

***** Proposed Revisions to Existing Rule - June 2, 2016 *****

5123:2-9-42 Home and community-based services waivers - community inclusion under the self-empowered life funding waiver.

(A) Purpose

~~The purpose of this rule is to define~~ This rule defines community inclusion and ~~set~~ sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

(B) Definitions

- (1) "Agency provider" means an entity that ~~employs persons~~ 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 Revised Code.
- (2) "Commercial vehicles" means buses, light rail transit, livery vehicles, and taxicabs that are available for public use.
- (3) "Community inclusion" means supports that promote an individual's full participation in his or her community, but does not include services that are otherwise available under the state medicaid program or experimental or prohibited treatments. Community inclusion includes, but is not limited to, such developmental and other supportive services as may be required to assist an individual with a developmental disability. Community inclusion also includes opportunities and experiences that focus on socialization and/or therapeutic recreational activities as well as personal growth, peer support activities, and organization and participation in self-advocacy events. Community inclusion is comprised of two components:
 - (a) Personal assistance in the home and/or the community with life activities.
 - (b) Transportation including, but not limited to, transportation in a modified vehicle; transportation provided by operators of commercial vehicles; and mileage reimbursement for up to the federal reimbursable mileage rate.
- (4) "Community respite" has the same meaning as in rule ~~5123:2-9-34~~ 5123:2-9-22 of the Administrative Code.
- (5) "County board" means a county board of developmental disabilities.
- (6) "Department" means the Ohio department of developmental disabilities.
- (7) "Family member" means a person who is related to the individual by blood, marriage, or adoption.
- (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.

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- ~~(8)~~ (9) "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 Revised Code and does not employ, either directly or through contract, anyone else to provide the services.
- ~~(9)~~ (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. An individual who is his or her own guardian may designate another person to assist the individual with development of the individual service plan and budget, selection of residence and providers, and negotiation of payment rates for services; the individual's designee shall not be employed by a county board or a provider, or a contractor of either.
- ~~(10)~~ (11) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- ~~(11)~~ "Medicaid program" ~~has the same meaning as in section 5111.01 of the Revised Code.~~
- ~~(12)~~ (12) "Modified vehicle" means a motor vehicle that has been designed, constructed, or fabricated and equipped to be used upon public streets and/or highways for transportation of persons who require use of a wheelchair.
- ~~(13)~~ (13) "Remote monitoring" has the same meaning as in rule 5123:2-9-35 of the Administrative Code.
- ~~(14)~~ (14) "Residential respite" has the same meaning as in rule 5123:2-9-34 of the Administrative Code.
- ~~(15)~~ (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)~~ (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 paragraphs (F)(1) and (F)(2) of this rule, as applicable, to validate payment for medicaid services.
- ~~(17)~~ (17) "Support broker" means a person who is responsible, on a continuing basis, for providing an individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services (particularly those associated with participant direction) in accordance with the individual service plan. The support broker assists the individual with the individual's responsibilities regarding participant direction, including understanding employer authority and budget

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authority, locating and selecting providers, negotiating payment rates, and keeping the focus of the services and support delivery on the individual and his or her desired outcomes. The support broker, working in conjunction with the service and support administrator, assists the individual with creating the individual service plan, developing the waiver budget, and doing day-to-day monitoring of the provision of services as specified in the individual service plan.

~~(18)~~ (18) "Usual and customary charge" means the amount charged to other persons for the same service.

~~(19)~~ (19) "Waiver eligibility span" means the twelve-month period following either an individual's initial enrollment date or a subsequent eligibility redetermination date.

(C) Provider qualifications for community inclusion-personal assistance

(1) Community inclusion-personal assistance shall be provided by an independent provider or an agency provider that:

(a) Meets the requirements of this rule;

(b) Has a medicaid provider agreement with the Ohio department of ~~job and family services~~ medicaid; and

(c) Has completed and submitted an application and adheres to the requirements of rule 5123:2-2-01 of the Administrative Code.

(2) The individual may determine additional qualifications for a provider of community inclusion-personal assistance; additional qualifications determined by the individual shall be recorded in the individual service plan.

(3) Neither a county board nor a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards shall provide community inclusion-personal assistance.

(4) 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) Provider qualifications for community inclusion-transportation

(1) Community inclusion-transportation shall be provided by an independent provider, an agency provider, or an operator of commercial vehicles that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of ~~job and family services~~ medicaid.

(2) Neither a county board nor a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards shall provide community inclusion-transportation.

(3) An applicant seeking approval to provide community inclusion-transportation shall

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complete and submit an application and adhere to the requirements of rule 5123:2-2-01 of the Administrative Code except that paragraphs ~~(C)(3)(a), (C)(3)(b), (C)(3)(c), (D)(1), (D)(3), and (K)~~ (D)(1), (D)(2), (D)(5), (D)(8), and (D)(17) of that rule do not apply to operators of commercial vehicles.

