

## Proposed New Rule 5123:2-8-01 Developmental Disabilities Level of Care

## **Clearance Period: January 22 to February 5, 2015 Comments Received with Department's Responses**

Comment	By Whom	Department's Response
Much of the specificity regarding the	Anita Allen, Vice President, Ohio	The Department convened the Level
actual review criteria has been	Provider Resource Association	of Care Workgroup in January 2012.
eliminated by the replacement of 5160-		The Workgroupwhich included
3-07, which contains many of the		representatives of The Arc, Disability
definitions and criteria used in the level		Rights Ohio, the Ohio Association of
of care process today. Under the new		County Boards, the Ohio Health Care
proposals, there are very few definitions		Association, and the Ohio Provider
and the remaining Ohio Department of		Resource Associationdetermined it
Medicaid rules do not provide much		would be best to operationalize the
guidance or definition either. We are		detail in the online developmental
concerned that the new rule does not		disabilities level of care tool and not
fully articulate the criteria used in the		in the rule. The rule was drafted
level of care (LOC) process. For example,		based on the direction provided by
in the Business Impact Analysis, there is		the Workgroup. Paragraph (C) of the
reference to a pilot project and a tool		rule articulates the criteria necessary
that is used regarding LOC. Is the tool		for a developmental disabilities level
something that will be implemented off-		of care. The questions from the
line and not incorporated by reference		online tool are posted under "Waiver
into the LOC rule? The current LOC		Enrollment" at the Department's
criteria are much more specific in rule		Forms webpage
and the new proposal seeks to make the		(http://dodd.ohio.gov/Forms/Pages/
criteria more vague without specific		default.aspx). The Level of Care
definitions. We are generally opposed to		Workgroup developed and approved
the Department setting standards and		the entire developmental disabilities
criteria outside the scope of a rule which		level of care assessment.
may initially have public input, but can be		
changed and modified by the		
Department with little to no oversight,		
notice, or due process. We would always		
advocate that issues that impact the lives		
of those we serve be discussed and		
vetted through a transparent public and		
lawful process. We would prefer that the		
definitions and tool remain in the rule or		
as an attachment to the rule.		

Comment	By Whom	Department's Response
(B)(7)(a): Anyone completing a level of care (LOC) must complete Department- approved training. This goes for Service and Support Administrators too as it is also a LOC for Home and Community- Based Services waivers.	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	Yes; that is correct.
(B)(7)(b)(iii): When would a person designated by the Department be conducting level of care? It is not clear.	Anita Allen, Vice President, Ohio Provider Resource Association	For example, when the Department contracted with CareStar to perform administrative functions for the Transitions Developmental Disabilities Waiver.
(B)(11): There is reference to rules 5160-3-06 through 5160-3-09 of the Administrative Code. Again, as we mentioned previously, the Department is proposing to eliminate and replace 5160- 3-07 regarding the definitions currently used for Intermediate Care Facility level of care. This leaves a big hole in the definition section and it is not replaced with anything under this proposal. We would prefer that there be a common understanding and definition section in rule as there is currently.	Anita Allen, Vice President, Ohio Provider Resource Association	<ul> <li>The Ohio Department of Developmental Disabilities is not proposing to eliminate rule 5160-3-07 as it is an Ohio Department of Medicaid (ODM) rule. The Department and ODM are coordinating efforts to make their respective level of care rule actions effective July 1, 2015. Again, based on the direction provided by the Level of Care Workgroup convened by the Department, the detail for the Developmental Disabilities Level of Care is in the online tool.</li> <li>Paragraph (B)(11) has been revised to reflect the correct ODM rules:</li> <li>5160-3-06 (Protective Level of Care),</li> <li>5160-3-08 (Nursing Facility Level of Care for an Adult), and</li> <li>5160-3-09 (Nursing Facility Level of Care for a Child).</li> <li>The ODM rules are being developed through ODM's Front Door Stakeholder group which includes the Ohio Provider Resource Association.</li> <li>Drafts of these rules were forwarded to the Front Door Stakeholder group on February 11.</li> </ul>

