

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5123-9-30

Rule Type: Amendment

Rule Title/Tagline: Home and community-based services waivers - homemaker/ personal care under the individual options and level one waivers.

Agency Name: Department of Developmental Disabilities

Division:

Address: 1810 Sullivant Avenue Columbus OH 43223-1239

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

Email: becky.phillips@dodd.ohio.gov

I. Rule Summary

1. Is this a five year rule review? Yes
 - A. What is the rule's five year review date? 9/29/2023
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, 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. 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 permit Homemaker/Personal Care to be provided to an individual in an acute care hospital, increase payment rates effective January 1, 2024 and July 1, 2024, correct 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 defines Homemaker/Personal Care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The Department is amending the rule to permit Homemaker/Personal Care to be provided to an individual in an acute care hospital, increase payment rates effective January 1, 2024 and July 1, 2024, correct 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 a person or agency seeking approval to provide Homemaker/ Personal Care to submit an application and have a Medicaid provider agreement with the Ohio Department of Medicaid. The rule requires a provider of services to maintain service documentation. These activities consume applicant/provider resources, the cost of which varies by applicant/provider and is unknown to 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? Yes

Paragraph (C) requires a provider of services 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)(5) sets forth that failure of a certified provider to comply with this rule and as applicable, rule 5123-2-08 or 5123-2-09, may result in denial, suspension, or revocation of the provider's certification.

Paragraph (C)(6) sets forth that failure of a licensed provider to comply with this rule and Chapter 5123-3 of the Administrative Code may result in denial, suspension, or revocation of the provider's license.

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

Paragraph (C) requires an applicant for provider certification to submit an application.

Paragraph (D)(7) requires a provider of services to notify the individual served or legally responsible person in the event that substitute coverage is necessary and notify the person identified in the individual service plan when substitute coverage is not available.

Paragraph (D)(8) requires some providers of services to utilize electronic visit verification.

Paragraph (E) requires a provider of services 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

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? 42

5123-9-30 (B): For the purposes of this rule, the following definitions shall apply:

5123-9-30 (B)(7): Minutes of service delivery time accrued throughout a day shall be added together for the purpose of calculating the number of fifteen-minute billing units for the day.

5123-9-30 (B)(22): "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.

5123-9-30 (C)(1): Homemaker/personal care shall be provided by an independent provider or an agency provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of medicaid.

5123-9-30 (C)(2): Homemaker/personal care shall not be provided by a county board or a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards.

5123-9-30 (C)(3): An applicant seeking approval to provide homemaker/personal care shall complete and submit an application through the department's website (<http://dodd.ohio.gov>).

5123-9-30 (C)(4): Providers licensed under section 5123.19 of the Revised Code seeking to provide homemaker/personal care shall:

5123-9-30 (D)(1): Homemaker/personal care shall be provided pursuant to an individual service plan that conforms to the requirements of rule 5123-4-02 of the Administrative Code.

5123-9-30 (D)(1): Providers shall participate in individual service plan development meetings when a request for their participation is made by the individual.

5123-9-30 (D)(2): A provider of homemaker/personal care shall not also provide money management or shared living to the same individual.

5123-9-30 (D)(3): Homemaker/personal care shall not be provided to an individual at the same time as residential respite.

5123-9-30 (D)(5): Homemaker/personal care services involving direct contact with an individual receiving the services shall not be provided at the same time the individual is receiving adult day support, group employment support, individual employment support, or vocational habilitation.

5123-9-30 (D)(6): A provider shall not bill for homemaker/personal care provided by the driver during the same time non-medical transportation at the per-trip rate is provided.

5123-9-30 (D)(8): A provider of homemaker/personal care shall arrange for substitute coverage, when necessary, only from a provider certified or approved by the department and as identified in the individual service plan; notify as applicable, the individual or legally responsible person in the event that substitute coverage is necessary; and notify the person identified in the individual service plan when substitute coverage is not available to allow such person to make other arrangements.

5123-9-30 (D)(9): A provider delivering homemaker/personal care in fifteen-minute billing units in accordance with this rule, excluding on-site/on-call, shall utilize electronic visit verification in accordance with rule 5160-1-40 of the Administrative Code.

