

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5123-9-19

Rule Type: Amendment

Rule Title/Tagline: Home and community-based services waivers - general requirements for adult day support, career planning, group employment support, individual employment support, non-medical transportation, and vocational habilitation.

Agency Name: Department of Developmental Disabilities

Division:

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I. Rule Summary

1. Is this a five year rule review? No
 - A. What is the rule's five year review date? 2/1/2025
2. Is this rule the result of recent legislation? Yes
 - A. If so, what is the bill number, General Assembly and Sponsor? HB 33 - 135 - Representative Edwards
3. What statute is this rule being promulgated under? 119.03
4. What statute(s) grant rule writing authority? 5123.04, 5123.049
5. What statute(s) does the rule implement or amplify? 5123.04, 5123.049, 5166.21
6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No
 - A. If so, what is the citation to the federal law or rule? Not Applicable
7. What are the reasons for proposing the rule?

The Department is amending the rule to increase budget limitations for Adult Day Support, Career Planning, Group Employment Support, Individual Employment Support, Non-Medical Transportation, and Vocational Habilitation that apply to individuals enrolled in the Individual Options Waiver. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.

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

The rule establishes general requirements governing provision of and payment for Adult Day Support, Career Planning, Group Employment Support, Individual Employment Support, Non-Medical Transportation, and Vocational Habilitation provided to individuals enrolled in Home and Community-Based Services waivers administered by the Department. The Department is amending the rule to increase budget limitations that apply to individuals enrolled in the Individual Options Waiver. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.

9. Does the rule incorporate material by reference? Yes

10. 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 Revised Code and the Administrative Code. Pursuant to Section 121.75 of the Revised Code, the requirements in Sections 121.71 to 121.74 do not apply. The Revised Code and the Administrative Code are available at libraries and on the internet at <https://codes.ohio.gov>. The Department's administrative rules are also available at <https://dodd.ohio.gov/forms-and-rules/rules-in-effect/administrative-rules-list>.

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

Not Applicable

II. Fiscal Analysis

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

This will increase expenditures.

\$1.2 billion

House Bill 33 of the 135th General Assembly increased the Department's appropriations by approximately \$352 million in fiscal year 2024 and \$860 million in fiscal year 2025 to fund increases in the payment rates for most services provided to persons enrolled in Department-administered Home and Community-Based Services waivers. The impact of the payment rate increases is not projected for each specific service because the impact will depend on the volume of each service to be used, which is unknown at this time.

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

The rule requires county boards of developmental disabilities to ensure an Acuity Assessment Instrument is completed for each individual receiving an adult day service, assign the individual to groups for purposes of provision of services, determine the individual's budget limitations, authorize payment for services, communicate information about these processes and outcomes to individuals served, and assist individuals to request administrative review by the Department. The rule requires providers of Adult Day Support, Group Employment Support, and Vocational Habilitation to ensure and document that sufficient staff are engaged in provision of the services. These activities consume staff resources, the cost of which varies by county board/provider based on multiple factors (e.g., number and nature of individuals served, number of staff employed, and staff wages and benefits) and is unknown by the Department.

14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

16. 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

17. Was this rule filed with the Common Sense Initiative Office? Yes

18. 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? No**
- 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? No**
- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

Paragraph (E)(5) requires providers of Adult Day Support, Group Employment Support, and Vocational Habilitation to document that sufficient staff are engaged in provision of the services to ensure the health and safety and achievement of outcomes identified in the Individual Service Plans of individuals being served.

- 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**

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).**19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes**

- A. How many new regulatory restrictions do you propose adding to this rule? 0**
- B. How many existing regulatory restrictions do you propose removing from this rule? 38**

5123-9-19 (B)(2): "Administrative review" means the processes internal to the department and subject to oversight by the Ohio department of medicaid available to individuals who believe that their acuity assessment instrument scores, their placement in group assignment A, A-1, or B, and when applicable, the resulting budget limitation, prohibit their access to or continuation in the adult day support, career planning, group employment support, individual employment support, and/or vocational habilitation services they have selected.

