

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5123-9-18

**Rule Type:** New

**Rule Title/Tagline:** Home and community-based services waivers - non-medical transportation under the individual options, level one, and self-empowered life funding waivers.

**Agency Name:** Department of Developmental Disabilities

**Division:**

**Address:** 30 East Broad Street, 12th Floor Columbus OH 43215-3414

**Contact:** Becky Phillips **Phone:** (614) 644-7393

**Email:** becky.phillips@dodd.ohio.gov

#### I. Rule Summary

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 166 - 133  
- Representative Oelslager
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5123.04, 5123.049, 5123.1611
5. **What statute(s) does the rule implement or amplify?** 5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
6. **What are the reasons for proposing the rule?**

The Department is rescinding rule 5123:2-9-18 and adopting replacement rule 5123-9-18. New rule 5123-9-18 reflects restructuring of the Non-Medical Transportation service delivery mode and payment rates for Non-Medical Transportation at the per-mile rate.

- 7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rule defines Non-Medical Transportation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

- 8. Does the rule incorporate material by reference? Yes**

- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75 please explain the basis for the exemption and how an individual can find the referenced material.**

The incorporated references are to the Administrative Code and the Revised Code, which are exempt pursuant to Section 121.75 of the Revised Code. The Administrative Code and the Revised Code are available at libraries and on the internet at [codes.ohio.gov](http://codes.ohio.gov).

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

PARAGRAPH (B)(5) REVISED FROM:

"Commercial vehicles" means buses, light rail transit, livery vehicles, and taxicabs that are available for public use.

TO:

"Commercial vehicles" means buses, light rail transit, livery vehicles, and taxicabs that are available for use by the general public.

PARAGRAPH (B)(15)(b)(iv) REVISED FROM:

On each day the vehicle is used to provide non-medical transportation, be inspected and tested by the first driver of the vehicle to ensure the permanent fasteners, safety harnesses or belts, and access ramp or hydraulic lift are working prior to transporting an individual in a wheelchair. The daily inspection shall be documented by the driver that conducts the inspection.

TO:

Be inspected, on each day the vehicle is used to provide non-medical transportation, by the first driver of the vehicle and prior to transporting an individual in a wheelchair, to ensure the permanent fasteners, safety harnesses or belts, and access ramp or hydraulic lift are working. The inspection shall be documented by the driver that conducts the inspection.

PARAGRAPH (D)(2) REVISED FROM:

An individual's non-medical transportation needs may be met through a combination of non-medical transportation at the per-trip rate, non-medical transportation at the per-mile rate, and/or non-medical transportation provided by operators of commercial vehicles at the usual and customary fare.

TO:

An individual's non-medical transportation needs may be met through a combination of non-medical transportation at the per-trip rate, non-medical transportation at the per-mile rate, and/or non-medical transportation provided by operators of commercial vehicles at the usual and customary fare. Unless otherwise specified in an individual service plan:

ADDED NEW PARAGRAPH (D)(2)(a):

Non-medical transportation at the per-trip rate shall be authorized for transporting an individual between the individual's residence and a location specified in paragraphs (B)(16)(a) to (B)(16)(f) of this rule.

ADDED NEW PARAGRAPH (D)(2)(b):

Non-medical transportation at the per-mile rate shall be authorized for transporting an individual in circumstances other than those described in paragraph (D)(2)(a) of this rule.

PARAGRAPH (E) REVISED FROM:

Requirements for service delivery of non-medical transportation

TO:

Requirements for service delivery of non-medical transportation at the per-trip rate or non-medical transportation at the per-mile rate in a modified vehicle or a vehicle equipped to transport five or more passengers

ELIMINATED WHAT WAS PARAGRAPH (E)(1) OF RULE ORIGINALLY-FILED OCTOBER 17, 2019:

Drivers of vehicles used for non-medical transportation at the per-trip rate or non-medical transportation at the per-mile rate shall comply with federal, state, and local laws and regulations.

ELIMINATED WHAT WAS PARAGRAPH (E)(2) OF RULE ORIGINALLY-FILED OCTOBER 17, 2019:

Operators of commercial vehicles shall comply with federal, state, and local laws and regulations pertaining to the maintenance and operation of the commercial vehicles.

PARAGRAPH (E)(2) REVISED FROM:

Be inspected and tested, on each day the vehicle is used to provide non-medical transportation, by the first driver of the vehicle and prior to transporting an individual,

to ensure the lights, windshield washer/wipers, emergency equipment, mirrors, horn, tires, and brakes are working. The daily inspection shall be documented by the driver that conducts the inspection.

TO:

Be inspected, on each day the vehicle is used to provide non-medical transportation, by the first driver of the vehicle and prior to transporting an individual, to ensure the lights, windshield washer/wipers, emergency equipment, mirrors, horn, tires, and brakes are working. The inspection shall be documented by the driver that conducts the inspection.

ELIMINATED WHAT WAS PARAGRAPH (H)(1)(c) OF RULE ORIGINALLY-FILED OCTOBER 17, 2019:

Type of vehicle (i.e., modified vehicle or non-modified vehicle) used to provide service.

## II. Fiscal Analysis

### 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will increase expenditures.

\$23.7 million

Increasing payment rates for providers of Non-Medical Transportation at the per-mile rate is projected to increase the Department's expenditures in the current biennium by \$23.7 million.

### 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

The rule requires a person or agency seeking approval to provide Non-Medical Transportation to complete and submit an application and supporting documentation to the Department and obtain a Medicaid provider agreement from the Ohio Department of Medicaid. The rule requires a provider of services to maintain service documentation. The rule requires an Independent Provider to notify the Department 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. These activities consume applicant/provider time, the cost of which varies and is unknown to the Department. The rule requires obtaining a driving record from the Bureau of Motor Vehicles, which costs \$5. The rule requires vehicles used for Non-Medical Transportation to be inspected annually; the inspection may be conducted by the Ohio State Highway Patrol at no cost to the operator.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
15. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not applicable.

### **III. Common Sense Initiative (CSI) Questions**

16. **Was this rule filed with the Common Sense Initiative Office? Yes**
17. **Does this rule have an adverse impact on business? Yes**
  - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes**

Paragraph (C)(1) requires a provider of Non-Medical Transportation to be certified by the Department and have a Medicaid provider agreement with the Ohio Department of Medicaid.
  - B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes**

Paragraph (C)(6) sets forth that failure to comply with this rule and applicable provisions of rule 5123:2-2-01 may result in denial, suspension, or revocation of the provider's certification.
  - C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

Paragraph (H) requires a provider of Non-Medical Transportation to maintain service documentation.
  - D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**