

**House Bill 1 - DD Update**  
**As Signed by Governor Strickland**

The FY 10-11 state budget presented unprecedented challenges for the Administration and lawmakers. Faced with never-ending budget shortfalls, several interim budget measures became necessary before lawmakers reached a final agreement on the state budget. The Governor finally signed the budget on July 17, 2009.

The budget was complicated by a \$3.2 billion shortfall that was announced at the beginning of conference committee negotiations. As a result, significant cuts were necessary, in addition to revenues from Video Lottery Terminals and other cost cutting and cash management strategies. The chart below shows how the Department of Developmental Disabilities fared throughout the budget process.

	<b>Current FY 09 levels</b>	<b>As passed by the House (FY10/FY11)</b>	<b>As passed by the Senate (FY10/FY11)</b>	<b>Conference committee report (FY10/FY11)</b>
Central Administration	\$5,485,500	\$5,485,500/ \$5,485,500	\$4,936,950/ \$4,936,950	\$4,662,675/ \$4,662,675
Protective Services (APSI)	\$2,558,619	\$2,558,619/ \$2,558,619	\$2,558,619/ \$2,558,619	\$2,174,826/ \$2,174,826
Residential and Support Services	\$5,608,047	\$5,854,555/ \$5,854,555	\$5,854,555/ \$5,854,555	\$5,854,555/ \$4,854,555
Medicaid Waiver – State Match	\$109,551,380	\$76,940,156/ \$96,995,649	\$76,940,156/ \$96,995,649	\$76,940,156/ \$96,995,649
Family Support Services	\$6,314,397	\$6,616,953/ \$6,616,953	\$6,616,953/ \$6,616,953	\$6,591,953/ \$6,591,953
County Board Subsidies*	\$57,964,005	\$82,093,807/ \$49,338,483	\$82,093,807/ \$49,338,483	\$66,986,448/ \$62,259,252
Tax Equity	\$14,000,000	\$14,000,000/ \$14,000,000	\$14,000,000/ \$14,000,000	\$14,000,000/ \$14,000,000
Subsidy – Federal Stimulus	\$0	\$0/ \$23,185,824	\$0/ \$23,185,824	\$0/ \$0
Martin Settlement	\$22,675,901	\$36,841,819/ \$36,841,819	\$36,841,819/ \$36,841,819	\$26,799,300/ \$31,234,500
Developmental Center Operations	\$95,247,156	\$72,874,333/ \$80,147,778	\$72,874,333/ \$80,147,778	\$72,091,333/ \$79,364,778

\*County Board subsidy funding level for '09 reflects cuts made after several budget corrections. FY 08 funding level was \$87,270,048.

In addition to the above appropriations, several language items of interest were included, including:

- Language to require a summary page for individual services plans to clearly outline the amount, duration, and scope of services under the plan
- Language asking the department to address wages, benefits, training and supervision of direct support staff as a part of their fiscal plan for HCBS DD waivers
- Requirement that ODODD adopt rules to ensure the payment of HCB waivers and to reduce the number of individuals required to be enrolled in HCBS in the event of a county levy failure.
- Eliminates requirement for each county board to have its own Business and Medicaid managers, allowing for the ability for county boards to share services.
- Requires that Developmental Centers pay the ICF/MR franchise permit fee, allowing for the leveraging of the fee in future years for use in funding the DCs.

All things considered, the budget includes some significant reductions in funding that will affect services at all levels. Other human services systems also saw significant cuts.

