

TO BE RESCINDED

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

(A) Purpose

The purpose of this rule is to define supported employment-enclave and set forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

(B) Definitions

- (1) "Acuity assessment instrument" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (2) "Adult day support" has the same meaning as in rule 5123:2-9-17 of the Administrative Code.
- (3) "Agency provider" means an entity that employs persons for the purpose of providing services for which the entity must be certified under rules adopted by the department.
- (4) "Budget limitation" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (5) "County board" means a county board of developmental disabilities.
- (6) "Daily billing unit" means a billing unit and corresponding payment rate that shall be used when between five and seven hours of adult day support, supported employment-enclave, vocational habilitation, or a combination of adult day support and vocational habilitation are provided by the same provider to the same individual during one calendar day.
- (7) "Department" means the Ohio department of developmental disabilities.
- (8) "Fifteen-minute billing unit" means a billing unit that is equivalent to fifteen minutes of actual service delivery time. Minutes of service provided to an eligible individual for adult day support, supported employment-community, supported employment-enclave, vocational habilitation, and/or a combination of adult day support and vocational habilitation may be accrued by one provider over one calendar day. The number of units is equivalent to the total

number of minutes of each type of service, as distinguished by service codes, provided during the day to the individual, divided by fifteen minutes. One additional unit of service may be added to this quotient if the remainder equals eight or more minutes of service.

- (9) "Independent provider" means a self-employed person who provides services for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.
- (10) "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.
- (11) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (12) "Mentor" means a person with experience providing direct services to persons with developmental disabilities 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 supported employment-enclave.
- (13) "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.
- (14) "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.
- (15) "Staff intensity" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (16) "Supported employment services" means intensive, ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who because

of their disabilities need supports, to perform in a regular work setting. Supported employment services does not include sheltered work or other similar types of vocational services furnished in specialized facilities.

- (17) "Supported employment-community" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.
- (18) "Supported employment-enclave" means supported employment services provided to individuals who work as a team, generally at a single worksite of a host community business or industry, with initial training, supervision, and ongoing support provided by on-site staff.
- (a) Two unique service arrangements have been identified in which supported employment-enclave is provided:
- (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.
 - (ii) Mobile work crews comprised solely of individuals operating as distinct units and/or self-contained businesses working in several locations within the community.
- (b) Activities that constitute supported employment-enclave include:
- (i) Vocational assessment that is conducted through formal and informal means for the purpose of developing a vocational profile and employment goals. The profile may contain information about the individual's educational background, work history, and job preferences; will identify the individual's strengths, values, interests, abilities, available natural supports, and access to transportation; and will identify the earned and unearned income available to the individual.
 - (ii) Job development and placement which includes some or all of the following activities provided directly to or on behalf of the individual:
 - (a) Developing a resume that identifies the individual's job-related and/or relevant vocational experiences;

- (b) Training and assisting the individual to develop job-seeking skills;
 - (c) Targeting jobs on behalf of the individual that are available in the individual's work location of choice;
 - (d) Assisting the individual to find jobs that are well matched to his or her employment goals;
 - (e) Developing job opportunities on behalf of the individual through direct and indirect promotional strategies and relationship-building with employers;
 - (f) Conducting worksite analyses, including customizing jobs; and
 - (g) Increasing potential employers' awareness of available incentives that could result from employment of the individual.
- (iii) Job training/coaching which includes some or all of the following activities:
- (a) Developing a systematic plan of on-the-job instruction and support, including task analyses;
 - (b) Assisting the individual to perform activities that result in his or her social integration with other individuals and persons employed at the worksite;
 - (c) Supporting and training the individual in the use of generic and/or individualized transportation services;
 - (d) Providing off-site services and training that assist the individual with problem-solving and meeting job-related expectations; and
 - (e) Developing and implementing a plan to assist the individual to transition from his or her prior vocational or educational setting to employment, emphasizing the use of natural supports.

- (iv) Ongoing job 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 individual's job adjustment and retention:
 - (a) Following-up with the employer and/or the individual at the frequency required to assist the individual to retain employment;
 - (b) Assisting the individual to use natural supports and generic community resources;
 - (c) Providing training to the individual to maintain work skills, enhance personal hygiene, learn new work skills, improve social skills, and/or modify behaviors that are interfering with the continuation of his or her employment; and
 - (d) Assisting the individual with self-medication or provision of medication administration for prescribed medication and assisting the individual with or performing health-related activities as identified in rule 5123:2-6-01 of the Administrative Code, which a licensed nurse agrees to delegate in accordance with requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.

- (v) Worksite accessibility which includes some or all of the following activities:
 - (a) Time spent identifying the need for and assuring the provision of reasonable worksite accommodations that allow the individual to gain and retain employment;
 - (b) Time spent assuring the provision of these accommodations through partnership efforts with the employer; and
 - (c) Purchasing or modifying equipment that will be retained by the individual on the current employment site and/or in other settings. The billing unit, service codes, and payment rate that shall be used to obtain payment for the purchase and/or modification of equipment obtained in accordance with this paragraph are contained in appendix A to this rule.

(vi) Training in 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.

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

(C) Provider qualifications

(1) Supported employment-enclave 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 job and family services.

(2) Supported employment-enclave shall not be provided by an independent provider.

