

5123-9-17

Home and community-based services waivers - adult day support under the individual options, level one, and self-empowered life funding waivers.**(A) Purpose**

This rule defines adult day support and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The expected outcome of adult day support is development of skills that lead to greater independence, community membership, relationship-building, self-direction, and self-advocacy.

(B) Definitions

For the purposes of this rule, the following definitions apply:

(1) "Adult day support" means provision of regularly scheduled activities such as assistance with acquisition, retention, or improvement of self-help, socialization, and adaptive skills that enhance the individual's social development and performance of daily community living. Adult day support shall be designed to foster the acquisition of skills, build community membership and independence, and expand personal choice. Adult day support enables the individual to attain and maintain his or her maximum potential. Activities that constitute adult day support include, but are not limited to:

(a) Activities that may be provided in-person or through virtual support:

- (i) Supports to participate in community activities and build community membership consistent with the individual's interests, preferences, goals, and outcomes.
- (ii) Supports to develop and maintain a meaningful social life, including social skill development which offers opportunities for personal growth, independence, and natural supports through community involvement, participation, and relationships.
- (iii) Supports and opportunities that increase problem-solving skills to maximize an individual's ability to participate in integrated community activities independently or with natural supports.
- (iv) Skill reinforcement including the implementation of behavioral support strategies, assistance in the use of communication and mobility devices, and other activities that reinforce skills learned

by the individual that are necessary to ensure his or her initial and continued participation in community life.

(v) 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.

(vi) Recreation and leisure including supports identified in the person-centered individual service plan as being therapeutic in nature, rather than merely providing a diversion, and/or as being necessary to assist the individual to develop and/or maintain social relationships and family contacts.

(b) Activities that may only be provided in-person:

(i) Personal care including supports and supervision in the areas of personal hygiene, eating, communication, mobility, toileting, and dressing to ensure an individual's ability to experience and participate in community living.

(ii) Assisting an individual with self-medication or health-related activities or performing medication administration or health-related activities in accordance with Chapters 5123-6 and 5123:2-6 of the Administrative Code.

(2) "Agency provider" has the same meaning as in rule 5123-2-08 of the Administrative Code.

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

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

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

(6) "Daily billing unit" means a billing unit that may be used when between five and seven hours of adult day support 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.

(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" has the same meaning as in rule ~~5123-2-9-16~~ 5123-9-16 of the Administrative Code.
- (10) "Independent provider" has the same meaning as in rule 5123-2-09 of the Administrative Code.
- (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~~ 5123-9-15 of the Administrative Code.
- (13) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (14) "Integrated community setting" means a setting that is integrated in and supports full access of individuals to the greater community to the same degree of access as persons not receiving home and community-based services.
- (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 professionals regarding techniques and practices that enhance the effectiveness of the provision of adult day support.
- (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) "Non-medical transportation" has the same meaning as in rule 5123-9-18 of the Administrative Code.
- (18) "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.

- (19) "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.
- (20) "Virtual support" means the provision of services by direct support professionals at a distant site who engage with an individual using interactive technology that has the capability for two-way, real time audio and video communication.
- (21) "Vocational habilitation" has the same meaning as in rule 5123-9-14 of the Administrative Code.
- (22) "Waiver eligibility span" means the twelve-month period following either an individual's initial waiver enrollment date or a subsequent eligibility re-determination date.

(C) Provider qualifications

- (1) Adult day 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.
- (2) Adult day support shall not be provided by an independent provider.
- (3) An applicant seeking approval to provide adult day support shall complete and submit an application through the department's website (<http://dodd.ohio.gov/>) and adhere to the requirements of rule 5123-2-08 of the Administrative Code.
- (4) An agency provider shall ensure that direct support professionals who provide adult day support successfully complete, no later than thirty calendar days after hire, training in:
 - (a) Services that comprise adult day support;
 - (b) Signs and symptoms of illness or injury and procedure for response;
 - (c) Site-specific emergency response plans; and
 - (d) Program-specific transportation safety.

- (5) An agency provider shall ensure that direct support professionals who provide adult day support (other than those who have at least one year of experience providing adult day 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 support professionals who provide adult day support (other than those who have at least one year of experience providing adult day 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 adult day support that includes, but is not limited to:
 - (a) Skill building in the necessary activities and environments that build on the strengths of individuals served and foster the development of skills that lead to greater independence, community membership, relationship-building, and self-direction;
 - (b) Developing natural supports; and
 - (c) 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) Failure to comply with this rule and rule 5123-2-08 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 adult day support is development of skills that lead to greater independence, community membership, relationship-building, self-direction, and self-advocacy.
- (2) Adult day support 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) Adult day support shall be provided pursuant to a person-centered individual service plan that conforms to the requirements of rule 5123-4-02 of the Administrative Code and shall be coordinated with other services and supports set forth in the individual service plan.