5123-9-19 (C)(1): The service and support administrator shall ensure that an acuity assessment instrument is completed for each individual for whom adult day support, career planning, group employment support, individual employment support, or vocational habilitation has been authorized through the individual service plan development process.

5123-9-19 (C)(2): Information needed to complete the acuity assessment instrument shall be provided by the individual and informants who know the capabilities and needs of the individual outside of the individual's residence, in the adult day services setting.

5123-9-19 (C)(2): The service and support administrator shall review and approve information contained on the acuity assessment instrument.

5123-9-19 (C)(2): The service and support administrator and/or a person designated by the service and support administrator shall submit information in electronic format to the department.

5123-9-19 (C)(4): Following assignment of an individual enrolled in the individual options waiver to one of four groups, the service and support administrator shall determine the individual's budget limitation for adult day support, career planning, group employment support, individual employment support, and vocational habilitation.

5123-9-19 (C)(4): When the need for non-medical transportation has been identified through the individual service plan development process, the service and support administrator shall also determine the individual's budget limitation for non-medical transportation.

5123-9-19 (C)(4): The budget limitation for non-medical transportation shall not be combined with the budget limitation for adult day support, career planning, group employment support, individual employment support, and/or vocational habilitation to enable an individual to increase the availability of one or more of these services or for any other purpose.

5123-9-19 (C)(5): The service and support administrator shall inform each individual of the acuity assessment instrument score, the resulting group assignment, and for an individual enrolled in the individual options waiver, the individual's budget limitations:

5123-9-19 (C)(6): A budget limitation established for an individual enrolled in the individual options waiver shall change only when changes in assessment

variable scores on the acuity assessment instrument that justify assignment to a new group have occurred and/or the individual receives the preponderance of adult day services in a county with a different cost-of-doing-business category.

5123-9-19 (C)(7): The department shall periodically re-examine the scoring of the acuity assessment instrument and the linkage of the scores to group assignments.

5123-9-19 (D)(1): The services shall be provided pursuant to a person-centered individual service plan that conforms to the requirements of rules 5123-4-02 and 5123:2-2-05 of the Administrative Code.

5123-9-19 (D)(2): Individual service plans shall indicate the group assignment for provision of adult day support, group employment support, and vocational habilitation in accordance with paragraph (C)(3) of this rule.

5123-9-19 (D)(2): When an individual who is enrolled in a waiver receives one or more of these services in a group that includes one or more individuals who are not enrolled in a waiver, the group assignment for the individuals who are not enrolled in a waiver shall be identified through the individual service plan development process.

5123-9-19 (D)(3): The county board shall determine whether the annual cost for adult day support, career planning, group employment support, individual employment support, and/or vocational habilitation can be met by or exceeds the assigned budget limitation of an individual enrolled in the individual options waiver, or the funding amount available to meet the assessed needs of an individual enrolled in the level one waiver or the self-empowered life funding waiver.

5123-9-19 (D)(3): The county board also shall determine whether the annual cost for non-medical transportation can be met by or exceeds the assigned budget limitation of an individual enrolled in the individual options waiver, or the funding amount available to meet the assessed needs of an individual enrolled in the level one waiver or the self-empowered life funding waiver.

5123-9-19 (D)(3): The service and support administrator shall inform the individual of these determinations in accordance with procedures developed by the department.

5123-9-19 (D)(4)(b): Neither the department nor the county board shall approve a change in a budget limitation or assign a new budget limitation to an individual enrolled in the individual options waiver after notification that the individual has requested a hearing pursuant to section 5160.31 of the Revised Code concerning the approval, denial, reduction, or termination of services in an individual service plan that has been developed within the funding parameters of this rule.

