

**DISABILITY RIGHTS OHIO**

## **DODD's Medicaid Waivers: Waiting lists**

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Many people with intellectual and developmental disabilities need and want services through Medicaid home and community-based waiver programs. These programs—the Individual Options, SELF, and Level One waivers—provide funding so that people can get the services and support they need in their own homes and communities instead of in institutions or facilities.

There are waiting lists for these programs in every county in Ohio. A new rule from the Ohio Department of Developmental Disabilities (“DODD”) governs how these waiting lists work. The rule went into effect on September 1, 2018.

### ***How is the new waiting list system different?***

Before this new rule, county boards generally ordered waiting lists by the date people requested a waiver. Anyone could be placed on a waiting list under the old system, as long as they asked for a waiver. The new rule says that a county board must first do a waiting list assessment and decide whether the person needs waiver services.

### ***I was on a waiting list under the old system. What will happen next?***

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. The county board or DODD will reach out to each person on the transitional list or the person’s legal guardian to do an assessment. DODD will keep this list until December 31, 2020.

All assessments for people on the transitional list must be completed by December 31, 2020. Once an assessment has taken place and a determination made, DODD will remove the person from the transitional list.

Through these waiting list assessments, some people may receive a waiver immediately, be placed on the new waiver waiting list, or be connected to other services to meet their needs. Others may be found to have no needs at all; these people will not receive a waiver and will not be placed on the new waiting list.

### ***Can I ask for an assessment?***

Yes. If you need services through a waiver program, you or your guardian should contact the county board and ask for a waiting list assessment (preferably in writing so you can keep a copy for your own records). You can do this even if you are not on the transitional list. And you can do this if you are already on the transitional list but have not been assessed yet, or if you have already been assessed but your needs or circumstances have changed.

Once someone asks for a waiting list assessment, the county board must start the assessment process within 30 calendar days. You can ask the county board to do it sooner, especially if it is an emergency. You can also ask the county board for a copy of the completed assessment.

### **What does the waiting list assessment determine?**

The assessment will decide whether you have:

- 1.) An Immediate Need,
- 2.) A Current Need (within 12 months), or
- 3.) No Immediate or Current Needs.

### **What does Immediate Need mean?**

Immediate Need is “a situation that creates a risk of substantial harm to an individual, caregiver, or another person if action is not taken within 30 calendar days to reduce the risk.” The rule lists Immediate Need situations:

- You are a resident of an ICF or a nursing home and received a notice of discharge or adverse PASRR determination.
- You are an adult and are losing your primary caregiver due to unforeseen circumstances (such as the caregiver’s own medical problems), and no other caregivers are available.
- Your documented behaviors have been determined to put yourself or others at risk of harm.
- You have significant care needs or life-threatening medical needs.
- You are an adult and you have been subjected to abuse, neglect, or exploitation.

To repeat, one of the situations above must create a “risk of substantial harm” to you, your caregiver, or another person if no action is taken within 30 calendar days.

### **What does Current Need mean?**

Current Need is “an unmet need” for waiver services within twelve months.

The rule lists Current Need situations:

- Your primary caregivers’ “declining or chronic physical or psychiatric condition” limits their ability to care for you, or there are not enough caregivers available for you, and this means you are likely to be at risk of substantial harm.
- You have an ongoing need for limited or intermittent supports for your behavioral, physical, or medical needs in order to help your current caregivers and to stay in your chosen home.
- You have an ongoing need for support for significant behavioral, physical, or medical needs.
- You are aging out of or being emancipated from Children’s Services.
- You need funding for adult day services or employment services.
- You are living in an ICF or nursing home and have a viable discharge plan.



### ***What happens if the county board determines I have an Immediate Need?***

If the county board determines that you have an Immediate Need, then it must take action to make sure this Immediate Need is met. This could mean enrollment in a waiver program, though not necessarily the waiver program you want. The county board might say that your Immediate Need could be met through other non-waiver services, like Medicaid state plan services, EPSDT or Healthchek services, or funding through the Family and Children First Council. These are called alternative services.