- PASSPORT and Assisted Living funds were reduced by \$30 million over the biennium.
  - Cuts in behavioral health will decrease community addiction prevention and treatment services by 30 percent and community mental health services by 6.5 percent.
  - Medicaid optional services for adults are funded with money that is tied up in court over disputes with the tobacco foundation. If the funds aren't freed up soon, optional services will end as scheduled January 1, 2010.
  - Child Welfare child protection funds cut 20%, adoption subsidies reduced, \$47 million in funding also tied up with the tobacco settlement.
  - Nursing homes face \$184 million in unreimbursed franchise fee assessments.
  - Hospitals will see a franchise fee of \$145 million that is unreimbursed.
  - Virtual elimination of the Early Learning Initiative program – from 14,000 enrolled to 1,500.
  - Child care eligibility reduced from 200% FPL to 150%.
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## Language Excerpts

### ISP Summary Page

<b>Sec. 5126.055.</b> (A) Except as provided in section 5126.056	111151
of the Revised Code, a county board of mental retardation and	111152
developmental disabilities has medicaid local administrative	111153
authority to, and shall, do all of the following for an individual	111154
with mental retardation or other developmental disability who	111155
resides in the county that the county board serves and seeks or	111156
receives home and community-based services:	111157
 (1) Perform assessments and evaluations of the individual. As	111158
part of the assessment and evaluation process, the county board	111159
shall do all of the following:	111160
 (a) Make a recommendation to the department of mental	111161
retardation and developmental disabilities on whether the	111162
department should approve or deny the individual's application for	111163
the services, including on the basis of whether the individual	111164
needs the level of care an intermediate care facility for the	111165
mentally retarded provides;	111166
 (b) If the individual's application is denied because of the	111167
county board's recommendation and the individual requests a	111168
hearing under section 5101.35 of the Revised Code, present, with	111169
the department of mental retardation and developmental	111170
disabilities or department of job and family services, whichever	111171
denies the application, the reasons for the recommendation and	111172
denial at the hearing;	111173
 (c) If the individual's application is approved, recommend to	111174
the departments of mental retardation and developmental	111175
disabilities and job and family services the services that should	111176
be included in the individual's individualized service plan and,	111177
if either department approves, reduces, denies, or terminates a	111178
service included in the individual's individualized service plan	111179
under section 5111.871 of the Revised Code because of the county	111180
board's recommendation, present, with the department that made the	111181
approval, reduction, denial, or termination, the reasons for the	111182
recommendation and approval, reduction, denial, or termination at	111183
a hearing under section 5101.35 of the Revised Code.	111184

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(2) In accordance with the rules adopted under section 5126.046 of the Revised Code, perform the county board's duties under that section regarding assisting the individual's right to choose a qualified and willing provider of the services and, at a hearing under section 5101.35 of the Revised Code, present evidence of the process for appropriate assistance in choosing providers;	111185 111186 111187 111188 111189 111190 111191
(3) If the county board is certified under section 5123.161 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services, furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires;	111192 111193 111194 111195 111196 111197 111198
(4) Monitor the services provided to the individual and ensure the individual's health, safety, and welfare. The monitoring shall include quality assurance activities. If the county board provides the services, the department of mental retardation and developmental disabilities shall also monitor the services.	111199 111200 111201 111202 111203 111204
(5) Develop, with the individual and the provider of the individual's services, an effective individualized service plan that includes coordination of services, recommend that the departments of mental retardation and developmental disabilities and job and family services approve the plan, and implement the plan unless either department disapproves it; <u>The individualized service plan shall include a summary page, agreed to by the county board, provider, and individual receiving services, that clearly outlines the amount, duration, and scope of services to be provided under the plan.</u>	111205 111206 111207 111208 111209 111210 111211 111212 111213 111214
(6) Have an investigative agent conduct investigations under section 5126.313 of the Revised Code that concern the individual;	111215 111216
(7) Have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.	111217 111218 111219

(B) A county board shall perform its medicaid local administrative authority under this section in accordance with all of the following:	111220 111221 111222
(1) The county board's plan that the department of mental retardation and developmental disabilities approves under section 5123.046 of the Revised Code;	111223 111224 111225
(2) All applicable federal and state laws;	111226
(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;	111227 111228 111229 111230
(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;	111231 111232 111233
(5) The department of mental retardation and developmental disabilities' oversight.	111234 111235
(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.	111236 111237 111238 111239 111240 111241 111242 111243 111244 111245 111246
(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 developmental disabilities. The notice shall include the tasks and responsibilities that the contract gives to the person or	111247 111248 111249 111250 111251 111252 111253 111254

government entity. The person or government entity shall comply in full with all requirements to which the county board is subject regarding the person or government entity's tasks and responsibilities under the contract. The county board remains ultimately responsible for the tasks and responsibilities.

