

Caroline A. Lahrmann
Senate Finance Testimony
June 17, 2019

Chairman Dolan and Ranking Member Sykes,

Thank you. DD families are grateful that the Senate has placed the Informed Choice Amendment into the budget bill so that families can make informed decisions about the full array of supports under Ohio's Medicaid State Plan. I had hoped not to take anymore of the Committee's time, but I would like to respond to the Ohio Association of County Boards' (OACB) testimony from Friday.

OACB portrayed the Amendment as if it pertains only to ICF services. As you know, it pertains to all services - waivers and ICFs. As OACB complained about offering information about ICFs, they failed to state that the amendment requires County Boards to simultaneously offer information about waivers.

OACB spoke about an individual's legal right to community services. Our amendment requires that individuals are informed about community services so that they can access that legal right if they choose. Individuals with intellectual and developmental disabilities (I/DD) also have a legal right to ICFs, but as noted OACB expressed a bias against ICFs. Are County Boards not concerned that their expressed bias infringes upon that legal right? It is an important question, especially when public servants who serve as gatekeepers of valuable information about service options are involved.

OACB admitted that County Boards only provide information on ICFs when they deem it appropriate. County Boards are designated under Revised Code as the local Medicaid administrator. They have a duty to dispassionately and impartially carry out state and federal laws that govern Medicaid services and to respect the needs and choices of all their constituents - those who can handle and benefit from community services and those that require higher levels of care. With all due respect to OACB, their organizational ideology and value system does not supersede the value system of a DD family; nor does OACB's value system supersede state and federal law. When County Boards say they provide information about ICFs only when appropriate, they are saying that they can impose their decision-making upon families. And, they are saying that they do not share information about state plan services evenly across their service system. America is a great county because people have the freedom to make choices about their lives. These freedoms extend to people with I/DD.

Senator Kunze asked about federal law. I do not believe she was given a proper response, therefore I would like to address her question. I attach to my testimony the relevant federal regulations. With respect to the public seeking information about Medicaid services,

- Pursuant to 42 CFR 435.905(a) & (b), the state has a legal obligation to provide information, in plain language and in a manner that is accessible and timely,

concerning: “(1) the eligibility requirements;” “(2) **Available Medicaid services;**” and “(3) The rights and responsibilities of applications and recipients.”

- Pursuant to 42 CFR 431.51(b)(1) “a beneficiary may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is (i) qualified to furnish the services; and (ii) willing to furnish them to that particular beneficiary.” This is known as Free Choice of Provider. If families are not informed of all options, they do not have Free Choice of Provider.

Neither of these regulations allow for a value judgement by a government official. Nor are families required to qualify the nature of a Medicaid service, by having to state, for instance, “residential services,” (as the errant¹ House language requires), to be informed of ICFs. Federal law does not expect individuals with intellectual disabilities and families to be policy wonks and to know the policy lingo. Federal law simply states the public has to ask for service information, and the agency has to provide the information in “plain language” and in a manner that is “accessible and timely.”

County Boards testified that Administrative Code (OAC) already requires disclosure of ICFs. It is more accurate to say that OAC provides the optics of offering ICFs. The new wait list rule and other areas of OAC require families to be offered “alternative services” when they are waiting for services. The ICF option - the state plan entitlement - is wrongly categorized in “alternative services” along with any number of non-Medicaid supports. County Boards may offer any alternative option, no matter how insignificant, and they will have fulfilled their obligation under the code to offer “alternative services.” This is why Counties prefer the errant House language that codifies the policy of non disclosure into Revised Code. It will provide the optics of informing about ICFs without actually having to provide the information. The attached DODD/County Board literature supports this finding:

- **Ohio’s DD Waiting List & You** - A brochure created by DODD for the new Wait List Rule that describes four fictional people and how they are affected by the rule. You will note that in none of the examples are individuals informed about ICFs.
- **LifeMap** - A County Board document that describes the services individuals with DD can access over a lifespan. ICFs are not mentioned at any point on the life map. In fact, nursing homes and assisted living facilities are offered as options, but ICFs that specialize in the care of people with DD are not listed.
- **Ohio Assessment for Immediate Need and Current Need** (Appendix to Wait List Rule) - Please note page 2, table of “Currently Used or Available Resources/ Services.” This is the bucket of service options County Boards are to use to serve individuals. ICFs are not included.

¹ See Representative Mark Romanchuk’s May 21st letter to Senators attached.

Finally, County Boards say that individuals are told about ICFs when they are enrolled in a waiver. Please note, it can be years before someone receives a waiver. It makes sense to tell people about all options up front so that those individuals who choose and need ICFs are not waiting years just to learn about them. But, even at waiver enrollment families are not being properly informed of ICFs. Families testified to the Subcommittee that even though they had a waiver for years, they were not informed of the ICF option.

Parents and guardians who seek services from County Boards must address the needs of very vulnerable family members, some with serious medical and/or behavioral conditions and others who can handle and benefit from community settings. With the Informed Choice Amendment, individuals and their families are empowered to be the primary decision-makers of care and treatment options. Many families will choose community settings, many families will choose ICFs. These are personal decisions. They should be respected as such and allowed to occur.

Thank you again for your support of the Informed Choice Amendment.

Federal Regulations Regarding Provision of Service Information

42 CFR § 435.905 Availability and accessibility of program information.

(a) The [agency](#) must furnish the following information in electronic and paper formats (including through the Internet Web site described in [§ 435.1200\(f\)](#) of this part), and orally as appropriate, to all [applicants](#) and other individuals who request it:

- (1) The [eligibility](#) requirements;
- (2) Available [Medicaid](#) services; and
- (3) The rights and responsibilities of [applicants](#) and beneficiaries.

(b) Such information must be provided to [applicants](#) and beneficiaries in plain language and in a manner that is accessible and timely to -

- (1) Individuals who are limited English proficient through the provision of language services at no cost to the individual including, oral interpretation and written translations;
- (2) Individuals living with disabilities through the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities [Act](#) and section 504 of the Rehabilitation [Act](#); and
- (3) Individuals must be informed of the availability of the accessible information and language services described in this paragraph and how to access such information and services, at a minimum through providing taglines in non-English languages indicating the availability of language services.

§ 431.51 Free choice of providers.

(b) **State plan requirements.** A State [plan](#), except the [plan](#) for Puerto Rico, the Virgin Islands, or Guam, must provide as follows:

(1) Except as provided under [paragraph \(c\)](#) of this section and part 438 of this chapter, a [beneficiary](#) may obtain [Medicaid services](#) from any institution, agency, pharmacy, [person](#), or organization that is -

(i) Qualified to furnish the services; and

(ii) Willing to furnish them to that particular [beneficiary](#).

How might this new process affect me?

If you were already on the waiting list before September 1, 2018, you will be contacted by your county board to schedule an assessment interview. The purpose of this interview is to talk about your needs and determine if a waiver is the only way your needs can be met. This interview can take place in person or over the phone, depending on your situation.

If you were not on the waiting list before September 1, 2018, but you think you might need a waiver and your county does not have any waivers available, you will need to complete the assessment process to be put on the waiting list in your county.

If you are not on the waiting list because you already have a waiver that meets your needs, or because your needs are already being met without a waiver and you have not requested one, this process is not likely to affect you.

How should I use this brochure?

This brochure was created to help people better understand the four possible outcomes of the new Waiting List Assessment process.

*To do this, we are imagining four friends—**Jaime, Kim, Tracy, and Alex**—who all go through the Waiting List Assessment process at the same time. These four friends each receive a different outcome and can use this brochure to compare why their outcomes are different. This brochure might even be used during your assessment to explain the process.*

Why is Ohio's DD Waiver Waiting List Changing?

*Over a 24-month period, organizations representing people with developmental disabilities, family members, guardians, county boards, private providers, and the State of Ohio worked together to come up with **a new way for Ohio to manage its waiting list as part of the "Fix The List" coalition.***

The solution they created is outlined in this brochure. This new assessment process is designed to address many of the issues that had frustrated families over the years while also helping county boards and the State of Ohio come up with a better plan to meet people's needs when they request a DD waiver.

To learn more about the coalition, the new assessment process, and related topics, visit FixTheList.info or contact your local county board.

www.FixTheList.info



2018FF-01

FROM
OLD

TO
NEW

Ohio's DD Waiver
Waiting List
and YOU

What has changed about Ohio's DD Waiver Waiting List ?

For years, people with developmental disabilities and their families knew that the way Ohio managed its waiting list for DD waivers wasn't working. The waiting list was confusing for families and did little to help people gain access to services and supports they needed to live happy, healthy, fulfilling lives. That's why, for more than two years, Ohio's DD community has been working on a new process that will help county boards fairly and accurately identify the needs of a person seeking a DD waiver. This new process, and the four possible outcomes, are outlined on the inside of this brochure.

Why are we conducting assessments?

In the past, anyone could be on the waiting list for any reason—regardless of whether or not they actually needed a waiver. In fact, a person could be put on waiting lists in multiple counties, even if they didn't live there. A person could also be on multiple waiting lists for different waivers, even if the waiver they were requesting would not meet their needs. The new statewide assessment process will help to identify people's true needs and find ways to meet those needs with or without a waiver.

Meet Jaime

Hello! My name is Jaime. Recently, I had a conversation with my county board to talk about my needs. We completed the Waiting List Assessment, and we discovered I have "Immediate Needs." This means that I have needs right now, and if those needs are not met within 30 days, I will be at serious risk of harm.

Common examples of situations creating a serious risk of harm include, but are not limited to:

My primary caregiver is going away and nobody else is available to take their place. My behavior creates a serious risk of harm to myself or others. My level of personal or medical care needs is so high that I am at serious risk of harm.

What happens next?

My county board will work with me to link me with services and supports to meet my "Immediate Needs." These services could be paid for by the county board, by a waiver, or through community-based alternative services, such as those offered by another government agency.

Will I be put on the waiting list?

NO. I am not put on the waiting list because my county board must take action to meet my needs within 30 days. If I was on the waiting list before September 1, 2018, I will be removed, and my county board will take action to meet my needs as soon as possible.

- If I disagree with the outcome of my assessment, I have the right to appeal. My county board will give me information about how to make an appeal.
- No matter what the outcome of my assessment, if my needs change, I can ask my county board to go through the assessment process again.

Meet Kim

Hi! My name is Kim. Recently, I had a conversation with my county board to talk about my needs. We completed the Waiting List Assessment, and we discovered I have "Current Needs." This means that I have needs right now or I will have needs some time in the next 12 months, but I am not at serious risk of harm if no action is taken within 30 days.

After talking it over with my county board, we have come up with a plan to meet all of my assessed needs without a waiver. This means I don't have to wait for services because I can have all of my needs met without a waiver.

What happens next?

My county board will work with me to link me with services and supports to meet all of my "Current Needs" without a waiver. These services could be offered by the county board or be community-based alternative services, such as those offered by another government agency.

Will I be put on the waiting list?

NO. I am not put on the waiting list because my needs can be met with non-waiver resources. If I was on the waiting list before September 1, 2018, I will be removed.

- If I disagree with the outcome of my assessment, I have the right to appeal. My county board will give me information about how to make an appeal.
- No matter what the outcome of my assessment, if my needs change, I can ask my county board to go through the assessment process again.

Meet Tracy

Hey there! My name is Tracy. Recently, I had a conversation with my county board to talk about my needs. We completed the Waiting List Assessment, and we discovered I have "Current Needs." This means that I have needs right now or I will have needs at some point in the next 12 months, but I am not at serious risk of harm if no action is taken within 30 days.

After talking it over with my county board, we have come up with a plan to meet some of my assessed needs without a waiver. However, we also determined that some of my other needs cannot be met unless I get a waiver. This means I need a waiver for all of my needs to be met.

What happens next?

My county board will work with me to link me with services and supports to meet my "Current Needs" as much as possible without a waiver. These services could be offered by the county board, or they could be community-based alternative services, such as those offered by another government agency.

Will I be put on the waiting list?

If my county board is unable to immediately enroll me on an available waiver, then **YES**, I will be put on the waiting list. If I was already on the waiting list before September 1, 2018, I will keep my original date of request. If I was not already on the list, I will be placed on the list with a new "status date."

- If I disagree with the outcome of my assessment, I have the right to appeal. My county board will give me information about how to make an appeal.
- No matter what the outcome of my assessment, if my needs change, I can ask my county board to go through the assessment process again.

Meet Alex

Howdy! My name is Alex. Recently, I had a conversation with my county board to talk about my needs. We completed the Waiting List Assessment and we discovered I do not have any unmet needs at this time. This means that I will not have any needs in the next 12 months, and I am not at serious risk of harm if no action is taken within 30 days.

After talking it over with my county board, we have agreed to stay in touch in the months and years ahead in case I have any unmet needs in the future. Even though I don't have any unmet needs today, my county board is always available to help me find services if that should change.

What happens next?

If my needs change, I should contact my county board as soon as possible to discuss my situation. My county board can link me to services and supports to meet my needs, and if necessary, complete a new assessment at that time.

Will I be put on the waiting list?

NO. I am not put on the waiting list because I do not have any unmet needs at this time. If I was on the waiting list before September 1, 2018, I will be removed.

- If I disagree with the outcome of my assessment, I have the right to appeal. My county board will give me information about how to make an appeal.
- No matter what the outcome of my assessment, if my needs change at any point in the future, I can ask my county board to go through the assessment process again.

Ohio House of Representatives



MARK J. ROMANCHUK
State Representative
House District 2

May 21, 2019

Dear Senator,

Due to an error in my office, the wrong version of an amendment got into House Bill 166. The amendment dealt with informing families and individuals who have a developmental disability of all their options of care. The amendment that was submitted and accepted does not reflect the original intent of the policy and needs to be corrected.

I ask that you fix this issue by submitting the attached amendment SC2943X1. Please support the Informed Choice Amendment so that families have information about *all* service options.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Mark J. Romanchuk".

Mark J. Romanchuk
State Representative
House District 2

Committees:

Finance Subcommittee on Health and Human Services, Chair
Joint Medicaid Oversight Committee, Chair
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