5123-9-30 (D)(10): An agency provider shall develop and implement a documented process by which it reviews and manages overtime of staff members who provide homemaker/personal care in a manner that ensures the health and safety of individuals served and staff members and considers the specific needs of individuals served, the abilities of staff members, and patterns of overtime with the goal of reducing overtime.

5123-9-30 (E): Service documentation for homemaker/personal care shall include each of the following to validate payment for medicaid services:

5123-9-30 (F)(3): Payment rates for homemaker/personal care shall be adjusted to reflect the number of individuals being served and the number of people providing services.

5123-9-30 (F)(3)(a): When two individuals are being served by one person, the base rate shall be one hundred seven per cent of the base rate for one-to-one service.

5123-9-30 (F)(3)(a): When three individuals are being served by one person, the base rate shall be one hundred seventeen per cent of the base rate for one-to-one service.

5123-9-30 (F)(3)(a): When four or more individuals are being served by one person, the base rate shall be one hundred thirty per cent of the base rate for one-to-one service.

5123-9-30 (F)(4): Payment rates for routine homemaker/personal care shall be adjusted 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)(4)(a) of this rule.

5123-9-30 (F)(4)(a): The department shall determine that an individual meets the criteria for the behavioral support rate modification when:

5123-9-30 (F)(4)(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.

5123-9-30 (F)(5): Payment rates for routine homemaker/personal care provided to individuals enrolled in the individual options waiver shall be adjusted by the complex care rate modification to reflect the needs of an individual requiring total support from others upon determination by the county board that the individual meets the criteria set forth in paragraph (F)(5)(a) of this rule.

5123-9-30 (F)(5)(a): The county board shall determine that an individual meets the criteria for the complex care rate modification based on the individual's responses to specific questions on the Ohio developmental disabilities profile that indicate that the individual:

5123-9-30 (F)(5)(b): The duration of the complex care 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.

5123-9-30 (F)(6): Payment rates for routine homemaker/personal care shall be adjusted 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)(6)(a) of this rule.

5123-9-30 (F)(6)(a): The county board shall determine that an individual meets the criteria for the medical assistance rate modification when:

5123-9-30 (F)(6)(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.

5123-9-30 (F)(7): Payment rates for routine homemaker/personal care shall be adjusted by the staff competency rate modification when homemaker/personal care is provided by independent providers or staff of agency providers who meet the criteria set forth in paragraph (F)(7)(a) of this rule and as determined in accordance with, as applicable, paragraph (F)(7)(b) or (F)(7)(c) of this rule.

5123-9-30 (F)(7)(a): An independent provider or a staff member of an agency provider shall be determined eligible for the staff competency rate modification when he or she:

5123-9-30 (F)(7)(b): Eligibility for the staff competency rate modification for an independent provider shall be determined by the department when documentation submitted by the independent provider through the department's website (<http://dodd.ohio.gov>) demonstrates that the independent provider meets the criteria set forth in paragraph (F)(7)(a) of this rule.

5123-9-30 (F)(7)(c): Eligibility for the staff competency rate modification for a staff member of an agency provider shall be determined by the employing agency provider.

5123-9-30 (F)(7)(c): The employing agency provider shall review, verify, and maintain documentation that demonstrates that the staff member meets the criteria set forth in paragraph (F)(7)(a) of this rule.

5123-9-30 (F)(10): The amount of the payment rate modifications set forth in paragraphs (F)(8) and (F)(9) of this rule shall be limited to fifty-two cents for each fifteen-minute billing unit of routine homemaker/personal care provided to the individual during the first year of the individual's enrollment in the individual options waiver.

5123-9-30 (F)(11): The team shall use a department-approved tool to assess and document in the individual service plan when on-site/on-call may be appropriate.

5123-9-30 (F)(11)(a): In making the assessment, the team shall consider:

5123-9-30 (F)(11)(b): A provider shall be paid at the on-site/on-call rate for homemaker/personal care contained in appendix A to this rule when:

5123-9-30 (F)(11)(c): During an authorized on-site/on-call period, a provider shall be paid the routine homemaker/personal care rate instead of the on-site/on-call rate for a period of time when an individual receives supervision or supports.

5123-9-30 (F)(11)(c): In these instances, the provider shall document the date and beginning and ending times during which supervision or supports were provided to the individual.

5123-9-30 (F)(12): Payment for homemaker/personal care shall not include room and board, items of comfort and convenience, or costs for the maintenance, upkeep, and improvement of the home.

- 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