Comment	By Whom	Department's Response
(C)(1) & (C)(2): We have significant	Amber Gibbs and Lori Stanfa,	Rule 5123:2-8-01 does not pertain to
concerns with County Boards' ability to	Service and Support	eligibility for county board of
use the level of care (LOC) tool or the	Administration Statewide	developmental disabilities services.
Ohio Eligibility Determination	Workgroup	The rule sets forth the criteria and
Instrument/ Children's Ohio Eligibility		process for individuals who are
Determination Instrument (OEDI/COEDI)		enrolled or seeking enrollment in a
to determine county board eligibility.		Medicaid Home and Community-
This allows for two processes that are		Based Services waiver or who reside
not uniform and for many variations		in or seeking admission to an
county to county. This will likely increase		Intermediate Care Facility.
the amount of time it takes to be		
determined eligible from one county to		Determination of eligibility for county
another (if they are using different tools)		board services is addressed in rule
and will likely lead to frustration for		5123:2-1-02 of the Administrative
individuals/families upon move from one		Code. In accordance with rule
county to another. The group feels that		5123:2-1-02 and in an effort to
the LOC tool should only be used to		simplify the process for individuals
determine LOC for those seeking		who receive services and for county
enrollment on a waiver or admission to		boards, the Department agreed to
an ICF. If our first comment is not		allow county boards <i>that choose to</i>
considered and the LOC may be used for		<i>do so</i> to use the level of care (LOC)
County Board eligibility (again, we		tool to determine county board
strongly disagree) then there is needed		eligibility for persons age 10 and
clarification within the rule itself in		older, instead of requiring county
paragraphs (C)(1) and (C)(2) that the LOC		boards to use two different tools.
tool <u>cannot</u> be used for eligibility under		Testing of the LOC tool demonstrated
the age of 10.		that there is negligible difference
		between determinations made using
		the LOC tool and the Ohio Eligibility
		Determination Instrument/Children's
		Ohio Eligibility Determination
		Instrument.
(D)(2)(a): Please define "clinician."	Amber Gibbs and Lori Stanfa,	By "clinician" we mean the three
	Service and Support	professionals described in paragraphs
	Administration Statewide	(D)(2)(a)(i), (D)(2)(a)(ii), and
	Workgroup	(D)(2)(a)(iii). To eliminate confusion,
		the term "clinician" was removed
		from lead-in paragraph (D)(2)(a) as
		indicated:
		A clinician's verification
		Verification of the presence of a
		substantial developmental delay
		or congenital condition for
		individuals

Comment	By Whom	Department's Response
(D)(4): It appears that the Department	Stephen Mould,	Only individuals determined to need
will no longer use the date of admission	Communications Director, Ohio	active treatment may be admitted to
for payment if the physician's signature is	Health Care Association	an Intermediate Care Facility (ICF). A
obtained within 30 days, instead insisting		preliminary evaluation is required for
on prior approval. This could delay the		all admission decisions. The level of
admission of an individual with care		care (LOC) assessment is part of the
needs, or the provider takes the risk of		preliminary evaluation. In
no payment for admitting and therefore		accordance with 42 CFR 483.440
providing a Medicaid service to an		(c)(ii)(3), the preliminary evaluation
eligible citizen awaiting the approval. If		must be conducted prior to
the level of care is not approved, the		admission; an assessment or
provider is not paid for services. While		reassessment to supplement the
there are provisions for "emergency		preliminary evaluation is required
placement," this could lead to further		within 30 days of admission. Under
delays in meeting the needs of citizens		the new rule, ICFs may also accept a
with disabilities. Can you refresh my		current (i.e., conducted within the
memory on any discussion and the		last 12 months) LOC assessment for
reasons for this change?		an individual enrolled in a waiver who
		is seeking admission to an ICF. In
The only way to admit to an Intermediate	Lori Stanfa, Medicaid Services	these situations, the ICF must only
Care Facility in non-emergency situation	Coordinator, Ohio Association of	attest to the fact that the current LOC
is if the Department approves the level of	County Boards Serving People	assessment reflects the individual's
care prior to admission. We have always	with Developmental Disabilities	present status. When individuals are
had a couple weeks leeway for this in the		admitted in an emergency situation,
past.		paragraph (D)(4) sets forth that an ICF
		has up to seven days after the date of
		admission to submit the LOC
		recommendation.
(D)(4): We recommend that "approved	Stephen Mould,	We incorporated your suggestion in
by" be replaced by "submitted to." This	Communications Director, Ohio	paragraphs (D)(3) and (D)(4).
would follow the same requirement as	Health Care Association	
for emergency placement and allow a		
degree of protection to providers while		
accomplishing the purpose.		