5123-9-19 (E)(1): Billing for adult day support, group employment support, and vocational habilitation shall correspond to the payment rates for the group assignment of individuals being served.

5123-9-19 (E)(4): Career planning and individual employment support shall be provided at a ratio of one staff to one individual.

5123-9-19 (E)(5): Agency providers shall ensure and document that sufficient numbers of staff are engaged in provision of adult day support, group employment support, and vocational habilitation to ensure the health and safety and achievement of outcomes identified in the individual service plans of individuals being served; submission of a claim for payment constitutes an attestation by the agency provider that sufficient staff were present to ensure health and safety and achievement of outcomes.

5123-9-19 (F)(1): The county board shall complete a payment authorization and the service and support administrator shall ensure waiver services are initiated for an individual whose annual cost for adult day support, career planning, group employment support, individual employment support, and/or vocational habilitation and whose annual cost for non-medical transportation are within the budget limitations of an individual enrolled in the individual options waiver or within the funding amount available to meet the assessed needs of an individual enrolled in the level one waiver or the self-empowered life funding waiver.

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5123-9-19 (F)(1): The service and support administrator shall inform the individual in writing in a form and manner the individual understands, of the individual's due process rights and responsibilities as set forth in section 5160.31 of the Revised Code.

5123-9-19 (F)(2): Administrative review requests shall not be accepted for individuals having group assignment C.

5123-9-19 (F)(5): The individual or county board requesting administrative review shall submit information requested by the department including but not limited to:

5123-9-19 (F)(6): The department shall make a determination within thirty calendar days following receipt of the information described in paragraph (F) (5) of this rule and shall notify the individual and county board in writing of the determination.

5123-9-19 (F)(6): The department shall make a determination within thirty calendar days following receipt of the information described in paragraph (F) (5) of this rule and shall notify the individual and county board in writing of the determination.

5123-9-19 (F)(7): The administrative review approval shall apply to the individual's current waiver eligibility span.

5123-9-19 (F)(8): Following completion of the administrative review process, the department shall inform the individual in writing in a form and manner the individual understands, of the individual's due process rights and responsibilities as set forth in section 5160.31 of the Revised Code.

5123-9-19 (F)(9): If, through the administrative review process, the department approves the request for a different group assignment, the county board shall ensure a payment authorization is completed within fifteen calendar days following the determination by the department and shall ensure waiver services are initiated.

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5123-9-19 (F)(10): If, through the administrative review process, the department denies the request for a different group assignment or if the service is not subject to an administrative review, the service and support administrator shall initiate the individual service plan development process to determine if an individual service plan can be developed that is acceptable to the individual and is within the assigned budget limitation or funding amount available.

5123-9-19 (F)(10)(a): If an individual service plan that meets these conditions is developed, the county board shall ensure a payment authorization is completed and shall ensure waiver services are initiated.

5123-9-19 (F)(10)(a): If an individual service plan that meets these conditions is developed, the county board shall ensure a payment authorization is completed and shall ensure waiver services are initiated.

5123-9-19 (F)(10)(b): If an individual service plan that meets these conditions cannot be developed, the county board shall propose to deny the initial or continuing provision of adult day support, career planning, group employment support, individual employment support, and/or vocational habilitation and inform the individual of the individual's due process rights and responsibilities as set forth in section 5160.31 of the Revised Code.

5123-9-19 (F)(11): The department shall use the twelve-month period following either an individual's initial individual options waiver enrollment date or the date the individual transitions to one or more of the services addressed in this rule to verify that cumulative payments made for adult day services remain within the approved budget limitations specified in this rule.

5123-9-19 (G): Applicants for and recipients of waiver services administered by the department shall use the process set forth in section 5160.31 of the Revised Code and rules implementing that statute for any challenge related to the administration and/or scoring of the acuity assessment instrument or to the type, amount, level, scope, or duration of services included or excluded from an individual service plan.

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**
- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable