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Representative Bacon

**Cosponsors: Representatives Setzer, Zehringer, Hughes, McGregor, J.,
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, Stewart, D., Ujvagi, Wachtmann,
Yuko**

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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 made a request 69
to the county board that the individual receive home and 70
community-based services instead of the services the individual 71
received at the time the request for home and community-based 72
services was made to the county board. 73

(C) A county board shall establish a separate waiting list 74
for each of the following categories of services, and may 75
establish separate waiting lists within the waiting lists: 76

(1) Early childhood services;	77
(2) Educational programs for preschool and school age children;	78 79
(3) Adult services;	80
(4) Service and support administration;	81
(5) Residential services and supported living;	82
(6) Transportation services;	83
(7) Other services determined necessary and appropriate for persons with mental retardation or a developmental disability according to their individual habilitation or service plans;	84 85 86
(8) Family support services provided under section 5126.11 of the Revised Code.	87 88
(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:	89 90 91 92 93
(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:	94 95 96
(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:	97 98 99 100 101 102
(i) Is twenty-two years of age or older;	103
(ii) Receives supported living or family support services.	104
(b) Give an individual who is eligible for home and	105

community-based services and meets both of the following 106
requirements priority over any other individual on a waiting list 107
established under division (C) of this section for home and 108
community-based services that include adult services: 109

(i) Resides in the individual's own home or the home of the 110
individual's family and will continue to reside in that home after 111
enrollment in home and community-based services; 112

(ii) Receives adult services from the county board. 113

(2) As federal medicaid funds become available pursuant to 114
division (D)(1) of this section, give an individual who is 115
eligible for home and community-based services and meets any of 116
the following requirements priority for such services over any 117
other individual on a waiting list established under division (C) 118
of this section: 119

(a) Does not receive residential services or supported 120
living, either needs services in the individual's current living 121
arrangement or will need services in a new living arrangement, and 122
has a primary caregiver who is sixty years of age or older; 123

(b) Is less than twenty-two years of age and has at least one 124
of the following service needs that are unusual in scope or 125
intensity: 126

(i) Severe behavior problems for which a behavior support 127
plan is needed; 128

(ii) An emotional disorder for which anti-psychotic 129
medication is needed; 130

(iii) A medical condition that leaves the individual 131
dependent on life-support medical technology; 132

(iv) A condition affecting multiple body systems for which a 133
combination of specialized medical, psychological, educational, or 134
habilitation services are needed; 135

(v) A condition the county board determines to be comparable 136
in severity to any condition described in divisions (D)(2)(b)(i) 137
to (iv) of this section and places the individual at significant 138
risk of institutionalization. 139

(c) Is twenty-two years of age or older, does not receive 140
residential services or supported living, and is determined by the 141
county board to have intensive needs for home and community-based 142
services on an in-home or out-of-home basis. 143

~~(3) In fiscal years 2002 and 2003, give an individual who is 144
eligible for home and community based services, resides in an 145
intermediate care facility for the mentally retarded or nursing 146
facility, chooses to move to another setting with the help of home 147
and community based services, and has been determined by the 148
department of mental retardation and developmental disabilities to 149
be capable of residing in the other setting, priority over any 150
other individual on a waiting list established under division (C) 151
of this section for home and community based services who does not 152
meet these criteria. The department of mental retardation and 153
developmental disabilities shall identify the individuals to 154
receive priority under division (D)(3) of this section, assess the 155
needs of the individuals, and notify the county boards that are to 156
provide the individuals priority under division (D)(3) of this 157
section of the individuals identified by the department and the 158
individuals' assessed needs. 159~~

(E) Except as provided in division (G) of this section and 160
for a number of years and beginning on a date specified in rules 161
adopted under division (K) of this section, a county board shall 162
give an individual who is eligible for home and community-based 163
services, resides in a nursing facility, and chooses to move to 164
another setting with the help of home and community-based 165
services, priority over any other individual on a waiting list 166
established under division (C) of this section for home and 167

community-based services who does not meet these criteria. 168

(F) If two or more individuals on a waiting list established 169
under division (C) of this section for home and community-based 170
services have priority for the services pursuant to division 171
(D)(1) or (2) or (E) of this section, a county board may use, 172
~~until December 31, 2009,~~ criteria specified in rules adopted under 173
division (K)(2) of this section in determining the order in which 174
the individuals with priority will be offered the services. 175
Otherwise, the county board shall offer the home and 176
community-based services to such individuals in the order they are 177
placed on the waiting list. 178

(G)~~(1)~~ No individual may receive priority for services 179
pursuant to division (D) or (E) of this section over an individual 180
placed on a waiting list established under division (C) of this 181
section on an emergency status. 182

~~(2) No more than four hundred individuals in the state may 183
receive priority for services during the 2008 and 2009 biennium 184
pursuant to division (D)(2)(b) of this section. 185~~

~~(3) No more than a total of seventy five individuals in the 186
state may receive priority for services during state fiscal years 187
2002 and 2003 pursuant to division (D)(3) of this section. 188~~

~~(4) No more than forty individuals in the state may receive 189
priority for services pursuant to division (E) of this section for 190
each year that priority category is in effect as specified in 191
rules adopted under division (K) of this section. 192~~

(H) Prior to establishing any waiting list under this 193
section, a county board shall develop and implement a policy for 194
waiting lists that complies with this section and rules adopted 195
under division (K) of this section. 196

Prior to placing an individual on a waiting list, the county 197
board shall assess the service needs of the individual in 198

accordance with all applicable state and federal laws. The county board shall place the individual on the appropriate waiting list and may place the individual on more than one waiting list. The county board shall notify the individual of the individual's placement and position on each waiting list on which the individual is placed.

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 231
section 121.38 of the Revised Code who requires the home and 232
community-based services provided through a medicaid component 233
that the department of mental retardation and developmental 234
disabilities administers under section 5111.871 of the Revised 235
Code shall receive services through that medicaid component. For 236
all other services, a child subject to a determination made 237
pursuant to section 121.38 of the Revised Code shall be treated as 238
an emergency by the county boards and shall not be subject to a 239
waiting list. 240

(J) Not later than the fifteenth day of March of each 241
even-numbered year, each county board shall prepare and submit to 242
the director of mental retardation and developmental disabilities 243
its recommendations for the funding of services for individuals 244
with mental retardation and developmental disabilities and its 245
proposals for reducing the waiting lists for services. 246

(K)(1) The department of mental retardation and developmental 247
disabilities shall adopt rules in accordance with Chapter 119. of 248
the Revised Code governing waiting lists established under this 249
section. The rules shall include procedures to be followed to 250
ensure that the due process rights of individuals placed on 251
waiting lists are not violated. 252

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

such priority for the services. ~~The rules adopted under division~~ 263
~~(K)(2) of this section shall cease to have effect December 31,~~ 264
~~2009.~~ 265

(3) As part of the rules adopted under this division, the 266
department shall adopt rules specifying both of the following for 267
the priority category established under division (E) of this 268
section: 269

(a) The number of years, which shall not exceed five, that 270
the priority category will be in effect; 271

(b) The date that the priority category is to go into effect. 272

(L) The following shall take precedence over the applicable 273
provisions of this section: 274

(1) Medicaid rules and regulations; 275

(2) Any specific requirements that may be contained within a 276
medicaid state plan amendment or waiver program that a county 277
board has authority to administer or with respect to which it has 278
authority to provide services, programs, or supports. 279

Sec. 5126.055. (A) Except as provided in section 5126.056 of 280
the Revised Code, a county board of mental retardation and 281
developmental disabilities has medicaid local administrative 282
authority to, and shall, do all of the following for an individual 283
with mental retardation or other developmental disability who 284
resides in the county that the county board serves and seeks or 285
receives home and community-based services: 286

(1) Perform assessments and evaluations of the individual. As 287
part of the assessment and evaluation process, the county board 288
shall do all of the following: 289

(a) Make a recommendation to the department of mental 290
retardation and developmental disabilities on whether the 291
department should approve or deny the individual's application for 292

the services, including on the basis of whether the individual 293
needs the level of care an intermediate care facility for the 294
mentally retarded provides; 295

(b) If the individual's application is denied because of the 296
county board's recommendation and the individual requests a 297
hearing under section 5101.35 of the Revised Code, present, with 298
the department of mental retardation and developmental 299
disabilities or department of job and family services, whichever 300
denies the application, the reasons for the recommendation and 301
denial at the hearing; 302

(c) If the individual's application is approved, recommend to 303
the departments of mental retardation and developmental 304
disabilities and job and family services the services that should 305
be included in the individual's individualized service plan and, 306
if either department approves, reduces, denies, or terminates a 307
service included in the individual's individualized service plan 308
under section 5111.871 of the Revised Code because of the county 309
board's recommendation, present, with the department that made the 310
approval, reduction, denial, or termination, the reasons for the 311
recommendation and approval, reduction, denial, or termination at 312
a hearing under section 5101.35 of the Revised Code. 313

~~(2) If the individual has been identified by the department 314
of mental retardation and developmental disabilities as an 315
individual to receive priority for home and community based 316
services pursuant to division (D)(3) of section 5126.042 of the 317
Revised Code, assist the department in expediting the transfer of 318
the individual from an intermediate care facility for the mentally 319
retarded or nursing facility to the home and community based 320
services; 321~~

~~(3) In accordance with the rules adopted under section 322
5126.046 of the Revised Code, perform the county board's duties 323
under that section regarding assisting the individual's right to 324~~

choose a qualified and willing provider of the services and, at a 325
hearing under section 5101.35 of the Revised Code, present 326
evidence of the process for appropriate assistance in choosing 327
providers; 328

~~(4)~~(3) If the county board is certified under section 329
5123.161 of the Revised Code to provide the services and agrees to 330
provide the services to the individual and the individual chooses 331
the county board to provide the services, furnish, in accordance 332
with the county board's medicaid provider agreement and for the 333
authorized reimbursement rate, the services the individual 334
requires; 335

~~(5)~~(4) Monitor the services provided to the individual and 336
ensure the individual's health, safety, and welfare. The 337
monitoring shall include quality assurance activities. If the 338
county board provides the services, the department of mental 339
retardation and developmental disabilities shall also monitor the 340
services. 341

~~(6)~~(5) Develop, with the individual and the provider of the 342
individual's services, an effective individualized service plan 343
that includes coordination of services, recommend that the 344
departments of mental retardation and developmental disabilities 345
and job and family services approve the plan, and implement the 346
plan unless either department disapproves it; 347

~~(7)~~(6) Have an investigative agent conduct investigations 348
under section 5126.313 of the Revised Code that concern the 349
individual; 350

~~(8)~~(7) Have a service and support administrator perform the 351
duties under division (B)(9) of section 5126.15 of the Revised 352
Code that concern the individual. 353

(B) A county board shall perform its medicaid local 354
administrative authority under this section in accordance with all 355

of the following:	356
(1) The county board's plan that the department of mental retardation and developmental disabilities approves under section 5123.046 of the Revised Code;	357 358 359
(2) All applicable federal and state laws;	360
(3) All applicable policies of the departments of mental retardation and developmental disabilities and job and family services and the United States department of health and human services;	361 362 363 364
(4) The department of job and family services' supervision under its authority under section 5111.01 of the Revised Code to act as the single state medicaid agency;	365 366 367
(5) The department of mental retardation and developmental disabilities' oversight.	368 369
(C) The departments of mental retardation and developmental disabilities and job and family services shall communicate with and provide training to county boards regarding medicaid local administrative authority granted by this section. The communication and training shall include issues regarding audit protocols and other standards established by the United States department of health and human services that the departments determine appropriate for communication and training. County boards shall participate in the training. The departments shall assess the county board's compliance against uniform standards that the departments shall establish.	370 371 372 373 374 375 376 377 378 379 380
(D) A county board may not delegate its medicaid local administrative authority granted under this section but may contract with a person or government entity, including a council of governments, for assistance with its medicaid local administrative authority. A county board that enters into such a contract shall notify the director of mental retardation and	381 382 383 384 385 386

developmental disabilities. The notice shall include the tasks and 387
responsibilities that the contract gives to the person or 388
government entity. The person or government entity shall comply in 389
full with all requirements to which the county board is subject 390
regarding the person or government entity's tasks and 391
responsibilities under the contract. The county board remains 392
ultimately responsible for the tasks and responsibilities. 393

(E) A county board that has medicaid local administrative 394
authority under this section shall, through the departments of 395
mental retardation and developmental disabilities and job and 396
family services, reply to, and cooperate in arranging compliance 397
with, a program or fiscal audit or program violation exception 398
that a state or federal audit or review discovers. The department 399
of job and family services shall timely notify the department of 400
mental retardation and developmental disabilities and the county 401
board of any adverse findings. After receiving the notice, the 402
county board, in conjunction with the department of mental 403
retardation and developmental disabilities, shall cooperate fully 404
with the department of job and family services and timely prepare 405
and send to the department a written plan of correction or 406
response to the adverse findings. The county board is liable for 407
any adverse findings that result from an action it takes or fails 408
to take in its implementation of medicaid local administrative 409
authority. 410

(F) If the department of mental retardation and developmental 411
disabilities or department of job and family services determines 412
that a county board's implementation of its medicaid local 413
administrative authority under this section is deficient, the 414
department that makes the determination shall require that county 415
board do the following: 416

(1) If the deficiency affects the health, safety, or welfare 417
of an individual with mental retardation or other developmental 418

disability, correct the deficiency within twenty-four hours; 419

(2) If the deficiency does not affect the health, safety, or 420
welfare of an individual with mental retardation or other 421
developmental disability, receive technical assistance from the 422
department or submit a plan of correction to the department that 423
is acceptable to the department within sixty days and correct the 424
deficiency within the time required by the plan of correction. 425

Section 2. That existing sections 5126.042 and 5126.055 of 426
the Revised Code are hereby repealed. 427