

# Know Your Rights - Medicaid Developmental Disabilities Waivers and You

## What is Medicaid?

Medicaid is a joint state and federal program that provides health coverage for low-income individuals and families, pregnant women, people with disabilities, and seniors. Medicaid is a need-based program, but the financial eligibility standard varies based on what program someone is applying for.

## What are Medicaid Home and Community Based Service (HCBS) Waivers?

Medicaid HCBS Waivers are programs that provide supports, services, and health coverage to people with disabilities. HCBS Waiver programs provide care for individuals in the community rather than in an institutional setting. Some HCBS Waiver programs are designed as an alternative to nursing facilities, and others are designed as an alternative to Intermediate Care Facilities (ICFs). This brochure will address the waivers administered by the Department of Developmental Disabilities (DODD), which are designed to keep individuals with developmental or intellectual disabilities in the community as an alternative to care in an ICF.

## What Waivers are available to individuals with developmental or intellectual disabilities?

### Level One

The Level One Waiver is the lowest level of funding of the three Developmental Disabilities Waivers. The Level One Waiver provides up to \$5,325 per year and up to \$8,520 in emergency funding over three years. The Level One Waiver can be used to pay for services and supports such as: homemaker and personal care (HPC), adult day supports, respite, home-delivered meals, transportation to and from employment, career planning, financial planning, and other services.

### Self-Empowered Life Funding (SELF)

The SELF Waiver is the middle level of funding of the three Developmental Disabilities Waivers. The SELF Waiver provides up to \$30,000 in funding for children and up to \$45,000 in funding for adults per year. The SELF Waiver is designed to be participant-directed. The SELF Waiver is a good fit for people who want to be in charge of some of their services. The SELF Waiver can be used to pay for all the same services as the Level One Waiver, and additional services such as: support brokerage, functional behavioral assessment, and other services.

### Individual Options (IO)

The IO Waiver is the highest level of funding of the three Developmental Disabilities Waivers. The County Board of Developmental Disabilities will use a tool called the Ohio Developmental Disabilities Profile for all individuals receiving the IO Waiver to determine the level of funding a

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person is eligible for. The IO Waiver provides many of the same services as the Level One and SELF Waivers. The IO Waiver also can be used to pay for shared living, a program for someone with a developmental disability to get the support they need while living with a paid caregiver.

### **How are these Waivers funded?**

The Level One, SELF, and IO Waivers are jointly funded by the federal government, through the Centers for Medicare and Medicaid (CMS), and the state or county. CMS pays the federal share of these waivers, which is 60%. Usually, the county pays for the remaining 40% of the cost. However, there are situations in which the state pays for the remaining 40% of the cost. Most of the County Boards of Developmental Disabilities rely heavily on local levies for their funding. As a result, there can be variations from county to county.

### **What is the Ohio Assessment for Immediate Need and Current Need?**

The Ohio Assessment for Immediate Need and Current Need is also called the Waiting List Assessment (WLA). The WLA focuses on identifying what services a person needs now and what services they may need in the next 12 months. The WLA became effective on September 1, 2018. The WLA determines whether someone has an immediate need, a current need, or no need as defined by Ohio Administrative Code Section 5123-9-04.

#### Immediate need

Immediate need is defined as a situation that creates a risk of substantial harm to a person, caregiver, or another person if action is not taken within 30 calendar days to reduce the risk.

#### Current need

Current need is defined as an unmet need for home and community-based services within 12 months, as determined by a county board based upon their assessment of the person with disabilities using the waiting list assessment tool. Suppose a person is found to have an immediate need under the assessment. In that case, their County Board of Developmental Disabilities must find a way to meet that need either through a waiver or through other alternative community-based services within 30 days. Suppose a person is found to have a current need under the assessment. In that case, the County Board of Developmental Disabilities can either meet the need with alternative community-based services or place the individual on the waiting list for a waiver.

