

5123:2-9-14

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

(A) Purpose

This rule defines vocational habilitation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The expected outcome of vocational habilitation is the advancement of an individual on his or her path to community employment in accordance with rule 5123:2-2-05 of the Administrative Code and the individual's achievement of competitive integrated employment in a job well-matched to the individual's interests, strengths, priorities, and abilities.

(B) Definitions

(1) "Adult day support" has the same meaning as in rule 5123:2-9-17 of the Administrative Code.

(2) "Agency provider" means an entity that directly employs at least one person in addition to the chief executive officer for the purpose of providing services for which the entity must be certified in accordance with rule 5123:2-2-01 of the Administrative Code.

(3) "Budget limitation" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.

(4) "Career planning" has the same meaning as in rule 5123:2-9-13 of the Administrative Code.

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

(7) "Daily billing unit" means a billing unit that may be used when between five and seven hours of vocational habilitation are delivered by the same provider to the same individual during one calendar day in accordance with the conditions specified in paragraph (F)(2) of this rule.

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

(9) "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.

(10) "Group employment support" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.

(11) "Independent provider" means a self-employed person who provides services for which he or she must be certified in accordance with rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.

- (12) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
- (13) "Individual employment support" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.
- (14) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (15) "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 services staff regarding techniques and practices that enhance the effectiveness of the provision of vocational habilitation.
- (16) "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) "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 of the Administrative Code.
- (18) "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 the items delineated in paragraph (E) of this rule to validate payment for medicaid services.
- (19) "Vocational habilitation" means services that provide learning and work experiences, including volunteer work, where the individual develops general skills that lead to competitive integrated employment such as ability to communicate effectively with supervisors, coworkers, and customers; generally-accepted community workplace conduct and dress; ability to follow directions; ability to attend to tasks; workplace problem-solving skills and strategies; and workplace safety and mobility training. Services are expected to occur over a defined period of time with specific outcomes to be achieved determined by the individual and his or her team. Activities that constitute vocational habilitation include, but are not limited to:

(a) Ongoing support which includes direct supervision, telephone and/or in-person monitoring and/or counseling, and the provision of some or all of the following supports to promote the development of general work skills:

(i) Developing a systematic plan of instruction and support, including task analyses to prepare the individual for competitive integrated employment;

(ii) Assisting the individual to perform activities that result in increasing his or her social integration with other persons employed at the worksite;

(iii) Supporting and training the individual in the use of individualized or community-based transportation services;

(iv) Providing services and training that assist the individual with problem-solving and meeting job-related expectations;

(v) Assisting the individual to use natural supports and community resources;

(vi) Providing training to the individual to maintain current skills, enhance personal hygiene, learn new work skills, attain self-determination goals, and improve social skills;

(vii) Developing and implementing a plan to assist the individual to transition from his or her vocational habilitation setting to competitive integrated employment emphasizing the use of natural supports; and

(viii) Assisting the individual with self-medication or provision of medication administration for prescribed medication and assisting the individual with or performing health-related activities in accordance with Chapter 5123:2-6 of the Administrative Code.

(b) Provision of information about or referral to career planning services, disability benefits services, or other appropriate consultative services.

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

(C) Provider qualifications

(1) Vocational habilitation shall be provided by an agency provider that meets the

requirements of this rule and that has a medicaid provider agreement with the Ohio department of medicaid.

- (2) Vocational habilitation shall not be provided by an independent provider.
- (3) An applicant seeking approval to provide vocational habilitation shall complete and submit an application through the department's website (<http://dodd.ohio.gov/>) and adhere to the requirements of rule 5123:2-2-01 of the Administrative Code.
- (4) An agency provider shall ensure that direct services staff who provide vocational habilitation successfully complete, no later than ninety calendar days after hire, an orientation program of at least eight hours that addresses, but is not limited to:
- (a) Organizational background of the agency provider, including:
- (i) Mission, vision, values, principles, and goals;
 - (ii) Organizational structure;
 - (iii) Key policies, procedures, and work rules;
 - (iv) Ethical and professional conduct and practice;
 - (v) Avoiding conflicts of interest; and
 - (vi) Working effectively with individuals, families, and other team members.
- (b) Components of quality care for individuals served, including:
- (i) Interpersonal relationships and trust;
 - (ii) Cultural and personal sensitivity;
 - (iii) Effective communication;
 - (iv) Person-centered philosophy, planning, and practice;
 - (v) Development of individual service plans;
 - (vi) Roles and responsibilities of team members; and
 - (vii) Record keeping including progress notes and incident/accident reports.
- (c) Health and safety, including:

- (i) Signs and symptoms of illness or injury and procedure for response;
 - (ii) Building/site-specific emergency response plans; and
 - (iii) Program-specific transportation safety.
 - (d) Positive behavioral support, including:
 - (i) Principles of positive culture;
 - (ii) Role of direct services staff in creating a positive culture;
 - (iii) General requirements for intervention and behavioral support strategies and direct services staff role including documentation;
 - (iv) Human rights committees established in accordance with rule 5123:2-2-06 of the Administrative Code; and
 - (v) Crisis intervention techniques.
 - (e) Services that comprise vocational habilitation including the expectation that vocational habilitation will eventually lead to competitive integrated employment.
- (5) An agency provider shall ensure that direct services staff who provide vocational habilitation (other than those who have at least one year of experience providing vocational habilitation at the point of hire), during the first year after hire, are assigned and have access to a mentor.
- (6) An agency provider shall ensure that direct services staff who provide vocational habilitation (other than those who have at least one year of experience providing vocational habilitation 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 vocational habilitation that includes, but is not limited to:
- (a) Skill building in advancement of individuals on the path to community employment as described in rule 5123:2-2-05 of the Administrative Code and development of individuals' strengths and skills necessary for competitive integrated employment; and
 - (b) Self-determination which includes assisting the 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, and to acquire skills that enable him or her to become more independent, productive, and integrated within the community.

- (7) An agency provider shall ensure that each direct services staff member who provides vocational habilitation successfully completes on-the-job training specific to each individual he or she serves that includes:
- (a) What is important to the individual and what is important for the individual; and
 - (b) The individual's support needs including, as applicable, behavioral support strategy, management of the individual's funds, and medication administration/delegated nursing.
- (8) An agency provider shall ensure that direct services staff who provide vocational habilitation, commencing in the second year of hire by the agency provider, annually complete at least eight hours of training, in accordance with the written plan of training priorities described in paragraph (C)(9) of this rule.
- (a) The training shall enhance the skills and competencies of the direct services staff member relevant to his or her job responsibilities and shall include, but is not limited to:
 - (i) The role and responsibilities of direct services staff with regard to services including person-centered planning, community integration, self-determination, and self-advocacy;
 - (ii) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
 - (iii) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department since the previous year's training;
 - (iv) The requirements relative to the direct services staff member's role in providing behavioral support to the individuals he or she serves; and
 - (v) Best practices related to the provision of vocational habilitation.
 - (b) The training may be structured or unstructured and may include, but is not limited to, lectures, seminars, formal coursework, workshops, conferences, demonstrations, visitations or observations of other services/programs, distance and other means of electronic learning, video and audio-visual training, and staff meetings.
- (9) An agency provider shall develop and implement a written plan identifying training priorities for direct services staff who provide vocational habilitation.

The training priorities shall be consistent with the needs of individuals served, best practice, and the provider's mission, vision, and strategic plan. The written plan of training priorities shall describe the method (e.g., written test, skills demonstration, or documented observation by supervisor) that will be used to establish competency in areas of training. The written plan of training priorities shall be updated at least once every twelve months and shall identify who is responsible for arranging or providing the training and projected timelines for completion of the training.

- (10) An agency provider shall ensure that a written record of training completed for direct services staff who provide vocational habilitation is maintained. The written record shall include a description of the training completed including a training syllabus and copies of training materials, the date of training, the duration of training, and the instructor's name, if applicable.
- (11) Failure to comply with this rule and rule 5123:2-2-01 of the Administrative Code may result in denial, suspension, or revocation of the agency provider's certification.

(D) Requirements for service delivery

- (1) The expected outcome of vocational habilitation is the advancement of an individual on his or her path to community employment in accordance with rule 5123:2-2-05 of the Administrative Code and the individual's achievement of competitive integrated employment in a job well-matched to the individual's interests, strengths, priorities, and abilities.
- (2) Vocational habilitation is available to individuals who are no longer eligible for educational services based on their graduation and/or receipt of a diploma or equivalency certificate and/or their permanent discontinuation of educational services within parameters established by the Ohio department of education.
- (3) The service and support administrator shall ensure that documentation is maintained to demonstrate that the service provided as vocational habilitation 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.
- (4) Vocational habilitation shall be provided pursuant to a person-centered individual service plan that conforms to the requirements of rules 5123:2-1-11 and 5123:2-2-05 of the Administrative Code and shall be coordinated with other services and supports set forth in the individual service plan. An individual receiving vocational habilitation shall have community employment outcomes in his or her individual service plan; vocational habilitation activities shall be designed to support the individual's community employment outcomes.

