

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

### **5123:2-9-16 Home and community-based services waivers - group employment support under the individual options, level one, and self-empowered life funding waivers.**

#### (A) Purpose

This rule defines group 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 group employment support is paid employment and work experience leading to further career development and competitive integrated employment.

#### (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 employees;

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- (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 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) "Department" means the Ohio department of developmental disabilities.
- (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.
- (9) "Group employment support" means services and training activities provided in regular business, industry, and community settings for groups of two or more workers with disabilities.
- (a) Activities that constitute group employment support include any combination of the following as necessary and appropriate to meet the community employment goals of the individual:
    - (i) Person-centered employment planning;
    - (ii) Work adjustment;
    - (iii) Job analysis;
    - (iv) Training and systematic instruction;
    - (v) Job coaching; and
    - (vi) Training in independent planning, arranging, and using transportation.
  - (b) Group employment support is provided in two distinct service arrangements:
    - (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

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company, but are not integrated with non-disabled employees of the company.

- (ii) Mobile work crews comprised solely of individuals operating as distinct units and/or self-contained business working in several locations within the community.
- (10) "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.
  - (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 guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
  - (12) "Individual employment support" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.
  - (13) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
  - (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 staff regarding techniques and practices that enhance the effectiveness of the direct provision of group employment support.
  - (15) "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.
  - (16) "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.
  - (17) "Vocational habilitation" has the same meaning in rule 5123:2-9-14 of the Administrative Code.
- (C) Provider qualifications
- (1) Group employment support 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.

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- (2) Group employment support shall not be provided by an independent provider.
- (3) An applicant seeking approval to provide group employment support shall complete and submit an application 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 group 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:
    - (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 intervention culture;

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- (ii) Role of direct service staff in creating a positive culture;
  - (iii) General requirements for intervention strategies and behavioral support strategies and direct service staff role including documentation;
  - (iv) Human rights committees; and
  - (v) Crisis intervention techniques.
- (e) Services that comprise group employment support as it is defined in this rule.
- (5) An agency provider shall ensure that direct services staff who provide group employment support (other than those who have at least one year of experience providing group 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 ensure that direct services staff who provide group employment support (other than those who have at least one year of experience providing group 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 group employment support that includes, but is not limited to:
- (a) Skill-building in advancement of individuals on the path to community employment 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 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, behavioral support strategy, planned interventions, 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;

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- (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.
- (8) An agency provider shall ensure that each direct services staff who provide group employment support, 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 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 group 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.
- (9) An agency provider shall develop and implement a written plan identifying training priorities for direct services staff who provide group 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 timeliness for completion of the training.
- (10) An agency provider shall ensure that a written record of training completed for each employee, contractor, and employee of a contractor who is engaged in direct provision of group 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.

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(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 provider's certification.

### (D) Requirements for service delivery

- (1) The expected outcome of group employment support is paid employment and work experience leading to further career development and competitive integrated employment.
- (2) Group 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 to demonstrate that the service provided as group 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) Group employment support shall be provided in an integrated setting and support individuals' access to the greater community, including opportunities to seek competitive integrated employment, to engage in community life, and to have control over earned income.
- (5) Group employment support may be provided in a variety of settings in the community but shall not be furnished in the individual's residence or other residential living arrangement.
- (6) Individuals receiving group employment support shall be compensated in accordance with applicable federal and state laws and regulations. A determination that an individual receiving group employment support 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," shall be based on documented evaluations and assessments.
- (7) A provider of group employment support shall ensure that appropriate staff are knowledgeable about the Workforce Innovation and Opportunity Act, wage and hour laws, benefits, work incentives, and employer tax credits for individuals with developmental disabilities and ensure that individuals served receive this information.
- (8) A provider of group employment support shall provide the service in a manner that presumes all participants are capable of working in competitive integrated employment. The provider shall encourage individuals receiving the service, on an

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ongoing basis, and as part of the annual person-centered planning process, to explore their interests, strengths, and abilities relating to competitive integrated employment. The provider shall, as a component of this service, assist individuals to explore, identify, and pursue opportunities that advance them toward competitive integrated employment with individual employment support as necessary.

- (9) A provider of group 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.
- (10) A provider of group 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.
- (11) A provider of group employment support shall report identified safety and sanitation hazards that occur at the work site to employers having the responsibility to remedy the condition.

### (E) Documentation of services

Service documentation for group 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.
- (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 group employment support are

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contained in appendix A to this rule. Payment rates are based on 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) 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 group 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 group 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 appendix A 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 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

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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 group 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 group 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 appendix A 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 A

### BILLING UNIT, SERVICE CODES, AND PAYMENT RATES FOR GROUP EMPLOYMENT SUPPORT

Billing Unit: Fifteen minutes

Service Codes: Individual Options Waiver                      AGR  
                    Level One Waiver                                      FGR  
                    Self-Empowered Life Funding Waiver      SGR

Payment Rates: Listed below by cost-of-doing-business (CODB) category.  
Rates are presented on a per-person basis, segregated by  
group assignment. Rates shall not be further altered to reflect  
actual group size.

CODB Category	Group A	Group A-1	Group B	Group C
1	\$1.38	\$1.04	\$2.49	\$4.15
2	\$1.40	\$1.05	\$2.52	\$4.19
3	\$1.41	\$1.06	\$2.54	\$4.24
4	\$1.43	\$1.07	\$2.57	\$4.28
5	\$1.44	\$1.08	\$2.59	\$4.32
6	\$1.46	\$1.09	\$2.62	\$4.37
7	\$1.47	\$1.10	\$2.65	\$4.41
8	\$1.49	\$1.11	\$2.67	\$4.45

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### 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.

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APPENDIX B

COST-OF-DOING-BUSINESS CATEGORIES

Category 1: Adams  
Athens  
Belmont  
Gallia  
Guernsey  
Harrison  
Jefferson  
Meigs  
Monroe  
Pike  
Ross  
Scioto  
Tuscarawas  
Vinton  
Washington

Category 2: Carroll  
Crawford  
Defiance  
Highland  
Hocking  
Jackson  
Lawrence  
Mercer  
Morgan  
Muskingum  
Noble  
Paulding  
Perry  
Van Wert  
Wyandot

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Category 3: Allen  
Auglaize  
Brown  
Clinton  
Columbiana  
Coshocton  
Fayette  
Hancock  
Holmes  
Knox  
Marion  
Morrow  
Putnam  
Richland  
Seneca  
Shelby  
Williams

Category 4: Ashland  
Darke  
Erie  
Fairfield  
Fulton  
Hardin  
Henry  
Huron  
Licking  
Logan  
Mahoning  
Pickaway  
Sandusky  
Stark  
Trumbull  
Wood

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Category 5: Ashtabula  
Champaign  
Clark  
Delaware  
Greene  
Lucas  
Madison  
Miami  
Montgomery  
Ottawa  
Preble  
Union  
Wayne

Category 6: Clermont  
Franklin  
Geauga  
Lake  
Lorain  
Medina  
Portage  
Summit

Category 7: Butler  
Cuyahoga  
Warren

Category 8: Hamilton