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

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

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

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

Direct Support Staff wages, benefits, training, and supervision

**Section 337.30.40. FISCAL PLAN FOR HOME AND COMMUNITY-BASED  
WAIVER SERVICES** 133726  
133727

Not later than December 31, 2009, the Director of 133728  
Developmental Disabilities shall submit a plan to the Director of 133729  
Job and Family Services with recommendations for actions to be 133730  
taken addressing the fiscal sustainability of home and 133731  
community-based services as defined in section 5123.01 of the 133732  
Revised Code. The plan may include recommendations for all of the 133733  
following: 133734

(A) Changing the ranges in the amount the Medicaid program 133735  
will pay per individual for the home and community-based services; 133736

(B) Establishing one or more maximum amounts that the 133737  
Medicaid program will pay per individual for the home and 133738  
community-based services; 133739

(C) Modifying the methodology used in establishing payment 133740  
rates for providers, including the methodology's component that 133741  
reflects wages and benefits for persons providing direct care and 133742  
the component that reflects training and direct supervision of 133743  
those persons. 133744

County DD Board Levy Failure

**Sec. 5123.0413.** ~~(A)~~ The department of mental retardation and 110309  
developmental disabilities, in consultation with the department of 110310  
job and family services, office of budget and management, and 110311  
county boards of mental retardation and developmental 110312  
disabilities, shall adopt rules in accordance with Chapter 119. of 110313  
the Revised Code ~~no later than January 1, 2002, establishing a~~ 110314  
~~method of paying for extraordinary costs, including extraordinary~~ 110315  
~~costs for services to individuals with mental retardation or other~~ 110316  
~~developmental disability, and ensure the availability of adequate~~ 110317  
~~funds to establish both of the following~~ in the event a county 110318  
property tax levy for services for individuals with mental 110319  
retardation or other developmental disability fails. ~~The rules may~~ 110320  
~~provide for using and managing either or both of the following:~~ 110321

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(1) <del>A state MR/DD risk fund, which is hereby created in the state treasury;</del>	110322 110323
(2) <del>A state insurance against MR/DD risk fund, which is hereby created in the state treasury.</del>	110324 110325
(B) <del>Beginning January 1, 2002, the department of job and family services may not request approval from the United States secretary of health and human services to increase the number of slots for home and community based services until the rules required by division (A) of this section are in effect;</del>	110326 110327 110328 110329 110330
<u>(A) A method of paying for home and community-based services;</u>	110331
<u>(B) A method of reducing the number of individuals a county board would otherwise be required by section 5126.0512 of the Revised Code to ensure are enrolled in a medicaid waiver component under which home and community-based services are provided.</u>	110332 110333 110334 110335
<b>Sec. 5126.0512.</b> (A) As used in this section, "medicaid waiver component" means a medicaid waiver component as defined in section 5111.85 of the Revised Code under which home and community-based services are provided.	111292 111293 111294 111295
(B) Effective July 1, 2007, <u>and except as provided in rules adopted under section 5123.0413 of the Revised Code,</u> each county board of mental retardation and developmental disabilities shall ensure, for each medicaid waiver component, that the number of individuals eligible under section 5126.041 of the Revised Code for services from the county board who are enrolled in a medicaid waiver component is no less than the sum of the following:	111296 111297 111298 111299 111300 111301 111302
(1) The number of individuals eligible for services from the county board who are enrolled in the medicaid waiver component on June 30, 2007;	111303 111304 111305
(2) The number of medicaid waiver component slots the county board requested before July 1, 2007, that were assigned to the county board before that date but in which no individual was enrolled before that date.	111306 111307 111308 111309
(C) An individual enrolled in a medicaid waiver component	111310