(3) An applicant seeking approval to provide supported employment-enclave 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 each employee, contractor, and employee of a contractor who is engaged in direct provision of supported employment-enclave successfully completes, within ninety days of employment or contract, either:

(a) The "Ohio Alliance of Direct Support Professionals Professional Advancement Through Training and Education in Human Services (PATHS) Certificate of Initial Proficiency" program; or

(b) An orientation program of at least eight hours that addresses, but is not limited to:

(i) Organizational background of the agency provider, including:

(a) Mission, vision, values, principles, and goals;

(b) Organizational structure;

- (vii) The employee's or contractor's role regarding management of the individual's funds and related documentation requirements.
- (c) Successfully completes at least eight hours of training specific to the provision of supported employment-enclave that includes, but is not limited to:
 - (i) Skill-building in vocational assessment, job development and placement, job training/coaching, ongoing job supports, worksite accessibility, developing natural supports, personal adjustment, work adjustment, and vocational planning; and
 - (ii) 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.
- (6) An agency provider shall develop and implement a written plan identifying training priorities for employees, contractors, and employees of a contractor who are engaged in direct provision of supported employment-enclave. 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 employees' and contractors' 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.
- (7) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of supported employment-enclave, commencing in the second year of employment or contract with the agency provider, annually completes at least eight hours of training, in accordance with the written plan of training priorities.
 - (a) The training shall enhance the skills and competencies of the employee or contractor relevant to his or her job responsibilities and shall include, but is not limited to:
 - (i) The provisions governing 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 relating to incidents adversely affecting health and safety including a review of health and safety alerts issued by the department since the previous year's training;
 - (iii) The requirements relative to the employee's or contractor's role in providing behavior support to the individuals he or she serves; and
 - (iv) Best practices related to the provision of supported employment-enclave.
- (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.
- (8) 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 supported employment-enclave 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.
- (9) 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) Supported employment-enclave shall be provided pursuant to an individual service plan that conforms to the requirements of paragraph (H) of rule 5101:3-40-01 of the Administrative Code, paragraph (H) of rule 5101:3-42-01 of the Administrative Code, or paragraph (K) of rule 5123:2-9-40 of the Administrative Code, as applicable.
- (2) The service and support administrator shall ensure that an acuity assessment instrument is completed, the individual is assigned to a staff intensity group, and a budget limitation is determined in accordance with rule 5123:2-9-19 of

the Administrative Code when the need for supported employment-enclave has been identified through development of the individual service plan.

- (3) The service and support administrator shall ensure that documentation is maintained to demonstrate that the service provided as supported employment-enclave 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, 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.
- (4) Supported employment-enclave shall take place in a setting separate from any home or facility in which the individual receiving the services resides.
- (5) Individuals receiving supported employment-enclave shall be compensated in accordance with applicable federal laws and regulations. Individuals who participate in a work program that meets the criteria for employment of workers with disabilities under certificates at special minimum wage rates issued by the department of labor, as required by the Fair Labor Standards Act of 1938, and in accordance with the requirements of 29 C.F.R. Part 525, "Employment of Workers with Disabilities Under Special Certificates," are eligible for supported employment-enclave.
- (6) Supported employment-enclave shall generally be made available four or more hours per day on a regularly scheduled basis for one or more days per week, unless provided as an adjunct to other day activities included in an individual service plan.
- (7) Supported employment-enclave services extend to those times when the individual is not physically present and the provider is performing supported employment-enclave on behalf of the individual.
- (8) A provider of supported employment-enclave shall ensure that appropriate staff are knowledgeable in benefits, work incentives, and employer tax credits for individuals with developmental disabilities and ensure that individuals served receive this information.
- (9) A provider of supported employment-enclave 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.
- (10) A provider of supported employment-enclave 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 supported employment-enclave 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) Number of units of the delivered service or continuous amount of uninterrupted time during which the service was provided.
- (11) Staff intensity ratio (i.e., the portion of one direct services staff needed per individual served as expressed in decimals in appendix A to rule 5123:2-9-19 of the Administrative Code).
- (12) Service codes that correlate to the service codes listed in appendix A to this rule and the billing documents submitted by the provider for payment of waiver services delivered.

- (13) Minutes of service delivered each day, by service code.
- (14) Verification of staff intensity ratios per calendar day for each individual enrolled in a waiver, including:
 - (a) The names of other individuals present when waiver services are provided.
 - (b) The names of the direct services staff who delivered services.
 - (c) The initials of the direct services staff indicating all time periods/spans during which they provided waiver services to the individual. (Legends indicating signatures and initials of direct services staff may be retained separately from documentation sheets.)
 - (d) The average staff intensity ratio for the combined time periods when one or more waiver services are provided during the calendar day by direct services staff employed by the same provider.
- (15) As applicable, the name of the individual's employer, the number of hours worked by the individual, and the hourly wage earned by the individual.

(F) Payment standards

- (1) The billing units, service codes, and payment rates for supported employment-enclave are contained in appendix A to this rule. Payment rates include an adjustment 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) The minimum number of direct services staff required to support the billing for adult day support, supported employment-enclave, and/or vocational habilitation may be determined by aggregating the staff intensity needs for all individuals (including individuals who are enrolled in waivers and those who are not) receiving services from one provider in one service delivery location during a calendar day. Calculation of the minimum number of direct services staff required to meet the staff intensity needs at a waiver service delivery location will depend on the number of individuals receiving services in one day, the times during the day in which they receive services, and their staff

intensity needs. A provider shall bill only for those times during the day in which waiver services were delivered to individuals whose staff intensity needs were met.

- (3) Payment for adult day support, supported employment-community, supported employment-enclave, and vocational habilitation, alone or in combination, shall not exceed the budget limitations contained in appendix C to rule 5123:2-9-19 of the Administrative Code.

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Certification

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