5123:2-3-11 **Licensed residential facilities - room and board.**

(A) Purpose

This rule identifies components of room and board and establishes standards and procedures for determining the amount of earned income and unearned income retained by an individual as personal funds and the amount of room and board for which an individual is responsible when residing in a residential facility licensed in accordance with section 5123.19 of the Revised Code other than an intermediate care facility for individuals with intellectual disabilities.

(B) Definitions

(1) "County board" means a county board of developmental disabilities.

(2) "Department" means the Ohio department of developmental disabilities.

(3) "Earned income" means wages and net earnings from employment or self-employment.

(4) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.

(5) "Individual" means a person with a developmental disability.

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

(7) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.

(8) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.

(9) "Patient liability" means the individual's financial obligation toward the medicaid cost of care. Patient liability shall be satisfied in accordance with rule 5160:1-3-04.3 of the Administrative Code.

(10) "Personal funds" means earned income and unearned income retained by an individual after satisfying his or her obligations such as rent, individual-specific expenses, or medical co-payments; satisfying state requirements including patient liability and/or monthly premiums for services funded by a home and community-based services waiver; and satisfying federal requirements including adherence to income restrictions necessary to maintain medicaid eligibility.

(11) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code, except that for purposes of this rule, "residential facility" does not include an intermediate care facility for individuals with intellectual

disabilities.

(12) "Room and board" means items, costs, and/or expenses, which are not reimbursable through medicaid or another payer, incurred by the licensee in order to provide needed supports and services to an individual residing in a residential facility. Room and board reflects the licensee's actual and reasonable costs and includes individual-specific expenses based on the support provided to each individual who resides in the residential facility to implement his or her individual service plan and residential facility costs.

(a) Individual-specific expenses include:

(i) Adaptive minor equipment, routine medical supplies, and over-the-counter medications.

(ii) Healthcare-related expenses and medical equipment such as dental services, eyeglasses, wheelchairs, and catheters.

(iii) Personal hygiene supplies such as hair and nail care items, lotions, powder, dental hygiene supplies, shaving items, and the cost of haircuts.

(iv) The cost of recreational and/or social activities such as an admission ticket and travel (but never staff wages) for an individual and for staff, as specified in the individual service plan, necessary to accompany the individual to recreational and/or social activities.

(v) An individual's clothing.

(vi) Atypical supplies required for the protection of an individual and staff while performing procedures that involve potential contact with bodily fluids including, but not limited to, gowns, goggles, and eye wash.

(b) Residential facility costs include:

(i) Administrative overhead expenses directly related to property management of the residential facility.

(ii) Utilities including fuel oil, natural and propane gas, metered electrical services, water and sewage expenses, local and long distance telephone service, equipment purchased or leased for use by residents, and the cost of security services provided for the benefit of residents.

(iii) The cost of basic television and internet services provided for the

benefit of residents.

(iv) The cost of food, after food stamps and other available resources are expended, including all raw, prepackaged, and prepared food (meals and/or snack items) eaten inside or outside the home (e.g., at restaurants) by the residents and like expenses for staff if consumed while providing supervision or services to the residents.

(v) Rental or lease costs for building and land limited to the lesser of actual cost or fair market value and insurance on contents.

(vi) Depreciation for a residential facility owned by the licensee (excluding the value of the land) using the straight line method of depreciation over forty years and interest expense as incurred, real property taxes, and insurance on contents and property. Excludes amortization expense over the life of state property grants received by the licensee for renovations.

(vii) Maintenance and repair of the residential facility including, but not limited to, lawn care, trash removal, pest control, carpet cleaning, and repair to minor equipment or structure.

(viii) Depreciation and current interest expense of residential facility equipment, furniture, and other furnishings that meet the licensee's capitalization policy, using the straight line method of depreciation. Guidelines established by the internal revenue service shall be used to determine the number of years of useful life of the asset to be depreciated.

(ix) Lease or rental of residential facility equipment, furniture, and other furnishings and/or the cost of equipment, furniture, and other furnishings under the capitalization policy of the licensee.

(x) Major maintenance to a residential facility owned by the licensee to improve and/or maintain the structural integrity of the facility and to maintain a safe and healthy living environment including, but not limited to, roof replacement; repairs to the foundation, walls, floors, electrical, heating and cooling, plumbing, or septic and sewer systems; additions or renovations that benefit the residents; and interest expense if funds were borrowed to complete the work. The straight line method of depreciation shall be used for depreciating all improvements. Improvements shall be depreciated over a period not less than the remaining useful life of the property and not more than the useful life of the improvement as determined by the internal revenue service.