- (4) Adult day support provided in-person shall take place in a non-residential setting separate from any individual's home. An individual participating in adult day support provided through virtual support may do so from his or her home.
- (5) Adult day support may be provided through virtual support under the following conditions:
 - (a) Virtual support does not have the effect of isolating an individual from the individual's community or preventing the individual from interacting with people with or without disabilities.
 - (b) The use of virtual support has been agreed to by an individual and the individual's team and is specified in the individual service plan.
 - (c) The use of virtual support complies with applicable laws governing an individual's right to privacy and the individual's protected health information.
 - (d) Provision of adult day support through virtual support does not include:
 - (i) Personal care including supports and supervision in the areas of personal hygiene, eating, communication, mobility, toileting, and dressing to ensure an individual's ability to experience and participate in community living; or
 - (ii) Assisting an individual with self-medication or health-related activities or performing medication administration or health-related activities in accordance with Chapters 5123-6 and 5123:2-6 of the Administrative Code.
- (6) A provider of adult day support 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 adult day support takes place.
- (7) A provider of adult day support shall comply with applicable laws, rules, and regulations of the federal, state, and local governments pertaining to the physical environment (building and grounds) where adult day support is provided. A provider of adult day support shall be informed of and comply with standards applicable to the service setting.
- (8) When meals are provided as part of adult day support, they shall not constitute a full nutritional regimen (i.e., three meals per day).

- (9) A provider of adult day support 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 adult day 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 adult day support are contained in appendix A to this rule. Payment rates, except payment rates for adult day support provided in-person in an integrated community setting for a group of ~~five~~ four or fewer individuals, are based on individuals' group assignments determined in accordance with rule 5123-9-19 of the Administrative Code and the county cost-of-doing-business category. Payment rates for adult day support provided in-person in an integrated community setting for a group of ~~five~~ four or fewer individuals 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) A provider of adult day support may use the daily billing unit when the provider delivers between five and seven hours of adult day support in-person 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 provide adult day support to the individual in multiple modes on the same day (i.e., in an integrated community setting when the individual is part of a group of ~~five~~ four or fewer individuals and in another setting).
- (3) A provider of adult day support shall use the fifteen-minute billing unit when:
- (a) The provider delivers less than five hours or more than seven hours of adult day support 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 provides adult day support to the individual in multiple modes on the same day (i.e., in an integrated community setting when the individual is part of a group of ~~five~~ four or fewer individuals and in another setting); ~~or~~
 - (e) The provider provides adult day support to the individual through virtual support.

- (4) A provider of adult day support 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 5123-9-19 of the Administrative Code.
- (6) Payment rates for adult day support provided in-person 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 adult day support provided in-person 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 tube, and/or requires the administration of routine doses of insulin through subcutaneous injection or insulin pump; 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)~~(ii) 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, oxygen, or metered dose inhaled 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.

(G) Providers certified by the Ohio department of aging

- (1) An agency provider certified by the department to provide adult day support may contract with and reimburse a provider certified by the Ohio department of aging for adult day support provided to individuals enrolled in individual options, level one, and self-empowered life funding waivers.
- (2) A provider certified by the Ohio department of aging that is under contract with an agency provider certified by the department to provide adult day support is not subject to the requirements set forth in paragraph (C) of this rule.
- (3) A provider certified by the Ohio department of aging that is under contract with an agency provider certified by the department to provide adult day support shall:
 - (a) Meet the requirements for an agency provider in accordance with rule 173-39-02 of the Administrative Code;
 - (b) Be certified to provide enhanced adult day service and/or intensive adult day service in an adult day service center in accordance with rule 173-39-02.1 of the Administrative Code;
 - (c) Require all employees and contractors who provide adult day support to comply with rule 5123-17-02 of the Administrative Code relating to incidents affecting health and safety;
 - (d) Participate in annual on-site provider structural compliance reviews conducted by the Ohio department of aging in accordance with rule 173-39-04 of the Administrative Code; and
 - (e) Meet the requirements of rule 173-39-04 of the Administrative Code within forty-five business days from each date a structural compliance review report is mailed from the Ohio department of aging designee.
- (4) The agency provider certified by the department to provide adult day support shall retain documentation that verifies that the provider certified by the Ohio department of aging complies with the requirements set forth in paragraph (G) (3) of this rule.
- (5) A unit of adult day support provided through contract with a provider certified by the Ohio department of aging does not include transportation time.
- (6) Notwithstanding paragraph (E) of this rule, service documentation for the provision of adult day support provided through contract with a provider certified by the Ohio department of aging shall comply with the provisions of rule 173-39-02.1 of the Administrative Code.

- (7) Notwithstanding the requirements of rule 173-39-02.1 of the Administrative Code, a provider certified by the Ohio department of aging is not required to arrange or provide non-medical transportation for individuals, but may provide non-medical transportation directly or through a contract, if selected by the individual.
- (8) Except as otherwise set forth in this rule, all of the provisions of this rule and rule 5123-9-19 of the Administrative Code are applicable to adult day support provided through contract with a provider certified by the Ohio department of aging.

Effective: 1/1/2022

Five Year Review (FYR) Dates: 11/19/2025

CERTIFIED ELECTRONICALLY

Certification

12/20/2021

Date

Promulgated Under: 119.03

Statutory Authority: 5123.04, 5123.049, 5123.1611

Rule Amplifies: 5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21

Prior Effective Dates: 01/01/2007, 10/01/2007, 12/21/2007 (Emer.), 03/20/2008, 07/23/2012, 04/01/2017, 06/11/2020 (Emer.), 11/19/2020, 06/17/2021 (Emer.), 10/15/2021