

5122-36-01 Introduction and definitions.

(A) Introduction: This chapter governs the RSS program. (The Ohio department of job and family services has also adopted rules governing this program, which are primarily located in Chapter 5101:1-17 of the Administrative Code.)

(B) Definitions for this chapter:

(1) "CDJFS" means "county department of job and family services."

(2) "Living arrangement" means an arrangement listed under division (C)(1) of section 5119.69 of the Revised Code. "Living arrangement" includes any owner, operator, employee, or volunteer who provides accommodations, supervision, or personal care services in the living arrangement.

(3) ODMH means "the Ohio department of mental health."

(4) "ODMH's designee" has the same meaning as "PASSPORT administrative agency" in section 5119.69 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging listed in rule [173-2-04](#) of the Administrative Code plus "Catholic Social Services of the Miami Valley."

(5) "Resident" means an individual who is enrolled in the RSS program.

(6) "Residential State Supplement Program" ("RSS program") means the program described under section 5119.69 of the Revised Code.

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5122-36-02

Eligibility criteria.

(A) Only an individual who meets all of the following criteria is eligible for the RSS program:

(1) The individual resides in Ohio, pursuant to section 1616(b)(1) of the "Social Security Act," 49 Stat. 620 (1935), 42 USC 1382e, as amended;

(2) Pursuant to division ~~(E)~~(1) of section ~~5119.69~~5119.41 of the Revised Code, the individual shall agree to reside in one of the following living arrangements and the individual is not related to an owner of the living arrangement or a caregiver in the living arrangement:

(a) ~~An adult foster home certified under section 5119.692 of the Revised Code;~~A residential care facility licensed by the department of health under Chapter 3721. of the Revised Code or an assisted living program as defined in section 5111.89 of the Revised Code;

(b) ~~A home or facility, other than a nursing home or nursing home unit of a home for the aging, licensed by the department of health under Chapter 3721. of the Revised Code or the department of mental health under sections 5119.70 to 5119.88 of the Revised Code;~~A residential facility as defined in division (A)(9)(b) of section 5119.34 of the Revised Code licensed by the department of mental health and addiction services; or,

(c) ~~An apartment or room that is used to provide community mental health housing services, is certified by the Ohio department of mental health under section 5119.611 of the Revised Code, and is approved by a board of alcohol, drug addiction, and mental health services in accordance with division (A)(14) of section 340.03 of the Revised Code;~~An apartment or room used to provide community mental health housing services certified by the department of mental health and addiction services under section 5119.36 of the Revised Code and approved by a board of alcohol, drug addiction, and mental health services under division (A)(14) of section 340.03 of the Revised Code.

(d) ~~A residential facility of the type defined in division (A)(1)(d)(ii) of section 5119.22 of the Revised Code, that is licensed by the Ohio department of mental health.~~

A living arrangement housing more than sixteen individuals shall not be eligible for inclusion in the RSS program, however those individuals residing in such living arrangements on the effective date of this rule shall remain eligible so long as the individual remains in that living arrangement.

- (3) The individual shall cooperate in the enrollment process, including applying for medicaid and selecting a living arrangement that ~~ODMH's~~OhioMHAS' designee determines meets the individual's needs under ~~paragraph (C)(5) of~~ rule 5122-36-03 of the Administrative Code;
 - (4) A CDJFS determined that the individual is financially eligible for medicaid in accordance with rule ~~5101:1-17-04~~5101:1-17-02 of the Administrative Code. A CDFJS uses a "financial needs standard" ("FNS") to determine if the individual is eligible for the program;
 - (5) The individual needs at least a protective level of care as defined in rule ~~5101:3-3-08~~5160-3-06 of the Administrative Code. An individual who is receiving (or authorized for) medicaid vendor payment of the nursing facility stay and is being discharged from a nursing facility as defined in rule ~~5101:3-3-15~~5160-3-15 of the Administrative Code shall be determined to meet this requirement without the need for an additional level of care assessment;
 - (6) The individual does not require more than one hundred twenty days of skilled nursing care during any twelve-month period, unless he or she resides in a licensed residential care facility that is authorized to provide skilled nursing care under section 3721.011 of the Revised Code. "Skilled nursing care" has the same meaning as in section 3721.01 of the Revised Code;
 - (7) The individual does not have a cognitive impairment that requires the presence of another person on a twenty-four-hours-per-day basis for the purpose of supervision to prevent harm;
 - (8) The individual is not a consumer of any home and community-based waiver program;
 - (9) The individual is not a participant in the program of all-inclusive care for the elderly ("PACE");
 - (10) The individual is at least eighteen years of age; and
 - (11) The individual agrees to participate in the RSS program and has signed the RSS resident agreement/release of information form.
- (B) If, at any time, a resident no longer meets all the criteria under paragraph (A) of this rule, the resident is no longer eligible for the RSS program, unless, according to

