

5123-9-15

Home and community-based services waivers - individual employment support under the individual options, level one, and self-empowered life funding waivers.

(A) Purpose

This rule defines individual employment support and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The expected outcome of individual employment support is competitive integrated employment in a job well-matched to the individual's interests, strengths, priorities, and abilities that meets the individual's personal and career goals.

(B) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Adult day support" has the same meaning as in rule 5123-9-17 of the Administrative Code.
- (2) "Agency provider" ~~has the same meaning as in~~ means an entity that directly employs at least one person in addition to a director of operations for the purpose of providing services for which the entity is certified in accordance with rule 5123-2-08 of the Administrative Code.
- (3) ~~"Budget limitation" has the same meaning as in rule 5123-9-19 of the Administrative Code.~~
- (4)(3) "Career planning" has the same meaning as in rule 5123-9-13 of the Administrative Code.
- (5)(4) "Competitive integrated employment" means work (including self-employment) that is performed on a full-time or part-time basis:

(a) For which an individual is:

(i) Compensated:

- (a) At a rate that ~~shall be~~ is not less than the higher of the rate specified in the Fair Labor Standards Act of 1938, 29 U.S.C. 206(a)(1), as in effect on the effective date of this rule, or the rate specified in the applicable state or local minimum wage law and is not less than the customary rate paid by the employer for the same or similar work performed by other employees who do not have disabilities, and who are

in similar occupations by the same employer and who have similar training, experience, and skills; or

- (b) In the case of an individual who is self-employed, yields an income that is comparable to the income received by persons without disabilities, who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and
 - (ii) Eligible for the level of benefits provided to other full-time and part-time employees;
- (b) At a location where the individual interacts with persons without disabilities to the same extent as employees who are not receiving home and community-based services;
- (c) That is not performed in:
 - (i) Dispersed enclaves in which individuals work in a self-contained unit within a company or service site in the community or perform multiple jobs in the company, but are not integrated with non-disabled employees of the company; or
 - (ii) Mobile work crews comprised solely of individuals operating as a distinct unit and/or self-contained business working in several locations within the community; and
- (d) That, as appropriate, presents opportunities for advancement that are similar to those for persons without disabilities who have similar positions.

~~(6)~~(5) "County board" means a county board of developmental disabilities.

~~(7)~~(6) "Customized employment" means competitive integrated employment designed to meet the specific abilities of an individual with a significant disability and the business needs of an employer that is carried out through flexible strategies such as job exploration by the individual and working with an employer to facilitate placement including:

- (a) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;
- (b) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location; and

(c) Providing services and supports at the job location.

~~(8)~~(7) "Department" means the Ohio department of developmental disabilities.

~~(9)~~(8) "Fifteen-minute billing unit" means a billing unit that equals fifteen minutes of service delivery time or is greater or equal to eight minutes and less than or equal to twenty-two minutes of service delivery time. Minutes of service delivery time accrued throughout a day will be added together for the purpose of calculating the number of fifteen-minute billing units for that day.

~~(10)~~(9) "Group employment support" has the same meaning as in rule 5123-9-16 of the Administrative Code.

~~(11)~~(10) "Independent provider" ~~has the same meaning as in~~ means a self-employed person who provides services for which the person is certified in accordance with rule 5123-2-09 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.

~~(12)~~(11) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, ~~his or her~~ the person's guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.

~~(13)~~(12) "Individual employment support" means individualized support for an individual to maintain competitive integrated employment. Activities that constitute individual employment support include but are not limited to:

(a) Job coaching, which is identification and provision of services and supports, utilizing task analysis and systematic instruction that assist the individual in maintaining employment and/or advancing ~~his or her~~ the individual's career. Job coaching includes supports provided to the individual and ~~his or her~~ the individual's supervisor or coworkers on behalf of the individual, either in-person or remotely via technology. Job coaching may include the engagement of natural supports in the workplace to provide additional supports that allow the job coach to maximize ~~his or her~~ the job coach's ability to fade. Examples of job coaching strategies include job analysis, job adaptations, instructional prompts, verbal instruction, self-management tools, physical assistance, role playing, coworker modeling, and written instruction. Job coaching for self-employment includes identification and provision of services and supports, including counseling and guidance, which assist the individual in maintaining self-employment through the operation of a business.

When job coaching is provided, a plan outlining the steps to reduce job coaching over time ~~shall~~ will be in place within thirty calendar days.

- (b) Training in assistive or other technology utilized by the individual while on the job.
- (c) Other workplace support services including services not specifically related to job skill training that enable the individual to be successful in integrating into the job setting.
- (d) Personal care and assistance, which may be a component of individual employment support but ~~shall~~ will not comprise the entirety of the service.

~~(14)~~(13) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.