### **What is the Waiting List?**

There is a Waiting List for the Level One, SELF, and IO Waivers in every county in Ohio. The new Waiting List Assessment rule became effective on September 1, 2018. The new rule says that a county board must first do the WLA and decide whether the person needs Waiver services. If the person is determined to have a current need that cannot be met by alternative community-based services, then they should be placed on the waiting list for a waiver. Under the old rule, county boards generally ordered waiting lists by the date people requested a waiver. Under the old rule, anyone who asked for a waiver could be placed on a waiting list. Under the new rule, a

person must be determined to need waiver services through the WLA to be placed on the waiting list.

Every person who was on a waiting list before September 1, 2018, is now on DODD's "transitional list". This list includes each person's name and the date they first asked for a waiver. Every person on the "transitional list" should have been assessed using the WLA by December 31, 2020. If the WLA determined that the person did not have an immediate or current need, they were removed from the list. Individuals who were removed from the waiting list have the right to appeal that decision by requesting a state hearing within 90 days of the notice of the county board's decision. Anyone removed from the list can also ask for a new WLA to be completed by the county board.

### **What are alternative community-based services?**

Alternative community-based services mean the various programs, funding mechanisms, services, and supports, other than HCBS waiver services, that exist as part of the developmental disability service system and other service systems. For example, community-based services can include Medicaid State Plan services for those who are already eligible for Medicaid, services and supports that the County Board offers to all individuals it serves, job training and coaching through the Ohio Bureau of Vocational Rehabilitation, services through the local school district for children, and services available through an ICF. Suppose potential alternative community-based services are identified and recommended in the Waiting List Assessment as options to meet a person's immediate or current needs. In that case, the county board should follow up to verify the resources are (1) actually available to the person and (2) successfully meeting the person's needs. For example, if a county board identifies that nursing or aide services may be available through the Medicaid State Plan, they must consider whether the person will qualify for those services and whether those services will be sufficient to meet the person's needs, before denying waiver services. Another issue may be if supports and services are only available on a short-term basis. For example, if someone will receive funding for services through a grant, but the grant is time-limited, it likely cannot meet the person's long-term needs.

### **What are natural supports?**

Natural supports mean help and care that someone gets from their friends, family, or community for free. For example, some family members provide basic personal care, transportation, laundry, meal preparation, or grocery shopping to their adult family members with developmental disabilities. For adults, natural supports are not mandatory or compulsory for family members. In other words, natural supports must be voluntary.

For children under 18, there is some obligation for the child's parent or guardian to provide natural supports. The determination of where the parental responsibilities for minor children end and where needs created because of a person's disability begin is challenging and should be determined case by case. Waiver services should support parents' efforts to care for their children, not relieve them of their reasonable responsibilities.

The natural supports an individual receives can change over time. For example, as caregivers age, they may no longer be able to provide the same level of support. When family members express the need for additional supports to continue providing natural supports, a frank and specific conversation should take place to discuss and plan what care they will provide and what additional support or waiver service is required to maintain the family unit. Additionally, the conversation should include a specific timeline for when additional supports and services are needed.

## **What can I do if a county board of developmental disabilities decides I cannot receive a waiver or reduces my services?**

### The Right to Appeal

Any time the county board decides to reduce, stop, or suspend services, removes a person from the waiting list, or makes an adverse decision about the Waiting List Assessment, you are entitled to receive written notice at least 15 calendar days before the action is to take place. Examples of waiting list decisions that trigger the right to appeal include: finding you have a current need but not an immediate need; finding you have no current or immediate needs; or deciding that alternative community-based services can meet your needs.

You can appeal the decision. The county board must include instructions for filing the appeal in the written notice. If you do not receive timely written notice and instructions for appealing, you can request the notice and appeal instructions from your local county board.