Comment	By Whom	Department's Response
(D)(5) & (D)(6): Notification to the	Lori Stanfa, Medicaid Services	By "transfers," we simply meant
Department must occur on all transfers	Coordinator, Ohio Association of	movement of an individual from a
within 3 days. What is the definition of	County Boards Serving People	waiver or Intermediate Care Facility
"transfers?"	with Developmental Disabilities	(ICF) to any of the listed alternative
	-	settings. This movement may be
		temporary, as when an individual
		transfers from a waiver or ICF for a
		short-term hospital admission. Based
		on your question, however, we
		replaced "transfers" (which may be
		interpreted to have a more specific
		meaning in ICF settings) with
		"moves."
		Please note that a new level of care
		(LOC) will not be required upon
		returning to the waiver setting or ICF
		as long as the county board or ICF
		attests, via the Department's
		Notification of Individual Change of
		Status process, that the individual
		continues to meet LOC.
(D)(5) & (D)(6): The proposed deadline is	Amber Gibbs and Lori Stanfa,	Notification of an individual's move is
3 days for notification to the	Service and Support	made via the Department's
Department. We request that you	Administration Statewide	Notification of Individual Change of
reconsider and substitute 5 days as the	Workgroup	Status (NICS) process. We recognize
deadline instead of 3.	5	that the county board may not always
		be immediately aware of these
		situations. The timeline becomes
		most important when an individual
		receives daily waiver services. The
		NICS becomes more critical as the
		Ohio Department of Medicaid retires
		the Client Registry Information
		System-Enhanced (CRIS-E) and
		implements the new eligibility system
		and as Payment Authorization for
		Waiver Services (PAWS) integration
		takes shape. The electronic NICS will
		signal the suspension of waiver
		payments in the other systems and
		replace the manual entry we do
		today. We will not disenroll an
		-
		individual from a waiver based upon
		individual from a waiver based upon a delay in NICS submission
<b>(D)(8):</b> It appears that a new level of	Lori Stanfa. Medicaid Services	a delay in NICS submission.
<b>(D)(8):</b> It appears that a new level of care is due to the department whenever	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of	-
<b>(D)(8):</b> It appears that a new level of care is due to the department whenever an individual may have experienced a	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People	a delay in NICS submission.

Comment	By Whom	Department's Response
(D)(9)(b): Under current law, there is a	Anita Allen, Vice President, Ohio	A denial of level of care (LOC) for the
check and balance on the Department in	Provider Resource Association	reason that the individual does not
the level of care (LOC) process when		meet the criteria continues to require
there is a denial. In addition to the face-		that Department personnel who are
to-face and medical records		Qualified Intellectual Disability
requirements, current law requires that		Professionals (QIDP) conduct a face-
authorized Department personnel, other		to-face assessment of the individual
than the Qualified Intellectual Disability		and review medical records that
Professional or nurse who conducted the		accurately reflect the individual's
face-to-face assessment, must review the		condition. Having Department staff
face-to-face assessment and make the		conduct a face-to-face assessment is
final LOC decision before a denial of LOC		the additional layer of check and
can be made. This additional layer of		balance. Having another Department
check and balance on denials is missing		employee review the assessment is
from the proposal. We believe that this		not necessary; all evaluators must
is an important step that is noticeably		complete training designed to ensure
absent in the proposal and one meant to		inter-evaluator reliability and scoring
protect individuals from denial of LOC.		of the tool is based on an algorithm
		which eliminates subjectivity.
(D)(11): Federal financial participation	Lori Stanfa, Medicaid Services	This is consistent with existing Ohio
shall not be paid prior to the level of care	Coordinator, Ohio Association of	Department of Medicaid rule 5160-3-
effective date. Why?	County Boards Serving People	15.3 which sets forth that vendor
	with Developmental Disabilities	payment may be initiated to an
		Intermediate Care Facility (ICF) only
		when the applicant is determined to
		need an ICF level of care according to
		the criteria specified in rule 5160-3-
		07 of the Administrative Code.