- (4) An applicant seeking approval to provide community inclusion-transportation as an independent provider shall present his or her driving record prepared by the bureau of motor vehicles no earlier than fourteen days prior to the date of his or her application for initial or renewal provider certification. A person having six or more points on his or her driving record is prohibited from providing community inclusion-transportation.
- (5) An independent provider of community inclusion-transportation shall:
 - (a) Hold a valid driver's license as specified by Ohio law.
 - (b) Have valid liability insurance as specified by Ohio law.
 - (c) Immediately notify the department, in writing, if he or she accumulates six or more points on his or her driving record or if his or her driver's license is suspended or revoked.
- (6) An agency provider of community inclusion-transportation shall:
 - (a) Ensure that each driver holds a valid driver's license as specified by Ohio law.
 - (b) Have or ensure that each driver has valid liability insurance as specified by Ohio law.
 - (c) Obtain, for each driver, a driving record prepared by the bureau of motor vehicles no earlier than fourteen days prior to the date of initial employment as a driver and at least once every three years thereafter. A person having six or more points on his or her driving record is prohibited from providing community inclusion-transportation.
 - (d) Require each driver to immediately notify the agency provider, in writing, if the driver accumulates six or more points on his or her driving record or if his or her driver's license is suspended or revoked.
 - (e) Develop and ~~maintain~~ implement written policies and procedures regarding ~~the requirements of its drivers~~ vehicle accessibility, vehicle maintenance, and requirements for vehicle drivers.
- (7) Operators of commercial vehicles that provide community inclusion-transportation shall comply with federal, state, and local laws and regulations pertaining to the maintenance and operation of the commercial vehicles.
- (8) The individual may determine additional qualifications for a provider of community inclusion-transportation; additional qualifications determined by the individual shall

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be recorded in the individual service plan.

(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.

(E) Requirements for service delivery

Community inclusion shall be provided pursuant to an individual service plan that conforms to the requirements of ~~paragraph (K) of rule 5123:2-9-40~~ rule 5123:2-1-11 of the Administrative Code.

(F) Documentation of services

(1) Service documentation for community inclusion-personal assistance shall include each of the following to validate payment for medicaid services:

- (a) Type of service.
- (b) Date of service.
- (c) Place of service.
- (d) Name of individual receiving service.
- (e) Medicaid identification number of individual receiving service.
- (f) Name of provider.
- (g) Provider identifier/contract number.
- (h) 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.
- (i) 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.
- (j) Number of units of the delivered service ~~or continuous amount of uninterrupted time during which the service was provided.~~
- (k) Times the delivered service started and stopped.

(2) Service documentation for community inclusion-transportation shall include each of the following to validate payment for medicaid services:

- (a) Mode of transportation provided (e.g., modified vehicle, bus, light rail transit, livery vehicle, taxicab, or transportation mileage).
- (b) Date of service, or in the case of purchase of bus fares, taxicab tokens, or similar types of travel vouchers to be used on more than one date, date of purchase.

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- (c) Name of individual receiving service.
- (d) Medicaid identification number of individual receiving service.
- (e) Name of provider.
- (f) Provider identifier/contract number.
- (g) If seeking mileage reimbursement, number of miles traveled.

(G) Payment standards

- (1) The billing units, service codes, and payment rates for community inclusion are contained in the appendix to this rule.
- (2) The payment rates for community inclusion-personal assistance provided by independent providers shall be negotiated by the individual and the provider subject to the minimum and maximum payment rates contained in the appendix to this rule and shall be identified in the individual service plan.
- (3) The payment rates for community inclusion-personal assistance provided by agency providers shall be the lesser of the provider's usual and customary charge or the statewide payment rate contained in the appendix to this rule.
- (4) Providers of community inclusion-transportation shall be paid no more than their usual and customary charge for the service.
- (5) Providers of community inclusion-transportation may be paid mileage reimbursement up to the federal reimbursable mileage rate.
- ~~(6) Payment for community inclusion, community respite, remote monitoring, and residential respite, alone or in combination, shall not exceed twenty-five thousand dollars per waiver eligibility span.~~

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APPENDIX

BILLING UNITS, SERVICE CODES, AND PAYMENT RATES
FOR COMMUNITY INCLUSION

Community Inclusion-Personal Assistance

Independent Provider

Billing Unit: ~~Per hour~~ Fifteen minutes

Service Code: ~~SPN~~ SAN

Payment Rate: Negotiable from ~~minimum wage to \$12.31~~ the equivalent of minimum wage to the rates listed below

<u>Serving 1 Individual</u>	<u>Serving 2 Individuals</u>	<u>Serving 3 Individuals</u>	<u>Serving 4 Individuals</u>
<u>\$3.08</u>	<u>\$3.29</u>	<u>\$3.60</u>	<u>\$4.00</u>

Agency Provider

Billing Unit: ~~Per hour~~ Fifteen minutes

Service Code: ~~SPA~~ SAA

~~Payment Rate: \$19.63~~

Payment Rates:

<u>Serving 1 Individual</u>	<u>Serving 2 Individuals</u>	<u>Serving 3 Individuals</u>	<u>Serving 4 Individuals</u>
<u>\$4.91</u>	<u>\$5.25</u>	<u>\$5.74</u>	<u>\$6.38</u>

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Community Inclusion-Transportation

Independent Provider

Billing Unit: Per service

Service Code: STI

Payment Rate: Usual and customary charge

Agency Provider

Billing Unit: Per service

Service Code: STA

Payment Rate: Usual and customary charge