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after March 1, 2007, due to an emergency reserve capacity waiver	111311
assignment shall not be counted in determining the number of	111312
individuals a county board must ensure under division (B) of this	111313
section are enrolled in a medicaid waiver component.	111314
 (D) An individual who is enrolled in a medicaid waiver	111315
component to comply with the terms of the consent order filed	111316
March 5, 2007, in <i>Martin v. Strickland</i> , Case No. 89-CV-00362, in	111317
the United States district court for the southern district of	111318
Ohio, eastern division, shall be excluded in determining whether a	111319
county board has complied with division (B) of this section.	111320
 (E) A county board shall make as many requests for	111321
individuals to be enrolled in a medicaid waiver component as	111322
necessary for the county board to comply with division (B) of this	111323
section.	111324
 <b>Sec. 5126.19.</b> (A) The director of mental retardation and	111325
developmental disabilities may grant temporary funding from the	111326
community mental retardation and developmental disabilities trust	111327
fund based on allocations to county boards of mental retardation	111328
and developmental disabilities. The director may distribute all or	111329
part of the funding directly to a county board, the persons who	111330
provide the services for which the funding is granted, or persons	111331
with mental retardation or developmental disabilities who are to	111332
receive those services.	111333
 (B) Funding granted under division (A) of this section shall	111334
be granted according to the availability of moneys in the fund and	111335
priorities established by the director. Funding may be granted for	111336
any of the following purposes:	111337
 (1) Behavioral or short-term interventions for persons with	111338
mental retardation or developmental disabilities that assist them	111339
in remaining in the community by preventing institutionalization;	111340
 (2) Emergency respite care services, as defined in section	111341
5126.11 of the Revised Code;	111342
 (3) Family support services provided under section 5126.11 of	111343
the Revised Code;	111344

(4) Supported living, as defined in section 5126.01 of the Revised Code;	111345 111346
(5) Staff training for county board employees, employees of providers of residential services as defined in section 5126.01 of the Revised Code, and other personnel under contract with a county board, to provide the staff with necessary training in serving mentally retarded or developmentally disabled persons in the community;	111347 111348 111349 111350 111351 111352
(6) Short-term provision of early childhood services provided under section 5126.05, adult services provided under sections 5126.05 and 5126.051, and service and support administration provided under section 5126.15 of the Revised Code, when local moneys are insufficient to meet the need for such services due to the successive failure within a two-year period of three or more proposed levies for the services;	111353 111354 111355 111356 111357 111358 111359
(7) Contracts with providers of residential services to maintain persons with mental retardation and developmental disabilities in their programs and avoid institutionalization.	111360 111361 111362
(C) If the trust fund contains more than ten million dollars on the first day of July the director shall use one million dollars for payments under section 5126.18 of the Revised Code, two million dollars for subsidies to county boards for supported living, and one million dollars for subsidies to county boards for early childhood services and adult services provided under section 5126.05 of the Revised Code. Distributions of funds under this division shall be made prior to August 31 of the state fiscal year in which the funds are available. The funds shall be allocated to a county board in an amount equal to the same percentage of the total amount allocated to the county board the immediately preceding state fiscal year.	111363 111364 111365 111366 111367 111368 111369 111370 111371 111372 111373 111374
<del>(D) In addition to making grants under division (A) of this section, the director may use money available in the trust fund for the same purposes that rules adopted under section 5123.0413 of the Revised Code provide for money in the state MR/DD risk fund and the state insurance against MR/DD risk fund, both created under that section, to be used.</del>	111375 111376 111377 111378 111379 111380

