

## 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? No
  - A. What is the rule's five year review date? 1/1/2024
2. Is this rule the result of recent legislation? Yes
  - A. If so, what is the bill number, General Assembly and Sponsor? HB 110 - 134  
- 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 amending the rule to increase payment rates for the service.
7. 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 increase payment rates for the service. Additional amendments are being made to add clarification to paragraph (D)(10), update the description of the medical assistance rate modification to reflect current practice, and update citations to the Administrative Code.

- 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 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 <http://codes.ohio.gov>. The Department's administrative rules are also available at [dodd.ohio.gov](http://dodd.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.**

ELIMINATED WHAT WAS PARAGRAPH (F)(5)(a)(ii):

The individual requires oxygen administration that a licensed nurse agrees to delegate in accordance with rules in Chapter 4723-13 of the Administrative Code; or

REVISED WHAT IS NOW PARAGRAPH (F)(5)(a)(ii) FROM:

The individual requires a nursing procedure or nursing task that a licensed nurse agrees to delegate in accordance with rules in Chapter 4723-13 of the Administrative Code, which is provided in accordance with section 5123.42 of the Revised Code, and when such nursing procedure or nursing task is not the administration of oral prescribed medication or topical prescribed medication or a health-related activity as defined in rule 5123:2-6-01 of the Administrative Code.

TO:

The individual requires a nursing procedure or nursing task that a licensed nurse agrees to delegate in accordance with rules in Chapter 4723-13 of the Administrative Code, which is provided in accordance with section 5123.42 of the Revised Code, and when such nursing procedure or nursing task is not the administration of oral prescribed medication, topical prescribed medication, oxygen, or metered dose inhaled medication, or a health-related activity as defined in rule 5123:2-6-01 of the Administrative Code.

## **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.

\$127 million

House Bill 110 of the 134th General Assembly increased the Department's appropriations by approximately \$42 million in fiscal year 2022 and \$85 million in fiscal year 2023 to fund a 4% increase in the payment rates for adult day services and residential services provided to persons enrolled in Department-administered Home and Community-Based Services (HCBS) waivers. The impact of the payment rate increases is not projected for each specific HCBS service because the impact will depend on the volume of each service to be used, which is unknown at this time.

- 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 Participant-Directed Homemaker/Personal Care to submit an application to the Department 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.

- 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) 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)(9) sets forth that failure 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 (C) requires an applicant for provider certification to submit an application to the Department.

Paragraph (D)(11) 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 Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

- 18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

- A. How many new regulatory restrictions do you propose adding?**

Not Applicable

- B. How many existing regulatory restrictions do you propose removing?**

Not Applicable