### The Appeals Process

#### *1. How do I appeal?*

If you receive a decision you disagree with, you can request a state hearing. The instructions will be on the notice of the decision you receive from the county board of developmental disabilities. Here are the ways you can submit your appeal:

- Online at: <https://secure.jfs.ohio.gov/ols/RequestHearing/>
- Call the ODJFS Consumer Access Line at 866-635-3748
- Email [bsh@jfs.ohio.gov](mailto:bsh@jfs.ohio.gov). In the subject, put “State Hearing Request”
- Fax to 614-728-9574, or
- Mail to ODJFS Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825

#### *2. What do I need to say when I send the appeal?*

When you submit your appeal, you will need to include *all* the following information:

- First name and last name
- Address where you receive mail
- Case number
- Phone number where you can be reached
- Date you received your notice (if that applies)

- Program(s) you want to request your hearing about
- County that took the action, and
- Why you want a hearing (a brief summary)

3. *What are the deadlines for appealing?*

If you want to appeal a waiver decision, you must send your appeal to the Bureau of State Hearings (BSH). If you need to continue receiving benefits while your appeal is pending, BSH must receive your appeal within 15 days of the mailing date of the notice. Check the decision for the mailing date. If you don't need to receive benefits while your appeal is pending, BSH must receive your request 90 days from the mailing date on the decision you received. If the 90<sup>th</sup> day falls on a holiday or weekend, the deadline will be the next workday. This means you need to send the request with plenty of time to reach BSH by the required deadline and should consider sending it by certified mail or other mail you can track – if possible.

4. *What are the different levels of appeal?*

- County Conference

When you submit your appeal and request for a state hearing, you also have the option of requesting a county conference. This does not replace the state (BSH) appeal, so be sure to submit your timely appeal to the BSH.

The county conference is an informal meeting with the County Board. It is an opportunity to see if you and the County Board can resolve your problem without a hearing. The county conference can happen by phone, videoconference, or in person. You can bring family members, friends, or a legal representative to help you make your case to the County Board. You can also submit written letters from anyone who can provide information about you and your needs, such as a doctor, a therapist, a family member, or a provider. If you and the County Board are unable to reach an agreement, you can proceed with the state hearing and you don't need to take further action. You will likely already have a date and time for the state hearing when you attend the county conference.

- State Hearing

The next level of appeal is the state hearing. The state hearing is an opportunity to present your case to an Impartial Hearing Officer (IHO). It is normally held by a county level agency. For more information about the state hearing, please see the next section, "What should I expect at a state hearing?"

- Administrative Appeal

If you do not win at the state hearing held at the county level, the next level of appeal is called an administrative appeal. To appeal, you need to file another written appeal to the Bureau of State Hearings. This appeal must be received within 15 days of the mailing date of the notice so you will need to move quickly. You can submit your administrative appeal by email, fax, or mail.

You can write your appeal, or a family member or legal representative can help you. In this appeal, you will need to explain why you believe the state hearing decision was wrong. You can include any letters supporting your needs or any additional information you think will be helpful. The instructions for appealing a hearing decision will be on the written notice of the decision.

- Appeal to the Common Pleas Court

The final level of appeal is an appeal to the Court of Common Pleas for your county. This level of appeal is complex and you may need an attorney to help you. The court charges fees to file the appeal with the court. However, you may be able to get those fees waived based on your income. It may take several months for you to receive a decision at this level of appeal. You have 30 days from the date of the administrative appeal decision to file your appeal in Common Pleas Court.

### **What should I expect at a state hearing?**

The state hearing is held at your county department of job and family services office or by phone. You can choose which option is best for you. The hearing officer will attend by phone under either option. Your hearing will be recorded, and you have the right to ask for a copy of the recording after you get the hearing decision in the mail. Usually, the hearings are scheduled for 30 minutes to one hour. However, if your hearing needs more time, the hearing officer may schedule a follow-up hearing at a later date and time.

If you need accommodations to participate in the hearing you can email [bsh@jfs.ohio.gov](mailto:bsh@jfs.ohio.gov) or call 866-635-3748 prior to the hearing. Accommodations may include but are not limited to: a foreign language interpreter, a sign language interpreter, use of assistive technology devices, use of braille, or other reasonable accommodations for your disabilities.

If you participate in person, please arrive at least 15 minutes early. You will need to check-in at the front desk. You will be taken to a conference room by a job and family services employee. Representatives from the County Board of DD may be in the room with you, or they may participate by phone. If you choose to have your hearing at the county department of job and family services, remember that the hearing officer will participate by phone and not in person.

