055. (A) Except as provided in section 5126.056 of the Revised Code, a county board of mental retardation and developmental disabilities has medicaid local administrative authority to, and shall, do all of the following for an individual with mental retardation or other developmental disability who resides in the county that the county board serves and seeks or receives home and community-based services:	277 278 279 280 281 282 283
(1) Perform assessments and evaluations of the individual. As part of the assessment and evaluation process, the county board shall do all of the following:	284 285 286
(a) Make a recommendation to the department of mental retardation and developmental disabilities on whether the department should approve or deny the individual's application for the services, including on the basis of whether the individual needs the level of care an intermediate care facility for the mentally retarded provides;	287 288 289 290 291 292
(b) If the individual's application is denied because of the county board's recommendation and the individual requests a hearing under section 5101.35 of the Revised Code, present, with	293 294 295

the department of mental retardation and developmental 296
disabilities or department of job and family services, whichever 297
denies the application, the reasons for the recommendation and 298
denial at the hearing; 299

(c) If the individual's application is approved, recommend to 300
the departments of mental retardation and developmental 301
disabilities and job and family services the services that should 302
be included in the individual's individualized service plan and, 303
if either department approves, reduces, denies, or terminates a 304
service included in the individual's individualized service plan 305
under section 5111.871 of the Revised Code because of the county 306
board's recommendation, present, with the department that made the 307
approval, reduction, denial, or termination, the reasons for the 308
recommendation and approval, reduction, denial, or termination at 309
a hearing under section 5101.35 of the Revised Code. 310

~~(2) If the individual has been identified by the department 311
of mental retardation and developmental disabilities as an 312
individual to receive priority for home and community based 313
services pursuant to division (D)(3) of section 5126.042 of the 314
Revised Code, assist the department in expediting the transfer of 315
the individual from an intermediate care facility for the mentally 316
retarded or nursing facility to the home and community based 317
services; 318~~

~~(3) In accordance with the rules adopted under section 319
5126.046 of the Revised Code, perform the county board's duties 320
under that section regarding assisting the individual's right to 321
choose a qualified and willing provider of the services and, at a 322
hearing under section 5101.35 of the Revised Code, present 323
evidence of the process for appropriate assistance in choosing 324
providers; 325~~

~~(4)(3) If the county board is certified under section 326
5123.161 of the Revised Code to provide the services and agrees to 327~~

provide the services to the individual and the individual chooses 328
the county board to provide the services, furnish, in accordance 329
with the county board's medicaid provider agreement and for the 330
authorized reimbursement rate, the services the individual 331
requires; 332

~~(5)~~(4) Monitor the services provided to the individual and 333
ensure the individual's health, safety, and welfare. The 334
monitoring shall include quality assurance activities. If the 335
county board provides the services, the department of mental 336
retardation and developmental disabilities shall also monitor the 337
services. 338

~~(6)~~(5) Develop, with the individual and the provider of the 339
individual's services, an effective individualized service plan 340
that includes coordination of services, recommend that the 341
departments of mental retardation and developmental disabilities 342
and job and family services approve the plan, and implement the 343
plan unless either department disapproves it; 344

~~(7)~~(6) Have an investigative agent conduct investigations 345
under section 5126.313 of the Revised Code that concern the 346
individual; 347

~~(8)~~(7) Have a service and support administrator perform the 348
duties under division (B)(9) of section 5126.15 of the Revised 349
Code that concern the individual. 350

(B) A county board shall perform its medicaid local 351
administrative authority under this section in accordance with all 352
of the following: 353

(1) The county board's plan that the department of mental 354
retardation and developmental disabilities approves under section 355
5123.046 of the Revised Code; 356

(2) All applicable federal and state laws; 357

(3) All applicable policies of the departments of mental 358
retardation and developmental disabilities and job and family 359
services and the United States department of health and human 360
services; 361

(4) The department of job and family services' supervision 362
under its authority under section 5111.01 of the Revised Code to 363
act as the single state medicaid agency; 364

(5) The department of mental retardation and developmental 365
disabilities' oversight. 366

(C) The departments of mental retardation and developmental 367
disabilities and job and family services shall communicate with 368
and provide training to county boards regarding medicaid local 369
administrative authority granted by this section. The 370
communication and training shall include issues regarding audit 371
protocols and other standards established by the United States 372
department of health and human services that the departments 373
determine appropriate for communication and training. County 374
boards shall participate in the training. The departments shall 375
assess the county board's compliance against uniform standards 376
that the departments shall establish. 377

(D) A county board may not delegate its medicaid local 378
administrative authority granted under this section but may 379
contract with a person or government entity, including a council 380
of governments, for assistance with its medicaid local 381
administrative authority. A county board that enters into such a 382
contract shall notify the director of mental retardation and 383
developmental disabilities. The notice shall include the tasks and 384
responsibilities that the contract gives to the person or 385
government entity. The person or government entity shall comply in 386
full with all requirements to which the county board is subject 387
regarding the person or government entity's tasks and 388
responsibilities under the contract. The county board remains 389

ultimately responsible for the tasks and responsibilities. 390

(E) A county board that has medicaid local administrative 391
authority under this section shall, through the departments of 392
mental retardation and developmental disabilities and job and 393
family services, reply to, and cooperate in arranging compliance 394
with, a program or fiscal audit or program violation exception 395
that a state or federal audit or review discovers. The department 396
of job and family services shall timely notify the department of 397
mental retardation and developmental disabilities and the county 398
board of any adverse findings. After receiving the notice, the 399
county board, in conjunction with the department of mental 400
retardation and developmental disabilities, shall cooperate fully 401
with the department of job and family services and timely prepare 402
and send to the department a written plan of correction or 403
response to the adverse findings. The county board is liable for 404
any adverse findings that result from an action it takes or fails 405
to take in its implementation of medicaid local administrative 406
authority. 407

(F) If the department of mental retardation and developmental 408
disabilities or department of job and family services determines 409
that a county board's implementation of its medicaid local 410
administrative authority under this section is deficient, the 411
department that makes the determination shall require that county 412
board do the following: 413

(1) If the deficiency affects the health, safety, or welfare 414
of an individual with mental retardation or other developmental 415
disability, correct the deficiency within twenty-four hours; 416

(2) If the deficiency does not affect the health, safety, or 417
welfare of an individual with mental retardation or other 418
developmental disability, receive technical assistance from the 419
department or submit a plan of correction to the department that 420
is acceptable to the department within sixty days and correct the 421

deficiency within the time required by the plan of correction. 422

Section 2. That existing sections 5126.042 and 5126.055 of 423

the Revised Code are hereby repealed. 424