division (~~GH~~) of section ~~5119.69~~5119.41 of the Revised Code (as first enacted by Am. Sub. House Bill 253 of the 118th General Assembly), the resident no longer meets all the criteria under paragraph (A) of this rule solely by reason of his or her living arrangement, so long as he or she has continued to reside in the same living arrangement since November 15, 1990.

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Five Year Review (FYR) Dates: 04/15/2017

CERTIFIED ELECTRONICALLY

Certification

11/10/2014

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5122-36-03 Enrollment process.

(A) Initial enrollment process:

(1) To request consideration to enroll in the RSS program, an individual shall submit a request to ODMH's designee or a CDJFS shall refer the individual to ODMH's designee in accordance with Chapter 5101:1-17 of the Administrative Code.

(2) Family enrollment option: If an individual and one or more members of the individual's immediate family apply for the RSS program, they may elect, at the date of request for consideration, to be considered as one individual in the enrollment process.

(3) ODMH's designee shall record the following information about the individual:

(a) The date of the request made in paragraph (A)(1) of this rule, which is the date of request for consideration;

(b) The individual's name, address, telephone number, date of birth, and social security number;

(c) If the individual has an authorized representative, the authorized representative's name, address, and telephone number. "Authorized representative" has the same meaning as in rule [5101:1-37-01](#) of the Administrative Code;

(d) If the individual has a legal representative, the legal representative's name, address, and telephone number. "Legal representative" means a person that the individual or probate court designates to decide for the individual. Examples of types of legal representatives are guardians, conservators, and attorneys-in-fact who are designated through a power of attorney, including a durable power of attorney for health care decisions; and,

(e) Whether the individual receives SSI benefits.

(4) ODMH's designee shall assess the individual to determine if the individual meets all the non-financial program eligibility criteria in rule 5122-36-02 of the Administrative Code.

(5) If the individual meets all the non-financial eligibility criteria for the RSS program, ODMH's designee shall add the individual to the waiting list.

(6) ODMH's designee shall allow any individual to withdraw from the waiting list at any time.

(B) Removing individuals from the waiting list:

(1) ODMH's designee shall offer enrollment to any individual on the waiting list who meets the requirements for enrollment described in paragraph (C) of this rule in the following order:

(a) First: An individual who currently resides in a nursing facility and is currently receiving SSI benefits.

(b) Second: An individual who currently resides in a nursing facility but is not currently receiving SSI benefits.

(c) Third: An individual who is currently receiving SSI benefits.

(d) Fourth: Any other individual on the waiting list.

(2) If more than one individual is waiting in a category described in paragraphs (B)(1)(a) to (B)(1)(d) of this rule, ODMH's designee shall first remove the individual with the earliest date of request for consideration.

(3) Pursuant to division (F) of section 5119.69 of the Revised Code, this rule shall not affect the place on the waiting list of any person who was on the list on July 1, 2006.

(4) Family enrollment option:

(a) If the individual chooses the family enrollment option described in paragraph (A)(2) of this rule, when the first immediate family member is selected for RSS enrollment, the ODMH's designee shall consider the other immediate family members for enrollment in the RSS program. In such cases, when immediate family members are enrolled into the RSS program as a group, ODMH's designee shall consider each immediate family member individually for the purposes of counting the maximum number of residents assigned to ODMH's designee.

(b) In order to allow immediate family members to enroll in RSS at the same time, the maximum number authorized for that region may be temporarily exceeded if the immediate family members are otherwise eligible. The number of future residents shall be reduced by the number of residents by which the maximum was exceeded for this purpose.

(5) Nursing facility: If an individual on the waiting list has been admitted to a nursing facility, ODMH's designee shall ensure that a long-term care consultation is provided to the individual, pursuant to section [173.42](#) of the Revised Code.

(C) Completion of the enrollment process:

(1) Contact applicant: ODMH's designee shall contact the applicant. If ODMH's designee cannot make contact with the applicant selected under paragraph (B) of this rule over the course of ten working days, ODMH's designee shall no longer consider the applicant for the RSS program unless the applicant applies for the RSS program again. If ODMH's designee is no longer considering the applicant for the RSS program, in accordance with this paragraph, ODMH's designee shall select another applicant from the waiting list, in accordance with paragraph (B) of this rule.

(2) Non-financial eligibility criteria: ODMH's designee shall determine if the applicant continues to meet the eligibility criteria of rule 5122-36-02 of the Administrative Code. If the applicant no longer meets the eligibility criteria, ODMH's designee shall deny the applicant enrollment into the RSS program.

(3) Financial eligibility criteria: ODMH's designee shall complete form JFS 07120 ("Residential State Supplement") for the applicant and submit it to a CDJFS, in accordance with Chapter 5101:1-17 of the Administrative Code to verify if the CDJFS determined that the applicant meets the medicaid financial eligibility criteria. If the applicant does not meet the financial eligibility criteria, ODMH's designee shall deny the applicant enrollment into the RSS program.

(4) Appropriateness of living arrangement:

(a) ODMH's designee shall help the applicant to locate and choose an available living arrangement in any Ohio county, then determine if the living arrangement is appropriate for the applicant according to paragraph (C)(4)(b) of this rule.

(b) A living arrangement is only appropriate for an applicant if:

(i) The living arrangement is able to furnish the services according to the consumer's preferences and needs that ODMH's designee identified in its assessment of the consumer;

(ii) The applicant, ODMH's designee, and the living arrangement agree that the living arrangement is able to furnish the services the applicant requires and is able to reach an agreement on how to pay for those services;

(iii) The living arrangement one of the types of living arrangements listed under division (C)(1) of section 5119.69 of the Revised Code;

(iv) The living arrangement has a current, valid license or certification to operate according to its type. (e.g., If the living arrangement is an adult foster home, it has a current, valid certification from ODMH to operate.);

(v) No licensure or certification agency has sanctioned the living arrangement so that it shall not admit new applicants;

(vi) The living arrangement agrees in writing to comply with all applicable statutes and regulations governing the services that it shall furnish each resident, including the regulations in rule 5122-36-04 of the Administrative Code; and,

(vii) If ODMH's designee is required to consult with the mental health reviewing agency of the county in which the applicant's chosen living arrangement is located determines, the mental health reviewing agency recommends that that ODMH's designee determine that the living arrangement is appropriate.

(a) ODMH's designee shall consult with the mental health reviewing agency no later than ten days after the applicant selects the living arrangement if the applicant has a history or receiving mental health services; or is eligible for eligible for supplemental security income (SSI) or social security disability insurance (SSDI) because of a mental disability, but does not have a primary diagnosis of dementia, delirium, Alzheimer's disease, or any other cognitive disorder defined in DSM-IV.

(b) ODMH's designee shall supply the mental health reviewing agency with any written referral or recommendation form or any information about the applicant that it requires.

(c) If ODMH's designee determines that the living arrangement is not appropriate, it shall:

(i) Notify the applicant of the rationale;

(ii) Notify the mental health reviewing agency of the rationale if ODMH's designee consulted with a mental health reviewing agency under paragraph (C)(4)(b)(vii) of this rule; and,

(iii) Help the applicant locate and choose another living arrangement that is capable of meeting his or her needs.

(d) If ODMH's designee notifies an applicant that the living arrangement he or she selected is not appropriate, but the applicant is not interested in another living arrangement, ODMH's designee shall not complete the applicant's enrollment into the program and shall inform the applicant of his or her hearing rights according to paragraph (D) of this rule.

(5) Failure to cooperate: ODMH's designee may deny an applicant's enrollment into the RSS program if the applicant fails to cooperate in the enrollment process because:

(a) The applicant did not apply for medicaid before the tenth working day after the date of the determination in paragraph (C)(2) of this rule; or,

(b) The applicant did not select a living arrangement for a determination of the living arrangement's appropriateness, in accordance with paragraph (C)(4) of this rule, before the thirtieth day after the date of the determination in paragraph (C)(2) of this rule.

(D) Hearing rights:

(1) If ODMH's designee determines that an applicant is ineligible for the RSS program, the CDJFS shall notify the applicant of the right to a hearing, pursuant to division (H) of section 5119.69 of the Revised Code.

(2) If ODMH's designee determines that a resident is no longer eligible for the RSS program in accordance with paragraph (B) of rule 5122-36-02 of the Administrative Code, the CDJFS shall notify the resident of the disenrollment and right to a hearing, pursuant to division (H) of section 5119.69 of the Revised Code.

(E) Definitions for this rule:

(1) "Immediate family member" means the applicant's spouse, child, step-child, daughter-in-law, or son-in-law.

(2) "Mental health reviewing agency" means a mental health agency under contract with a mental health board under section [340.091](#) of the Revised Code to recommend if ODMH's designee should determine that a specific living arrangement is appropriate to meet a specific applicant's needs.

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5122-36-04 Responsibilities of the living arrangement.

Each living arrangement housing a RSS resident shall:

(A) Furnish accommodations to each resident. "Accommodations" means housing, three nutritious meals per day, meal preparation, laundry service, housekeeping, arranging transportation, social activities within the living arrangement, recreational activities within the living arrangement, maintenance, security service, and similar services.

(B) Furnish supervision to each resident. "Supervision" means ensuring the resident's health, safety, and welfare by observing the resident while he or she engages in activities of daily living or other activities; reminding the resident to engage in or complete an activity of personal hygiene or other self-care activity; or, assisting the resident in making or keeping an appointment.

(C) Furnish personal care services to each resident. "Personal care services" mean services that include assisting a resident with activities of daily living, assisting a resident with self-administration of medications in accordance with rule 5122-33-17 of the Administrative Code, and preparing special diets, if the living arrangement furnishes special diets in accordance with rule 5122-33-20 of the Administrative Code.

(D) Accept the allowable fee in rule 5122-36-05 of the Administrative Code as payment in full for all accommodations, supervision, and personal care services the living arrangement provides to the RSS resident. The living arrangement shall not request additional payment for these services from the resident, the resident's family, or any other local, state, or federal agency.

(E) Provide ODMH's designee with access to any RSS resident's records, including a resident's financial records, and any mental health plans of care as defined in rule 5122-33-18 of the Administrative Code.

(F) Allow each resident to meet privately with ODMH's designee.

(G) Notify ODMH's designee before transferring or discharging a resident to another living arrangement.

(H) Notify ODMH's designee of any significant changes in the resident's status that might affect the resident's needs.

(I) Not act as legal guardian or power of attorney for any resident unless appointed guardian or named power of attorney before July 1, 2000. However, the living arrangement may act as a resident's authorized representative.

(J) Maintain the appropriate licensure or certification.

(K) Return any RSS payment that it receives for a resident who was disenrolled from the program or left the living arrangement before the beginning of the month for which the payment was made.

(L) Give a prorated portion of any RSS payment to a resident who finds it necessary to leave the living arrangement due to extenuating circumstances before the end of the month for which the payment was made. The living arrangement shall pay even if the resident fails to give the minimum notice of departure that an admissions agreement or other contract between the living arrangement and the resident requires. Examples of extenuating circumstances include:

(1) The living arrangement cannot provide the level of care that the resident's mental, emotional, or physical condition requires;

(2) The health, safety, or welfare of the resident or any other person residing in the living arrangement requires a transfer or discharge;

(3) The living arrangement no longer has a current, valid license or certification; or,

(4) The living arrangement goes out of business.

(M) Permit each resident to have daily access to his or her personal funds during regularly-scheduled office hours, as specified in a posted notice that is available to each resident.

(N) Have each resident sign receipts for all funds exchanged between the resident and the living arrangement including payment for care, spending money, and any purchases the living arrangement makes on the resident's behalf. Additionally, the living arrangement shall provide each resident with a quarterly itemized account statement, and, if the resident gives permission to do so, the living arrangement shall provide ODMH's designee with this statement.

(O) Provide transportation for each resident as needed. If the living arrangement provides transportation for a charge to the resident, the living arrangement shall provide the resident with complete information regarding the living arrangement's transportation policy, including information concerning costs, and other transportation options available to the resident.

(P) Refrain from charging a resident more than the usual and customary rate for furnishing transportation or purchasing items.

(Q) Provide for the resident's needs, as determined by ODMH's designee. If the living arrangement cannot meet the resident's needs, it shall cooperate with ODMH's designee to relocate the resident to a living arrangement that can meet the resident's needs.

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5122-36-05 Allowable fee.

(A) The allowable fee for a particular living arrangement is the amount a resident pays to a living arrangement. The allowable fees are listed in "Table 1" to this rule.

Table 1

LIVING ARRANGEMENT	ALLOWABLE FEE
Adult family home	\$774
Adult foster home	\$774
Adult group home	\$877
Community mental health housing	\$618
Residential care facility	\$877
Residential facility	\$774

(B) The CDJFS uses the allowable fee to calculate the amount of supplement a resident receives based upon the resident's living arrangement as specified in Chapter 5101: 1-17 of the Administrative Code.

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