If you participate by phone, make sure that the Bureau of State Hearings has the correct phone number for you. Be sure to keep your phone charged if using a mobile device. Please choose a quiet place with no distractions to participate from. If you have a legal representative or attorney, they may participate with you at the same phone number or choose to use their phone number. Please make sure you mute yourself when you are not speaking. If you are unsure how to mute yourself, please make sure to be quiet when it is not your turn to speak.

### The Hearing Process

At the beginning of the hearing, the hearing officer will ask who is in the room or on the phone line. The hearing officer will explain the process briefly. The hearing officer will then ask everyone who will be giving testimony to raise their right hand and take an oath to tell the truth. Please be sure to speak loudly and clearly enough to be heard.

During the hearing, the hearing officer will ask the County Board to speak first. The hearing officer will ask the County Board to explain their decision and how they arrived at that decision. You should not interrupt during their turn to speak. It may be hard not to respond, but you will get your turn to give your side of the story. You or your legal representative will be given a chance to ask the County Board questions. The hearing officer may also ask the County Board questions. After the County Board is finished, the hearing officer will give you the chance to present your side. If you have a legal representative, they may ask you questions and have you respond. You can also choose to read a written statement that you have prepared. You can use this time to have any witnesses, such as a caretaker, provide a statement or answer questions. The hearing officer may ask you questions, and the County Board will also get the chance to ask you questions. Both sides can make a closing argument or state any final points they want to share with the hearing officer.

### The Hearing Decision

The hearing officer will not issue a decision at the end of the hearing. The hearing officer will review all evidence and issue a decision in writing at a later date. The hearing officer will likely confirm your address during the hearing, but if not, you can give your address before the hearing ends. The decision will also be mailed to the County Board and your legal representative if you have one. The decision will include instructions on how to appeal if you disagree with the state hearing decision.

### **How can I help improve my odds of winning an appeal?**

First, make sure you gather all the important evidence. For example, it helps to get letters from your medical providers or others who know you well. If you've had any County Board incident reports, hospitalizations, or emergency room visits, you will want to get copies of those records. If you have any records from an adult day program, you can also request copies of those records. You should present all this evidence to the County Board at your county conference. If you are unable to resolve your case at the county conference, you will want to make sure to submit your evidence to the Bureau of State Hearings. You can submit evidence by emailing it to [bsh@jfs.ohio.gov](mailto:bsh@jfs.ohio.gov), faxing it to 614-728-9574, or mailing it to ODJFS Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825.

Second, you should think about who can be a witness at your hearing. You can have people speak on your behalf at the hearing. You should limit the number of witnesses to just a few people who know you well because there may be another hearing scheduled shortly after yours. If you have a caregiver, you may ask them to be a witness. You could also ask a therapist, doctor, case manager, family member, close friend, roommate, or anyone else who knows you well to be a witness or to submit a written statement on your behalf. If you have a guardian, your guardian can testify on your behalf. Witnesses should talk about your physical, mental, and emotional needs. If you have any self-harm or behavior that harms others, witnesses should talk about those behaviors. If witnesses provide you natural supports and are no longer able or willing to provide the same level of support, they should say so and explain why. Witnesses can also talk about anything else they think will help your case.

Third, if the County Board has suggested your needs can be met by alternative community-based services, you can speak about or provide a letter explaining why those services are not available to you or are not meeting your needs. For example, the County Board may say that Medicaid State Plan nursing or aide services can meet your needs. However, many people do not qualify for Medicaid State Plan nursing or aide services. The County Board may suggest services that you have to pay for out of pocket, which are not an appropriate alternative. Also, if the County Board suggests a service you've already tried in the past, and it did not meet your needs, it is not an appropriate alternative.

