

**5123:1-5-02 Risk funds for extraordinary costs.****(A) Purpose**

This rule sets forth a process to establish and access county board medicaid reserve funds and identifies a process for accessing a state bridge fund. Both funds identified are established for the purpose of assisting the department and county boards, in consultation with ODJFS, to assure the health and welfare of an individual receiving home and community-based services when a county board is unable to pay the nonfederal share of medicaid expenditures for home and community-based services due to extraordinary costs on a short-term basis.

**(B) Definitions**

(1) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.

(2) "County MR/DD medicaid reserve fund" means a risk fund established in accordance with paragraph (C)(6) of this rule.

(3) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.

(4) (a) "Extraordinary costs" means increased expenditures for a county board resulting from the following situations:

(i) Increased service costs for an individual currently receiving home and community-based services funded by a county board as a direct consequence of a change in the individual's medical or behavioral condition, or environment, or other unanticipated, short-term emergency circumstances, any one of which creates an immediate threat to the individual's health and welfare as determined by the county board; or

(ii) If, as a consequence of levy failure and at the request of the county board, the department's division of audits certifies that the county board can no longer pay the nonfederal share of medicaid expenditures for home and community-based services necessary to assure the health and welfare of individuals receiving home and community-based services.

(b) "Extraordinary costs" does not mean regular and ongoing provider expenses. Examples of such unallowable expenses shall include, but are not limited to:

(i) Increasing rates paid to providers as a result of a vacancy; and

(ii) Increasing rates paid to providers on either a temporary or permanent basis in order to address catastrophic events that are covered by the provider's private insurance or otherwise the express responsibility of the provider as outlined in the provider's contract with the county board.

(c) When emergency assistance is a covered service in a home and community-based services provided under a medicaid component the cost of emergency assistance shall not be considered an extraordinary cost for a county board.

(5) "Home and community-based services" means medicaid-funded

home and community-based services provided under a medicaid component the department administers pursuant to section 5111.871 of the Revised Code.

(6) "Individual" means a person with mental retardation or other developmental disability.

(7) "OBM" means the office of budget and management as established by section 121.02 of the Revised Code.

(8) "ODJFS" means the Ohio department of job and family services as established by section 121.02 of the Revised Code.

(9) "State bridge fund" means a risk fund established in accordance with paragraph (C)(9) of this rule.

(C) Process to address extraordinary costs

(1) Section 5126.057 of the Revised Code requires a county board that has local administrative authority for home and community-based services to pay the nonfederal share of medicaid expenditures for those services provided to an individual who the county board determines under section 5126.041 of the Revised Code is eligible to receive county board services in that county unless division (C)(2) of section 5123.047 of the Revised Code requires the department to pay the nonfederal share.

(2) A county board shall not be permitted to request or fill waiver slots beyond those that can be matched by the projected nonfederal match available to the county board as mutually determined by the department and the county board.

(3) Paragraph (C) of this rule contains a series of sequential actions. A county board shall not take the next action until the former is completed.

(4) When emergency assistance is a covered service in a home and community-based services waiver administered by the department and an individual's needs, as determined by the county board, exceed the individual cost cap for the waiver, a county board must use the waiver service defined as emergency assistance (up to eight thousand dollars, one time only per individual), where appropriate, in order to assure the individual's health and welfare on a short-term basis until:

(a) The county board determines that the emergency situation is resolved and the individual can remain on the waiver; or

(b) The individual may transition to a waiver with a higher cost cap in order to accommodate the change in the individual's long-term service needs.

(5) If unobligated funding is not available in its operating budget, a county board shall use funds from the county board's county MR/DD medicaid reserve fund on a short-term basis if the county board determines the existing situation can be resolved quickly and the individual can remain in a waiver setting.

(6) A county board shall establish a county MR/DD medicaid reserve fund in accordance with this rule and section 5705.091 of the Revised Code.

(a) Each year the fund shall contain an amount equal to no less than two per cent of the total nonfederal share of medicaid expenditures for home and community-based services for residents of the county for the

most recently completed fiscal accounting period. As of the effective date of this rule, the first such completed fiscal accounting period is state fiscal year 2000. All prior year deposits will roll over and another two per cent will be deposited in the next year, up to a maximum of ten per cent at the end of a five-year period. The five-year period shall commence when the county board is required to begin making monthly deposits into the fund in accordance with paragraph (C)(6)(d) of this rule. It is the intent of this rule that the fund be fully funded in year six and thereafter at ten per cent of the increase of the nonfederal share of medicaid expenditures for home and community-based services for residents of the county for the most recently completed fiscal accounting period.