County Board Medicaid and Business Managers

<b>Sec. 5126.054.</b> (A) Each county board of mental retardation and developmental disabilities shall, by resolution, develop a three-calendar year plan that includes the following three components:	111055 111056 111057 111058
(1) An assessment component that includes all of the following:	111059 111060
(a) The number of individuals with mental retardation or other developmental disability residing in the county who need the level of care provided by an intermediate care facility for the mentally retarded, may seek home and community-based services, are given priority for the services pursuant to division (D) of section 5126.042 of the Revised Code; the service needs of those individuals; and the projected annualized cost for services;	111061 111062 111063 111064 111065 111066 111067
(b) The source of funds available to the county board to pay the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay;	111068 111069 111070 111071
(c) Any other applicable information or conditions that the department of mental retardation and developmental disabilities requires as a condition of approving the component under section 5123.046 of the Revised Code.	111072 111073 111074 111075
(2) (A preliminary implementation component that specifies the number of individuals to be provided, during the first year that the plan is in effect, home and community-based services pursuant to the priority given to them under divisions (D)(1) and (2) of section 5126.042 of the Revised Code and the types of home and community-based services the individuals are to receive;	111076 111077 111078 111079 111080 111081
(3) A component that provides for the implementation of medicaid case management services and home and community-based services for individuals who begin to receive the services on or after the date the plan is approved under section 5123.046 of the Revised Code. A county board shall include all of the following in the component:	111082 111083 111084 111085 111086 111087

(a) If the department of mental retardation and developmental disabilities or department of job and family services requires, an agreement to pay the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay;	111088 111089 111090 111091 111092
(b) How the services are to be phased in over the period the plan covers, including how the county board will serve individuals on a waiting list established under division (C) of section 5126.042 who are given priority status under division (D)(1) of that section;	111093 111094 111095 111096 111097
(c) Any agreement or commitment regarding the county board's funding of home and community-based services that the county board has with the department at the time the county board develops the component;	111098 111099 111100 111101
(d) Assurances adequate to the department that the county board will comply with all of the following requirements:	111102 111103
(i) To provide the types of home and community-based services specified in the preliminary implementation component required by division (A)(2) of this section to at least the number of individuals specified in that component;	111104 111105 111106 111107
(ii) To use any additional funds the county board receives for the services to improve the county board's resource capabilities for supporting such services available in the county at the time the component is developed and to expand the services to accommodate the unmet need for those services in the county;	111108 111109 111110 111111 111112
(iii) To employ <u>or contract with</u> a business manager <del>who is either a new employee who has earned at least a bachelor's degree in business administration or a current employee who has the equivalent experience of a bachelor's degree in business administration</del> <u>or enter into an agreement with another county board of developmental disabilities that employs or contracts with a business manager to have the business manager serve both county boards. If the county board will employ a new employee, the county board shall include in the component a timeline for employing the employee. No superintendent of a county board may serve as the county board's business manager.</u>	111113 111114 111115 111116 111117 111118 111119 111120 111121 111122 111123

(iv) To employ or contract with a medicaid services manager	111124
<del>who is either a new employee who has earned at least a bachelor's</del>	111125
<del>degree or a current employee who has the equivalent experience of</del>	111126
<del>a bachelor's degree</del> <u>or enter into an agreement with another county</u>	111127
<u>board of developmental disabilities that employs or contracts</u>	111128
<u>with a medicaid services manager to have the medicaid services</u>	111129
<u>manager serve both county boards.</u> <del>If the county board will employ</del>	111130
<del>a new employee, the county board shall include in the component a</del>	111131
<del>timeline for employing the employee. Two or three county boards</del>	111132
<del>that have a combined total enrollment in county board services</del>	111133
<del>not exceeding one thousand individuals as determined pursuant to</del>	111134
<del>certifications made under division (B) of section 5126.12 of the</del>	111135
<del>Revised Code may satisfy this requirement by sharing the services</del>	111136
<del>of a medicaid services manager or using the services of a medicaid</del>	111137
<del>services manager employed by or under contract with a regional</del>	111138
<del>council that the county boards establish under section 5126.13 of</del>	111139
<del>the Revised Code.</del> <u>No superintendent of a county board may serve</u>	111140
<u>as the county board's medicaid services manager.</u>	111141
(e) Programmatic and financial accountability measures and	111142
projected outcomes expected from the implementation of the plan;	111143
(f) Any other applicable information or conditions that the	111144
department requires as a condition of approving the component	111145
under section 5123.046 of the Revised Code.	111146
(B) A county board whose plan developed under division (A) of	111147
this section is approved by the department under section 5123.046	111148
of the Revised Code shall update and renew the plan in accordance	111149
with a schedule the department shall develop.	111150