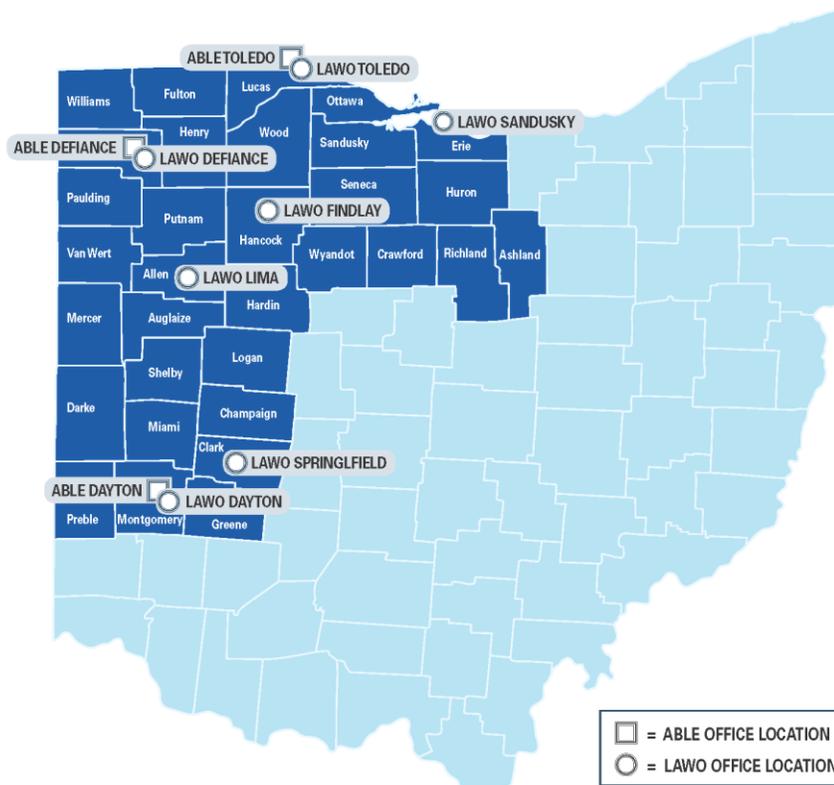
### How do I get legal help with my appeal?

Advocates for Basic Legal Equality, Inc. (ABLE) and Legal Aid of Western Ohio, Inc. (LAWO) are available to low-income residents in our 32-county service area. To start an application for legal help, please contact our Legal Aid Line at 888-534-1432 or online at <https://legalaidline.lawolaw.org/>.



### Service Area Map

LAWO and ABLE serve 32 Northwest and Western Ohio counties. LAWO offices are located in Dayton, Defiance, Findlay, Lima, Sandusky, Springfield, and Toledo. ABLE offices are located in Dayton, Defiance, and Toledo. ABLE and LAWO's Agricultural and Immigrant Programs serve all 88 Ohio counties.



If you live in Ohio, but outside of our service area, you can find your local legal aid program at <https://www.ohiolegalthelp.org/>. You can also contact Disability Rights Ohio by phone at 1-800-282-9181. You should press option 2 and leave a voicemail with your issue and contact information. Or you can apply online at [www.disabilityrightsohio.org](http://www.disabilityrightsohio.org).

If none of these resources can take your case, you can contact your local bar association and ask for a referral to an attorney. Many bar associations have pro bono programs that provide free legal assistance, and some have modest means programs that provide low-cost legal help.

### **What other options do I have to advocate for myself or my family member?**

Your County Board may have an ombudsman assigned to help families and individuals who are having problems getting what they need. If you are unsure, you can ask your services and support coordinator if your County Board has an ombudsman.

You also have the option of contacting the Family Outreach and Education Coordinator at the Ohio Department of Developmental Disabilities (DODD). You can call DODD at 1-800-617-6733 and ask to speak to the Family Outreach and Education Coordinator.

Another option is to contact the Arc of Ohio, a grassroots organization that advocates for individuals with developmental disabilities. You can contact the Arc of Ohio at [info@thearcofohio.org](mailto:info@thearcofohio.org) or 614-487-4720. You can also find more information at [www.thearcofohio.org](http://www.thearcofohio.org).

You can also contact your state legislators to discuss problems you have accessing services. You can find your state representative at: [www.legislature.ohio.gov/legislators/house-directory](http://www.legislature.ohio.gov/legislators/house-directory). You can find your state senator at: [www.legislature.ohio.gov/legislators/senate-directory](http://www.legislature.ohio.gov/legislators/senate-directory). You will find information on calling, emailing, or writing to your legislator at these websites.



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