~~(15)~~(14) "Mentor" means a person employed by or under contract with the agency provider who has experience providing direct services to persons with developmental disabilities and who is available on a regular basis to provide guidance to new direct support professionals regarding techniques and practices that enhance the effectiveness of the provision of individual employment support.

~~(16)~~(15) "Natural supports" means the personal associations and relationships typically developed in the community that enhance the quality of life for individuals. Natural supports may include family members, friends, neighbors, and others in the community or organizations that serve the general public who provide voluntary support to help an individual achieve agreed upon outcomes through the individual service plan development process.

~~(17)~~(16) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule ~~5123:2-5-02~~ 5123-5-02 of the Administrative Code.

~~(18)~~(17) "Service documentation" means all records and information on one or more documents, including documents that may be created or maintained in electronic software programs, created and maintained contemporaneously with the delivery of services, and kept in a manner as to fully disclose the nature and extent of services delivered that ~~shall include~~ includes the items delineated in paragraph (E) of this rule to validate payment for medicaid services.

~~(19)~~(18) "Vocational habilitation" has the same meaning as in rule 5123-9-14 of the Administrative Code.

~~(20)~~(19) "Waiver eligibility span" means the twelve-month period following either an individual's initial waiver enrollment date or a subsequent eligibility re-determination date.

(C) Provider qualifications

- (1) Individual employment support ~~shall~~ will be provided by an agency provider or an independent provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of medicaid.
- (2) An applicant seeking approval to provide individual employment support ~~shall~~ will complete and submit an application ~~through the department's website (<http://dodd.ohio.gov/>)~~ and adhere to the requirements of as applicable, rule 5123-2-08 or 5123-2-09 of the Administrative Code.
- (3) An applicant seeking independent provider certification to provide individual employment support ~~shall~~ must have:
 - (a) At least one year of full-time (or part-time equivalent), paid work experience related to supporting individuals to maintain jobs in the general workforce; or
 - (b) Thirty hours of formal training related to supporting individuals to maintain jobs in the general workforce.
- (4) An agency provider ~~shall~~ will ensure that direct support professionals who provide individual employment support successfully complete, no later than thirty calendar days after hire, training in:
 - (a) Services that comprise individual employment support;
 - (b) Signs and symptoms of illness or injury and procedure for response;
 - (c) Building/site-specific emergency response plans; and
 - (d) Program-specific transportation safety.
- (5) An agency provider ~~shall~~ will ensure that direct support professionals who provide individual employment support (other than those who have at least one year of experience providing individual employment support at the point of hire), during the first year after hire, are assigned and have access to a mentor.

- (6) An agency provider ~~shall~~ will ensure that direct support professionals who provide individual employment support (other than those who have at least one year of experience providing individual employment support at the point of hire), no later than one year after hire, successfully complete at least eight hours of training specific to the provision of individual employment support that includes, but is not limited to:
- (a) Skill-building in job training and systematic instruction that assists ~~the~~ an individual in maintaining employment and or advancing ~~his or her~~ the individual's career; and
 - (b) Self-determination which includes assisting ~~the~~ an individual to develop self-advocacy skills, to exercise ~~his or her~~ civil rights, to exercise control and responsibility over the services ~~he or she receives~~ received, and to acquire skills that enable ~~him or her to become~~ becoming more independent, productive, and integrated within the community.
- (7) Failure to comply with this rule and as applicable, rule 5123-2-08 or 5123-2-09 of the Administrative Code, may result in denial, suspension, or revocation of the provider's certification.

(D) Requirements for service delivery

- (1) The expected outcome of individual employment support is competitive integrated employment in a job well-matched to the individual's interests, strengths, priorities, and abilities that meets the individual's personal and career goals.
- (2) Individual employment support ~~shall~~ will be provided pursuant to a person-centered individual service plan that conforms to the requirements of rules 5123-4-02 and ~~5123-2-2-05~~ 5123-2-05 of the Administrative Code and ~~shall be~~ coordinated with other services and supports set forth in the individual service plan.
- (3) The service and support administrator ~~shall~~ will ensure that documentation is maintained to demonstrate that the service provided as individual employment support to an individual enrolled in a waiver is not otherwise available as vocational rehabilitation services funded under section 110 of the Rehabilitation Act of 1973, 29 U.S.C. 730, as in effect on the effective date of this rule, or as special education or related services as those terms are defined in section 602 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1401, as in effect on the effective date of this rule.

- (4) Individual employment support, other than services and supports that assist an individual to maintain self-employment through the operation of a business, ~~shall~~ will take place in a setting separate from the home of the individual receiving the services.
- (5) Individual employment support ~~shall~~ will be provided at a ratio of one direct support professional to one individual.
- (6) Individual employment support services may extend to those times when ~~the~~ an individual is not physically present while the provider is performing individual employment support activities on behalf of the individual (e.g., developing coworker supports or meeting with a supervisor).
- (7) A provider of individual employment support ~~shall~~ will complete reports and collect and submit data via the department's employment outcome tracking system in accordance with rule ~~5123-2-2-05~~ 5123-2-05 of the Administrative Code.
- (8) A provider of individual employment support ~~shall~~ will recognize changes in the individual's condition and behavior, report to the service and support administrator, and record the changes in the individual's written record.
- (9) A provider of individual employment support ~~shall~~ will report identified safety and sanitation hazards that occur at the worksite to employers having the responsibility to remedy the condition.