(b) A county board shall use the federal revenue funds the county board earns for providing habilitation center services, medicaid case management services, and home and community-based services to make deposits into the fund in accordance with this rule.

(c) The department shall notify a county board no later than August of each year of the target fund balance for that year based on the most recently completed fiscal accounting period in accordance with paragraph (C)(6)(a) of this rule. In the event that new waiver slots as described in paragraph (C)(6)(d) of this rule are allocated prior to August 2002, the department shall make an initial notification of the targeted amount to be deposited for the period prior to August 2002. Once the target is reached for the year, a county board may cease making monthly deposits to the fund.

(d) Except as provided in paragraph (C)(6)(c) of this rule, a county board shall make deposits into the fund on a monthly basis so that the amount available in the fund expands at the same rate as the home and community-based services provided in the county. The county board shall begin making monthly deposits into the fund ninety days after the department has allocated to the county board the county board's pro rata share of at least two thousand new waiver slots statewide for home and community-based services under the combination of waiver number 0380 and waiver number 0231.90 and the enrollment process has been authorized by the department. To be considered a new waiver slot for the purposes of this paragraph, the slot must be allocated on or after the effective date of this rule. The department shall inform the county board of the date by which the county board shall begin making monthly deposits into the fund.

(e) A county board shall report annually to the department the amount of money contained in the fund, as well as the total amount of any transactions that have occurred.

(7) Before a county board may withdraw money from the fund, the county board must notify the department. Thereafter, the county board shall work with the department's technical assistance staff to address the county board's overall extraordinary cost challenges including methods to assure the health and welfare of all individuals receiving home and community-based services in the county. When a county board has withdrawn money from the fund, the county board shall restore the money in accordance with a plan acceptable to the department and in accordance with the county board's financial capabilities.

(8) For home and community-based services waivers administered by the department, if a county board is unable to assure the health and welfare of an individual receiving home and community-based services because of the county board's inability to pay the nonfederal share of medicaid expenditures for those services, the county board shall divert funding from nonmedicaid programs that are not mandated by federal or state law up to the limits of the county board's required assurances with respect to nonfederal funds from local property tax monies under division (C) of section 5126.057 of the Revised Code in order to address the medicaid budget shortfall.

(9) When a county board has met the requirements of paragraphs (C)(1) to (C)(8) of this rule, the county board may request authorization from the department to access the state bridge fund.

(a) The department shall establish a state bridge fund pursuant to this rule and section 5123.0413 of the Revised Code.

(i) The fund shall be used as a final way to assure the health and welfare of an individual receiving home and community-based services for a temporary basis until a permanent placement is identified and made available.

(ii) The department shall provide initial funding for the fund in state fiscal years 2002 and 2003 based upon available appropriation.

(iii) If a county board utilizes the fund, the department may replenish the fund with a portion of that county's earned federal revenue based on the number of waiver slots and the amount of waiver expenditures in the county, in accordance with a repayment plan agreed to by the county board, the department, and OBM. The plan must be agreed to prior to the release of money from the fund. A county board's repayment to the fund may be adjusted based upon the experience of the fund and/or the county board's risk experience.

(iv) The department shall report at least annually to OBM and ODJFS the amount of money contained in the fund, as well as the total amount of any transactions that have occurred.

(b) To obtain authorization from the department to access the fund, the county board must do all of the following:

(i) Notify the department as soon as the county board's probable need to access the fund becomes apparent, e.g., levy fails, etc.

(ii) Obtain a certification from the department's division of audits that the county board's county MR/DD medicaid reserve fund has been completely depleted, and no alternative resources are available to provide transition funding for individuals receiving home and community-based services.

(iii) Submit to the department an emergency placement plan for all affected individuals receiving home and community-based services.

(c) The director of the department in consultation with ODJFS and OBM. may grant the county board short-term access to the fund upon receipt and approval of an emergency placement plan and in accordance with such terms and conditions as the director shall specify in writing.

**HISTORY: Eff 1-2-02 (Emer.); 3-21-02**

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Rule amplifies: RC 5123.04, 5123.0413, 5705.091

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