

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
<p>Much of the specificity regarding the actual review criteria has been eliminated by the replacement of 5160-3-07, which contains many of the definitions and criteria used in the level of care process today. Under the new proposals, there are very few definitions and the remaining Ohio Department of Medicaid rules do not provide much guidance or definition either. We are concerned that the new rule does not fully articulate the criteria used in the level of care (LOC) process. For example, in the Business Impact Analysis, there is reference to a pilot project and a tool that is used regarding LOC. Is the tool something that will be implemented off-line and not incorporated by reference into the LOC rule? The current LOC criteria are much more specific in rule and the new proposal seeks to make the criteria more vague without specific definitions. We are generally opposed to the Department setting standards and criteria outside the scope of a rule which 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.</p>	<p>Anita Allen, Vice President, Ohio Provider Resource Association</p>	<p>The Department convened the Level of Care Workgroup in January 2012. The Workgroup--which included representatives of The Arc, Disability Rights Ohio, the Ohio Association of County Boards, the Ohio Health Care Association, and the Ohio Provider Resource Association--determined it would be best to operationalize the detail in the online developmental disabilities level of care tool and not in the rule. The rule was drafted based on the direction provided by the Workgroup. Paragraph (C) of the rule articulates the criteria necessary for a developmental disabilities level of care. The questions from the online tool are posted under "Waiver Enrollment" at the Department's Forms webpage (http://dodd.ohio.gov/Forms/Pages/default.aspx). The Level of Care Workgroup developed and approved the entire developmental disabilities level of care assessment.</p>

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(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	<p>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.</p> <p>Paragraph (B)(11) has been revised to reflect the correct ODM rules:</p> <ul style="list-style-type: none"> • 5160-3-06 (Protective Level of Care), • 5160-3-08 (Nursing Facility Level of Care for an Adult), and • 5160-3-09 (Nursing Facility Level of Care for a Child). <p>The ODM rules are being developed through ODM's Front Door Stakeholder group which includes the Ohio Provider Resource Association. Drafts of these rules were forwarded to the Front Door Stakeholder group on February 11.</p>

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

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(D)(5) & (D)(6): Notification to the Department must occur on all transfers within 3 days. What is the definition of "transfers?"	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	<p>By "transfers," we simply meant movement of an individual from a waiver or Intermediate Care Facility (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."</p> <p>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.</p>
(D)(5) & (D)(6): The proposed deadline is 3 days for notification to the Department. We request that you reconsider and substitute 5 days as the deadline instead of 3.	Amber Gibbs and Lori Stanfa, Service and Support Administration Statewide Workgroup	Notification of an individual's move is made via the Department's Notification of Individual Change of Status (NICS) process. We recognize 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 a delay in NICS submission.
(D)(8): It appears that a new level of care is due to the department whenever an individual may have experienced a significant change of condition.	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	Yes; that is correct.

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