(E) Documentation of services

Service documentation for individual employment support ~~shall~~ will include each of the following to validate payment for medicaid services:

- (1) Type of service.
- (2) Date of service.
- (3) Place of service.
- (4) Name of individual receiving service.
- (5) Medicaid identification number of individual receiving service.
- (6) Name of provider.
- (7) Provider identifier/contract number.

- (8) Written or electronic signature of the person delivering the service, or initials of the person delivering the service if a signature and corresponding initials are on file with the provider.
- (9) Description and details of the services delivered that directly relate to the services specified in the approved individual service plan as the services to be provided.
- (10) Times the delivered service started and stopped.
- (11) Number of units of the delivered service.

(F) Payment standards

- (1) The billing unit, service codes, and payment rates for individual employment support provided January 1, 2024 through June 30, 2024 are contained in ~~the~~ appendix A to this rule. The billing unit, service codes, and payment rates for individual employment support provided on or after July 1, 2024 are contained in appendix B to this rule.
- (2) Payment for adult day support, career planning, group employment support, individual employment support, and vocational habilitation, alone or in combination, ~~shall~~ will not exceed the budget limitations contained in appendix B to rule 5123-9-19 of the Administrative Code.
- (3) Payment rates for individual employment support ~~shall be modified~~ will be adjusted by the behavioral support rate modification to reflect the needs of an individual requiring behavioral support upon determination by the department that the individual meets the criteria set forth in paragraph (F)(3)(a) of this rule. The amount of the behavioral support rate modification applied to each fifteen-minute billing unit of service is contained in ~~the~~ as applicable, appendix A or appendix B to this rule.
 - (a) The department ~~shall~~ will determine that an individual meets the criteria for the behavioral support rate modification when:
 - (i) The individual has been assessed within the last twelve months to present a danger to self or others or have the potential to present a danger to self or others; and
 - (ii) A behavioral support strategy that is a component of the individual service plan has been developed in accordance with the requirements in rules established by the department; and
 - (iii) The individual either:

- (a) Has a response of "yes" to at least four items in question thirty-two of the behavioral domain of the Ohio developmental disabilities profile; or
 - (b) Requires a structured environment that, if removed, will result in the individual's engagement in behavior destructive to self or others.
 - (b) The duration of the behavioral support rate modification ~~shall be~~ is limited to the individual's waiver eligibility span, may be determined needed or no longer needed within that waiver eligibility span, and may be renewed annually.
 - (c) The purpose of the behavioral support rate modification is to provide funding for the implementation of behavioral support strategies by staff who have the level of training necessary to implement the strategies; the department retains the right to verify that staff who implement behavioral support strategies have received training (e.g., specialized training recommended by clinicians or the team or training regarding an individual's behavioral support strategy) that is adequate to meet the needs of the individuals served.
- (4) Payment rates for individual employment support ~~shall be modified~~ will be adjusted by the medical assistance rate modification to reflect the needs of an individual requiring medical assistance upon determination by the county board that the individual meets the criteria set forth in paragraph (F)(4)(a) of this rule. The amount of the medical assistance rate modification applied to each fifteen-minute billing unit of service is contained in ~~the~~ as applicable, appendix A or appendix B to this rule.
 - (a) The county board ~~shall~~ will determine that an individual meets the criteria for the medical assistance rate modification when:
 - (i) The individual requires ~~routine feeding and/or~~ the administration of fluid, nutrition, and/or prescribed medication through gastrostomy and/or jejunostomy tube; and/or requires the administration ~~of routine doses~~ of insulin through subcutaneous injection, inhalation, or insulin pump; and/or requires the administration of medication for the treatment of metabolic glyceimic disorder by subcutaneous injection; or
 - (ii) The individual requires a nursing procedure or nursing task that a licensed nurse agrees to delegate in accordance with rules in

Chapter 4723-13 of the Administrative Code, which is provided in accordance with section 5123.42 of the Revised Code, and when such procedure or nursing task is not the administration of oral prescribed medication, topical prescribed medication, oxygen, or metered dose inhaled medication, or a health-related activity as defined in rule ~~5123:2-6-01~~ 5123-6-01 of the Administrative Code.

- (b) The duration of the medical assistance rate modification ~~shall be~~ is limited to the individual's waiver eligibility span, may be determined needed or no longer needed within that waiver eligibility span, and may be renewed annually.

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CERTIFIED ELECTRONICALLY

Certification

12/18/2023

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