- (5) Vocational habilitation shall take place in a non-residential setting separate from any individual's home.
- (6) A provider of vocational habilitation shall notify the department within fourteen calendar days when there is a change in the physical address (i.e., adding a new location or closing an existing location) of any facility where vocational habilitation takes place.
- (7) A provider of vocational habilitation shall complete reports and collect and submit data via the department's employment tracking system in accordance with rule 5123:2-2-05 of the Administrative Code.
- (8) Individuals receiving vocational habilitation shall be compensated in accordance with applicable federal and state laws and regulations. A determination that an individual receiving vocational habilitation is eligible to be paid at special minimum wage rates in accordance with 29 C.F.R. Part 525, "Employment of Workers with Disabilities Under Special Certificates," as in effect on the effective date of this rule, shall be based on documented evaluations and assessments.
- (9) A provider of vocational habilitation shall ensure that appropriate staff are knowledgeable about the Workforce Innovation and Opportunity Act as in effect on the effective date of this rule, wage and hour laws, benefits, work incentives, and employer tax credits for individuals with developmental disabilities and ensure that individuals served receive this information.
- (10) A provider of vocational habilitation shall comply with applicable laws, rules, and regulations of the federal, state, and local governments pertaining to the physical environment (building and grounds) where vocational habilitation is provided. A provider of vocational habilitation shall be informed of and comply with standards applicable to the service setting.
- (11) A provider of vocational habilitation shall recognize changes in the individual's condition and behavior as well as safety and sanitation hazards, report to the service and support administrator, and record the changes in the individual's written record.

(E) Documentation of services

Service documentation for vocational habilitation shall 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/contact 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 units, service codes, and payment rates for vocational habilitation are contained in appendix A to this rule. Payment rates are based on individuals' group assignments determined in accordance with rule 5123:2-9-19 of the Administrative Code and the county cost-of-doing-business category. The cost-of-doing-business category for an individual is the category assigned to the county in which the service is actually provided for the preponderance of time. The cost-of-doing-business categories are contained in appendix B to this rule.
- (2) A provider of vocational habilitation may use the daily billing unit when the provider delivers between five and seven hours of vocational habilitation to the same individual during one calendar day and:
 - (a) The individual does not qualify for or the provider elects not to receive the behavioral support rate modification described in paragraph (F)(6) of this rule;
 - (b) The individual does not qualify for or the provider elects not to receive the medical assistance rate modification described in paragraph (F)(7) of this rule; and
 - (c) The provider does not qualify for or elects not to receive the community

integration rate modification described in paragraph (F)(8) of this rule.

- (3) A provider of vocational habilitation shall use the fifteen-minute billing unit when:
- (a) The provider delivers less than five hours or more than seven hours of vocational habilitation to the same individual during one calendar day;
 - (b) The individual being served qualifies for and the provider elects to receive the behavioral support rate modification in accordance with paragraph (F)(6) of this rule;
 - (c) The individual being served qualifies for and the provider elects to receive the medical assistance rate modification in accordance with paragraph (F)(7) of this rule; or
 - (d) The provider qualifies for and elects to receive the community integration rate modification in accordance with paragraph (F)(8) of this rule.
- (4) A provider of vocational habilitation shall not bill a daily billing unit on the same day the provider bills fifteen-minute billing units for the same individual.
- (5) Payment for adult day support, career planning, group employment support, individual employment support, and vocational habilitation, alone or in combination, shall not exceed the budget limitations contained in appendix B to rule 5123:2-9-19 of the Administrative Code.
- (6) Payment rates for vocational habilitation at the fifteen-minute billing unit shall be eligible for adjustment 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)(6)(a) of this rule. The amount of the behavioral support rate modification applied to each fifteen-minute billing unit of service is contained in appendix A to this rule.
- (a) The department shall 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 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.

(7) Payment rates for vocational habilitation at the fifteen-minute billing unit shall be eligible for adjustment 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)(7)(a) of this rule. The amount of the medical assistance rate modification applied to each fifteen-minute billing unit of service is contained in appendix A to this rule.

(a) The county board shall 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 prescribed medication through gastrostomy and/or jejunostomy tubes, and/or requires the administration of routine doses of insulin through subcutaneous injections and insulin pumps; or

(ii) The individual requires oxygen administration that a licensed nurse agrees to delegate in accordance with rules in Chapter 4723-13 of the Administrative Code; or

(iii) 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 or topical prescribed medication or a health-related activity as defined in rule 5123:2-6-01 of the Administrative Code.

- (b) The duration of the medical assistance rate modification shall be 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) Medical assistance rate modifications are subject to review by the department.
- (8) Payment rates for vocational habilitation at the fifteen-minute billing unit shall be eligible for adjustment by the community integration rate modification when the service is provided in integrated settings in groups of four or fewer individuals and the staff providing the service have demonstrated enhanced competency by successfully completing a department-administered program of instruction in community integration. The amount of the community integration rate modification applied to each fifteen-minute billing unit of service is contained in appendix A to this rule.

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