

## **\*\*\*Proposed New Rule - June 2, 2016\*\*\***

### **5123:2-9-15 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 that is well-matched to the individual's interests, strengths, priorities, and abilities, and that meets the individual's personal and career goals.

#### (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

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- (ii) Eligible for the level of benefits provided to other 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; and
  - (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 distinct units 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) "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) "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,

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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" 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. Job coaching 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 career. Job coaching includes supports provided to the individual and his or her 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 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 be in place within thirty 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 not comprise the entirety of the service.
- (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 support staff regarding techniques and practices that enhance the effectiveness of the direct provision of individual employment support.
- (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

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support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.

(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 the items delineated in paragraph (E) of this rule to validate payment for medicaid services.

(18) "Vocational habilitation" has the same meaning as in rule 5123:2-9-14 of the Administrative Code.

### (C) Provider qualifications

(1) Individual employment support shall be provided by an independent provider or an agency 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 complete and submit an application and adhere to the requirements of rule 5123:2-2-01 of the Administrative Code.

(3) An applicant seeking independent provider certification to provide individual employment shall 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 independent provider shall annually complete at least eight hours of training that enhances his or her skills and competencies relevant to the services he or she provides which shall include, but is not limited to:

(a) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;

(b) 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; and

(c) Services that comprise individual employment support as it is defined in this rule.

(5) An agency provider shall ensure that direct services staff who provide individual employment support successfully complete, no later than ninety 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:

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- (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) Recordkeeping 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 intervention culture;
  - (ii) Role of direct service staff in creating a positive culture;
  - (iii) General requirements for intervention and behavioral support strategies and direct service staff role including documentation;
  - (iv) Human rights committees; and
  - (v) Crisis intervention techniques.
- (e) Services that comprise individual employment support as it is defined in this rule.
- (6) An agency provider shall ensure that direct services staff who provide individual employment support (other than those who have at least one year of experience

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providing individual employment support at the point of hire), during the first year after hire, are assigned and have access to a mentor.

- (7) An agency provider shall ensure that direct services staff 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 individual in maintaining employment and or advancing his or her career; 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.
- (8) An agency provider shall ensure that each direct services staff member who provides individual employment support successfully completes on-the-job training specific to each individual he or she serves that includes, but is not limited to:
  - (a) Requirements set forth in the individual service plan including skill development goals, service/support activities, planned interventions, behavioral support strategy, and related documentation requirements;
  - (b) The individual's preferences and strengths;
  - (c) The individual's diagnoses and related needs;
  - (d) The individual's care needs including nutrition, diet and mealtime support, restroom assistance, mobility needs, lifting, and general supervision/support requirements;
  - (e) Medication administration and delegated nursing, as applicable;
  - (f) Teaching techniques and related documentation requirements; and
  - (g) The employee's or contractor's role regarding management of the individual's funds and related documentation requirements.
- (9) An agency provider shall ensure that direct services staff who provide individual employment support, commencing in the second year of hire by the agency provider, annually completes at least eight hours of training, in accordance with the written plan of training priorities described in paragraph (C)(10) 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:

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- (i) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
  - (ii) 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;
  - (iii) The requirements relative to the direct services staff member's role in providing behavioral support to the individuals he or she serves; and
  - (iv) Best practices related to the provision of individual employment support.
- (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 facilities/services/programs, distance and other means of electronic learning, video and audio-visual training, and staff meetings.
- (10) An agency provider shall develop and implement a written plan identifying training priorities for direct services staff who provide individual employment support. 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.
- (11) An agency provider shall ensure that a written record of training completed for direct services staff who provide individual employment support 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.
- (12) 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 provider's certification.
- (D) Requirements for service delivery
- (1) The expected outcome of individual employment support is competitive integrated employment in a job that is well-matched to the individual's interests, strengths, priorities, and abilities, and that meets the individual's personal and career goals.
  - (2) Individual employment support 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.
  - (3) The service and support administrator shall ensure that documentation is maintained

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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 shall be provided at a ratio of one staff to one individual.
  - (5) Individual employment support services may extend to those times when the individual is not physically present and the provider is performing individual employment support on behalf of the individual (e.g., developing coworker supports or meeting with a supervisor).
  - (6) A provider of individual employment support 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.
  - (7) A provider of individual employment support shall 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.
  - (8) A provider of individual employment support shall 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 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.

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- (9) Description and details of the services delivered that directly relate to the services specified in the approved individual service plan.
  - (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 are contained in the appendix 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 not exceed the budget limitations contained in appendix B to rule 5123:2-9-19 of the Administrative Code.
  - (3) Payment rates for individual employment support may be modified to reflect the needs of individuals requiring behavioral support and/or medical assistance in accordance with paragraphs (F)(3)(a) and (F)(3)(b) of this rule. Upon determination by the county board that the individual meets the criteria, the county board shall recommend and implement rate modifications for behavioral support and/or medical assistance. Rate modifications are subject to review by the department. The duration of approval for behavioral support and/or medical assistance rate modifications 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.
    - (a) The behavioral support rate modification shall be paid during all times when individual employment support is provided to an individual who qualifies for the modification. The amount of the behavioral support rate modification for each fifteen-minute billing unit of service is contained in the appendix to this rule.
      - (i) 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.
      - (ii) In order for an individual to receive the behavioral support rate modification, the following conditions shall be met:
        - (a) 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
        - (b) 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
        - (c) The individual receives ongoing behavioral support services from a

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licensed, certified, or other specially trained professional to address the identified behavior; and

- (d) The individual either:
  - (i) 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
  - (ii) Requires a structured environment that, if removed, will result in the individual's engagement in behavior destructive to self or others.
- (iii) When determined through the individual service plan development process that the conditions specified in paragraph (F)(3)(a)(ii) of this rule have been met, the county board shall apply the behavioral support rate modification for individual employment support. The department retains the right to review and validate the qualifications of any provider of ongoing behavioral support services.
- (b) The medical assistance rate modification shall be paid during all times when individual employment support is provided to an individual who qualifies for the modification. The amount of the medical assistance rate modification for each fifteen-minute billing unit of service is contained in the appendix to this rule. The county board shall apply the medical assistance rate modification when the following criteria have been met:
  - (i) An individual requires routine feeding and/or the administration of prescribed medications through gastrostomy and/or jejunostomy tubes, and/or requires the administration of routine doses of insulin through subcutaneous injections and insulin pumps; or
  - (ii) An 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) An 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.

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APPENDIX

BILLING UNIT, SERVICE CODES, AND PAYMENT RATES  
FOR INDIVIDUAL EMPLOYMENT SUPPORT

Agency Provider

Billing Unit: Fifteen minutes

Service Codes:	Individual Options Waiver	AEE
	Level One Waiver	FEE
	Self-Empowered Life Funding Waiver	SEE

Payment Rate: \$ 10.96

Independent Provider

Billing Unit: Fifteen minutes

Service Codes:	Individual Options Waiver	AEE
	Level One Waiver	FEE
	Self-Empowered Life Funding Waiver	SEG

Payment Rate: \$ 6.87

Behavioral Support Rate Modification

Billing Unit: Fifteen minutes

Rate Modification Amount: \$ 0.63

Instructions: Indicate modification on the cost projection and payment authorization.

Medical Assistance Rate Modification

Billing Unit: Fifteen minutes

Rate Modification Amount: \$ 0.12

Instructions: Indicate modification on the cost projection and payment authorization.