

5123-2-05

**Employment first.****(A) Purpose**

This rule implements Ohio's employment first policy in accordance with section 5123.022 of the Revised Code.

**(B) Scope**

This rule applies to county boards of developmental disabilities and providers of employment services, regardless of funding source, to individuals with developmental disabilities.

**(C) Definitions**

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

(1) "Benefits analysis" means information provided to individuals about the impact of earning wages on public assistance programs including but not limited to, social security disability insurance, supplemental security income, medicaid/medicare eligibility, medicaid buy-in for workers with disabilities, veteran's benefits, housing assistance, and food stamps.

(2) "Community employment" means competitive employment that takes place in an integrated setting.

(3) "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 is 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 similar tasks and who have similar training, experience, and skills; and

(ii) Eligible for the level of benefits provided to other full-time and part-time 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;

(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 a distinct unit 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.

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

(5) "Department" means the Ohio department of developmental disabilities.

(6) "Employment first policy" means the state of Ohio policy, established in section 5123.022 of the Revised Code, that employment services for individuals with developmental disabilities be directed at community employment and that individuals with developmental disabilities are presumed capable of community employment.

(7) "Employment services" means:

(a) The following medicaid-funded home and community-based services:

(i) Career planning in accordance with rule 5123-9-13 of the Administrative Code;

(ii) Group employment support in accordance with rule 5123-9-16 of the Administrative Code;

- (iii) Individual employment support in accordance with rule 5123-9-15 of the Administrative Code; and
      - (iv) Vocational habilitation in accordance with rule 5123-9-14 of the Administrative Code.
    - (b) Any services, regardless of funding, that are comparable to the services described in paragraph (C)(7)(a) of this rule.
  - (8) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
  - (9) "Individual" means a person with a developmental disability.
  - (10) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
  - (11) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner the individual or the individual's guardian understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; the risks and benefits of the alternatives to the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual or the individual's guardian, as applicable, may withdraw informed consent at any time.
  - (12) "Integrated setting" means a setting typically found in the community where individuals interact with persons who do not have disabilities to the same extent as persons who do not have disabilities in comparable positions. "Integrated setting" includes employment settings in which employees interact with the community through technology.
  - (13) "Provider" means an agency provider or an independent provider that is certified by the department or a residential facility that is licensed by the department.
  - (14) "Working age" means at least eighteen years of age.
- (D) Person-centered planning process
- (1) Each individual of working age and each individual approaching completion of a program or service under Chapter 3323 of the Revised Code will participate in a person-centered planning process in accordance with rule

5123-3-03 or 5123-4-02 of the Administrative Code, as applicable, to identify the individual's unique strengths, interests, abilities, preferences, resources, and desired outcomes as they relate to competitive integrated employment.

- (a) The person-centered planning process will begin with a review of available information to determine what additional information is needed and what supplemental situational and/or other formal or informal evaluations are needed to discover this information and culminate in informed consent.
- (b) For an individual who receives public assistance, the importance of obtaining a benefits analysis will be emphasized to enable the individual to make informed decisions regarding employment. Resources available for obtaining a benefits analysis will be identified for the individual prior to job development.
- (2) The person-centered planning process will include identification and documentation of the individual's place on the path to competitive integrated employment, that is:

  - (a) Place I - the individual is already engaged in competitive integrated employment and needs support for job stabilization, job improvement, or career advancement;
  - (b) Place II - the individual expresses a desire to obtain competitive integrated employment but is not currently employed and needs support to obtain employment or identify career options and employment opportunities;
  - (c) Place III - the individual is unsure about competitive integrated employment and needs support to identify career options and employment opportunities and the economic impact of the individual's decision; or
  - (d) Place IV - the individual has been offered, within the most recent twelve-month period, information and support to identify career options, employment opportunities, and the economic impact of the individual's decision and does not currently desire to pursue competitive integrated employment.
- (3) The individual service plan will:

  - (a) For an individual on place I or place II of the path to competitive integrated employment, include the individual's desired competitive integrated employment outcome and related action steps.

- (b) For an individual on place III of the path to competitive integrated employment, describe the activities that will occur to advance the individual on the path to competitive integrated employment.
  - (c) For an individual on place IV of the path to competitive integrated employment, document the information and support offered to the individual within the most recent twelve-month period about career options, employment opportunities, the economic impact of the individual's decision, and outcomes centered around the individual's capabilities and successes of engaging in meaningful activities within the individual's community.
- (4) The results of the person-centered planning process will be reviewed at least once every twelve months and whenever a significant change in employment, training, continuing education, services, or supports occurs or is proposed.

(E) Requirements for county boards

A county board will:

- (1) Adopt and implement a local policy to implement the employment first policy which clearly identifies competitive integrated employment as the desired outcome for every individual of working age.
- (2) Outline and periodically update its strategy and benchmarks for increasing the number of individuals of working age engaged in competitive integrated employment.
- (3) Collaborate with workforce development agencies, vocational rehabilitation agencies, and mental health agencies in the county to support individuals to obtain competitive integrated employment.
- (4) Collaborate with school districts in the county to:
  - (a) Ensure a framework exists for individuals approaching completion of a program or service under Chapter 3323 of the Revised Code such that the county board and school districts in the county use similar methods to support students with developmental disabilities to obtain competitive integrated employment.
  - (b) Identify and attempt to resolve any duplication of efforts.
- (5) Disseminate information to individuals served, families, schools, community partners, employers, and providers of services about resources and

opportunities, including medicaid buy-in for workers with disabilities and other work incentive programs, that facilitate competitive integrated employment.

- (6) Collect and annually submit to the department, individual-specific data regarding the cost of non-medicaid employment services, employment outcomes for individuals who receive non-medicaid employment services, and the place on the path to competitive integrated employment for individuals of working age.

(F) Requirements for providers of employment services

A provider of employment services will:

- (1) Submit to each individual's team at least once every twelve months, or more frequently as decided by the team, a written progress report that demonstrates that employment services provided are consistent with the individual's desired competitive integrated employment outcome and that the individual receiving employment services has obtained competitive integrated employment or is advancing on the path to competitive integrated employment.
  - (a) The written progress report will include the individual's annual wage earnings and identify the anticipated time-frame and tangible progress made toward achievement of each desired outcome of the employment services provided as set forth in the individual service plan.
  - (b) If no progress is reported, the individual service plan will be amended to identify the barriers toward achieving desired outcomes and the action steps to overcome the identified barriers.
- (2) Collect and annually submit to the department's outcome tracking system, individual-specific data regarding employment services and employment outcomes for individuals served by the provider including but not limited to, type of employment services provided, how individuals obtained employment, hours worked, wages earned, and occupations.
- (3) Disseminate to individuals seeking employment services and others upon request, aggregate data regarding employment services and employment outcomes for individuals served by the provider including but not limited to, type of employment services provided, how individuals obtained employment, hours worked, wages earned, and occupations. The data will be disseminated in a manner that does not disclose confidential information regarding individuals receiving employment services.

Replaces: 5123:2-2-05

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

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