

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5123-9-32

**Rule Type:** Amendment

**Rule Title/Tagline:** Home and community-based services waivers - participant-directed homemaker/personal care under the individual options, level one, and self-empowered life funding waivers.

**Agency Name:** Department of Developmental Disabilities

**Division:**

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#### 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 Participant-Directed 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 Participant-Directed 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 Participant-Directed 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.**

APPENDIX A (ENACTED, SEQUENCE INDEX 2) AND APPENDIX B (ENACTED, SEQUENCE INDEX 3) REVISED TO ADD SERVICE CODES FOR SERVICES PROVIDED BY PARENTS OF MINOR CHILDREN AND SPOUSES.

11/06/2023 ADDED SENTENCE TO PARAGRAPH (B)(21):

*This rate and service may only be authorized in the residence of the individual or at another location in the community selected by the individual other than the residence of the provider of the service.*

PARAGRAPH (C)(7) REVISED FROM:

*An applicant seeking approval to provide participant-directed homemaker/personal care will complete and submit an application through the Ohio department of medicaid provider network management system and adhere to the requirements of as applicable, rule 5123-2-08 or 5123-2-09 of the Administrative Code.*

*TO:*

*An applicant seeking approval to provide participant-directed homemaker/personal care will complete and submit an application and adhere to the requirements of as applicable, rule 5123-2-08 or 5123-2-09 of the Administrative Code.*

*PARAGRAPH (F)(7)(a)(v) REVISED FROM:*

*Other safety considerations which require supervision or supports throughout the night; and*

*TO:*

*Other safety considerations which require supervision or supports throughout the night;*

*PARAGRAPH (F)(7)(a)(vi) REVISED FROM:*

*Emergency action needed to keep the individual safe.*

*TO:*

*Emergency action needed to keep the individual safe; and*

*ADDED NEW PARAGRAPH (F)(7)(a)(vii):*

*On-site/on-call will be delivered in the residence of the individual or at another location in the community selected by the individual other than the residence of the provider of the service.*

*10/05/2023 FIRST SENTENCE OF PARAGRAPH (F)(1) REVISED FROM:*

*The billing unit, service codes, and payment rates for participant-directed homemaker/personal care provided on or before June 30, 2024 are contained in appendix A to this rule.*

*TO:*

*The billing unit, service codes, and payment rates for participant-directed homemaker/personal care provided January 1, 2024 through June 30, 2024 are contained in appendix A to this rule*

*TITLE OF APPENDIX A (ENACTED, SEQUENCE INDEX 2) REVISED FROM:*

*Billing Unit, Service Codes, And Payment Rates For Participant-Directed Homemaker/ Personal Care Provided On Or Before June 30, 2024*

*TO:*

*Billing Unit, Service Codes, And Payment Rates For Participant-Directed Homemaker/ Personal Care Provided January 1, 2024 Through June 30, 2024*

## **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 Participant-Directed 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)(3) requires a provider of Participant-Directed Homemaker/Personal Care 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)(7) sets forth that failure of a provider of Participant-Directed Homemaker/Personal Care 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.

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

Paragraph (E) requires a provider of Participant-Directed Homemaker/Personal Care 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?** 37

5123-9-32 (B): For the purposes of this rule, the following definitions shall apply:

5123-9-32 (B)(6): A common law employee shall not employ, either directly or through contract, anyone else to provide participant-directed homemaker/personal care.

5123-9-32 (B)(12): 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.

5123-9-32 (B)(25): "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.

5123-9-32 (C)(1): Participant-directed homemaker/personal care provided to an individual enrolled in the individual options waiver or the level one waiver shall be provided by a common law employee.

5123-9-32 (C)(2): Participant-directed homemaker/personal care provided to an individual enrolled in the self-empowered life funding waiver shall be provided by a common law employee or an agency with choice.

5123-9-32 (C)(3): A provider of participant-directed homemaker/personal care shall meet the requirements of this rule and have a medicaid provider agreement with the Ohio department of medicaid.

5123-9-32 (C)(4): Neither a county board nor a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards shall provide participant-directed homemaker/personal care.

5123-9-32 (C)(5)(b): A common law employee need not complete the eight hours of annual training described on page two of appendix A to rule 5123-2-09 of the Administrative Code unless specifically required to do so by the individual receiving services, but in any case shall annually complete training in accordance with standards established by the department in:

5123-9-32 (C)(6): A provider of participant-directed homemaker/personal care shall not administer medication or perform health-related activities unless the provider meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.

5123-9-32 (C)(7): An applicant seeking certification to provide participant-directed homemaker/ personal care shall will complete and submit an application through the department's website (<http://dodd.ohio.gov>).

5123-9-32 (C)(8): The individual receiving participant-directed homemaker/ personal care shall determine training to be completed by the common law employee or staff of the agency with choice as necessary to meet the individual's unique needs.

5123-9-32 (D)(2): Participant-directed 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.

5123-9-32 (D)(4): A provider of participant-directed homemaker/personal care shall not also provide money management or shared living to the same individual.

5123-9-32 (D)(5): Participant-directed homemaker/personal care shall not be provided to an individual at the same time as residential respite.

5123-9-32 (D)(6): Participant-directed 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.

5123-9-32 (D)(9): A provider shall not bill for participant-directed homemaker/ personal care provided by the driver during the same time non-medical transportation at the per-trip rate is provided.

5123-9-32 (D)(10): The ratio of persons providing participant-directed homemaker/personal care to the individuals being served shall not exceed one to three.

5123-9-32 (D)(11): A provider of participant-directed 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.

5123-9-32 (D)(12): A provider delivering participant-directed homemaker/personal care 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.

5123-9-32 (E)(1): Service documentation for participant-directed homemaker/personal care shall include each of the following to validate payment for medicaid services:

5123-9-32 (E)(2): A common law employee shall prepare an accurate timesheet to be verified by the individual receiving participant-directed homemaker/personal care prior to submission to the financial management services entity.

5123-9-32 (F)(2): The payment rates for participant-directed homemaker/personal care provided by a common law employee shall be negotiated by the individual and the common law employee subject to the minimum and maximum payment rates contained in the appendix to this rule and shall be recorded in the individual service plan.

5123-9-32 (F)(2): The payment rates for participant-directed homemaker/personal care provided by a common law employee shall be negotiated by the individual and the common law employee subject to the minimum and maximum payment rates contained in the appendix to this rule and shall be recorded in the individual service plan.

5123-9-32 (F)(3): The payment rates for participant-directed homemaker/personal care shall be adjusted to reflect the number of individuals being served and the number of persons providing services.

5123-9-32 (F)(4)(a): The department shall determine that an individual meets the criteria for the behavioral support rate modification when:

5123-9-32 (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.

5123-9-32 (F)(5)(a): The county board shall determine that an individual meets the criteria for the medical assistance rate modification when:

5123-9-32 (F)(5)(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.

5123-9-32 (F)(6)(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:

5123-9-32 (F)(6)(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.

5123-9-32 (F)(7): 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.

5123-9-32 (F)(7)(a): In making the assessment, the team shall consider:

5123-9-32 (F)(7)(b): A provider shall be paid at the on-site/on-call rate for participant-directed homemaker/personal care contained in the appendix to this rule when:

5123-9-32 (F)(7)(c): During an authorized on-site/on-call period, a provider shall be paid the routine participant-directed homemaker/personal care rate instead of the on-site/on-call rate for a period of time when an individual receives supports.

5123-9-32 (F)(7)(c): In these instances, the provider shall document the date and beginning and ending times during which supports were provided to the individual.

5123-9-32 (F)(8): Payment for participant-directed 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