The county board must offer to help you access these alternative services, and these alternative services must actually be available and must successfully meet your needs. If not, you may need a waiver.

### ***What happens if the board determines I have a Current Need?***

If the county board finds that you have a Current Need, it must determine if there are non-waiver services that can meet that need. Again, these are called alternative services. The county board must help you access these services, and these services must be available and successfully meet your needs.

If these alternative services cannot meet your Current Need and only waiver services can, then you must be placed on the waiting list for a waiver. There is no guarantee that you will get a waiver within a specific period of time, however.

### ***How should I prepare for the waiting list assessment?***

It is important to be prepared for the assessment. The county board will use the waiting list assessment tool to assess your needs [<https://dodd.ohio.gov/wps/portal/gov/dodd/county-boards/assessments/assessment-immediate-current-need>]. You should look this over before the assessment so you know what to expect. Some county boards will schedule an in-person meeting, while others may do it over the phone (if you want to meet in person, you should ask).

You should be ready to show the county board assessor that you meet one or more of the criteria for Immediate Needs or Current Needs. Pay close attention to the definitions above to decide which one (or ones) best describe your situation. You may want to ask others to be present for the assessment—a parent, guardian, friend, neighbor, advocate, or other person who knows you well and can explain your need for waiver services.

You should also bring documents to show your needs. An example would be a letter from your doctor explaining your need for waiver services. One common reason people are denied a waiver is because of natural supports [<https://www.disabilityrightsohio.org/medicaid-natural-supports>]. Parents or family members are expected to do a lot, and some county boards may decide you do not need a waiver for this reason.



If you want a waiver, it is important to show not only that you have an Immediate or Current Need, but also that you require a waiver to meet these needs. Familiarize yourself with the services available in each of DODD's waiver programs, which can be found here: [<https://dodd.ohio.gov/wps/portal/gov/dodd/waivers-and-services/waivers/>]. Be prepared to argue why other non-waiver services would not work for you. Each person is different and has their own unique needs, so you should contact DRO for advice before your assessment.

A thorough assessment is important. If you have to challenge the county board's decision at a Medicaid state hearing, hearing officers sometimes will ask the county board to do a new assessment if certain documents or other information have not been considered.

### ***What can I do if I don't agree with the outcome of the assessment?***

If you do not agree with the outcome, you can request a Medicaid state hearing. The process is described at [<https://www.disabilityrightsohio.org/medicaid-appeals-overview>].

There are many reasons why you could be dissatisfied with the outcome of the assessment or the assessment process:

- You may think you have an Immediate Need, but the county board found that you only have a Current Need or no needs at all.
- The county board may have agreed that you have an Immediate Need, and it may offer you a waiver, such as the Level One waiver, but not the one you need, like the Individual Options waiver.
- The county board may agree you have Immediate Needs or Current Needs, but say you do not need a waiver now or within twelve months because other alternative services can meet your needs. These alternative services may not be actually available, or may not successfully meet your needs.
- The county board decides that natural supports can meet your needs.
- The county board may not assess your needs if it decides you do not have a "qualifying condition," which means you do not meet the legal definition of "developmental disability."
- The county board does not start the process within 30 days after you request an assessment, or it waits too long to finish the assessment.
- The county board could decide to place you on a waiting list for a waiver, but then later decide to remove you from that waiting list. You could also disagree with the specific order on the new waiting list on which you are placed.

You should contact DRO for advice. We can give you guidance on how to proceed (whether and how to ask for a hearing, how to prepare for the hearing, what testimony and evidence would be most helpful).



***Does DODD's new rule apply to all waivers in DODD's system?***

No, DODD's new rule just applies to waivers funded by county boards. This rule does not apply to exit waivers for people who want to leave ICFs, and diversion waivers for people who want to remain in the community instead of entering an ICF.

***Where can I get help?***

If you have questions about waivers, state hearings or your rights, please contact:

**Disability Rights Ohio** at **(800) 282-9181** and press option **2** for **Intake**.