(xi) Non-food supplies and minor equipment used in the storage, preparation, serving, and delivery of food such as dishes, dish washing detergent, cooking utensils, silverware, wraps and containers to preserve food, and propane gas for grills.

(xii) Household costs including, but not limited to, trash cans and bags, general household cleaning supplies, paper products, towels, bedding, laundry, and minor equipment used for laundry and housekeeping.

(13) "Unearned income" means all income that is not earned income, including, but not limited to, social security disability income, supplemental security income, and other public benefits an individual receives.

(C) General provisions

(1) For the purposes of this rule, earned income and unearned income shall be considered in the month it is received.

(2) A county board is permitted to recoup earned income and unearned income received by an individual from a non-routine event (e.g., social security back payment, tax refund, or inheritance) for payment of past room and board, not to exceed twelve months. An individual shall not be charged for prepayment of future room and board as a result of receiving earned income or unearned income from a non-routine event.

(3) The total amount of room and board available to support residents of residential facilities in a county shall align with the plan and priorities established by the county board in accordance with section 5126.04 of the Revised Code and be based upon available resources of the county board.

(4) When a licensee operates more than one residential facility in a county, the individual-specific expenses component of room and board and/or the residential facility costs component of room and board may be determined separately for each facility or by aggregating costs across all facilities to arrive at an average. The county board and licensee shall jointly establish which method will be used. The total room and board rate may vary among facilities based on identified individual-specific expenses.

(5) The amount of room and board to be paid to a licensee by a county board shall be identified in a written contract between the licensee and the county board which shall be made available upon request by the department. Room and board costs shall be reviewed by the county board and the licensee at least annually and amended as necessary.

(6) A county board and licensee shall share information as necessary for

determination of reasonable and appropriate room and board. The county board and licensee shall work together to resolve differences regarding room and board.

(D) Personal funds retained by the individual

(1) Each individual shall retain as personal funds at least one hundred dollars per month from the individual's earned income.

(2) Each individual shall retain as personal funds at least one hundred dollars per month from the individual's unearned income. Food stamps, although unearned income, shall not be applied toward the personal funds to be retained by the individual.

(3) When the sum of an individual's earned income and unearned income is less than one hundred dollars per month, the county board shall provide the individual with the difference, up to one hundred dollars, for the individual to retain as personal funds.

(E) Responsibilities of the county board

(1) The county board shall identify assets of the individual, resources, and alternatives to assist the individual to meet room and board. Unusual or atypical room and board expenses, resources, and responsible entities shall be identified in the individual service plan.

(2) The county board is responsible for paying the licensee the amount owed to the licensee for room and board based on the contract established in accordance with paragraph (C)(5) of this rule, adjusted for earned income and unearned income of the individual as calculated in accordance with paragraph (D) of this rule.

(F) Responsibilities of the licensee

The licensee is responsible for calculating and documenting the sum of the individual's earned income and unearned income available for room and board as determined in accordance with paragraph (D) of this rule and shall compare it to the room and board amount identified in the contract established in accordance with paragraph (C)(5) of this rule.

(1) If the sum of the individual's earned income and unearned income minus the amount the individual is entitled to retain in accordance with paragraph (D) of this rule is less than the contracted room and board for the month, the entire amount of the individual's personal funds available for room and board shall be paid to the licensee. The balance of the room and board cost shall be billed to the county board by the licensee in accordance with the contract.

(2) If the sum of the individual's earned income and unearned income minus the amount the individual is entitled to retain in accordance with paragraph (D) of this rule is greater than the contracted room and board for the month, the individual shall pay the entire cost of the room and board to the licensee. Any earned income and unearned income received by the individual in excess of the amount paid for room and board for the month shall be retained by the individual as personal funds.

(G) Responsibilities of the individual, guardian, and/or payee

(1) The individual, guardian, or payee of the individual, as applicable, is responsible for providing the licensee and county board with information pertaining to the individual's earned income and unearned income in order to determine the individual's obligation to pay for room and board.

(2) The individual, guardian, or payee of the individual, as applicable, is responsible for paying the licensee the amount owed to the licensee for room and board in a timely manner and in accordance with the lease or residency agreement required pursuant to rule 5123:2-9-02 of the Administrative Code.

(H) Implementation of this rule

(1) County boards and licensees shall be fully compliant with this rule as room and board contracts are negotiated for the first time after the effective date of this rule and no later than one year from the effective date of this rule.

(2) Until such time that county boards and licensees become fully compliant with this rule, they shall be fully compliant with rule 5123:2-3-18 of the Administrative Code as it existed on the day immediately prior to the effective date of this rule.

Replaces: 5123:2-3-18

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

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