

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5123-9-33

Rule Type: Amendment

Rule Title/Tagline: Home and community-based services waivers - shared living under the individual options waiver.

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?** 11/19/2025
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, 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:

- Add new paragraph (D)(9) to permit Residential Respite to be provided on the same day as Shared Living.
- Eliminate existing paragraph (D)(10) which permitted Homemaker/Personal Care to be provided on the same day as Shared Living during the COVID-19 state of emergency.
- Add new paragraph (D)(10) to address provision of Homemaker/Personal Care to a person who receives Shared Living.
- Add new paragraph (D)(11) to permit Shared Living to be provided to an individual in an acute care hospital.
- Amend paragraph (G) to add additional exemptions that permit individuals to receive Homemaker/Personal Care instead of Shared Living.
- Increase payment rates effective January 1, 2024 and July 1, 2024.
- Correct citations to the Administrative Code.
- 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 Shared Living 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:

- Add new paragraph (D)(9) to permit Residential Respite to be provided on the same day as Shared Living.
- Eliminate existing paragraph (D)(10) which permitted Homemaker/Personal Care to be provided on the same day as Shared Living during the COVID-19 state of emergency.
- Add new paragraph (D)(10) to address provision of Homemaker/Personal Care to a person who receives Shared Living.
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- Amend paragraph (G) to add additional exemptions that permit individuals to receive Homemaker/Personal Care instead of Shared Living.
- Increase payment rates effective January 1, 2024 and July 1, 2024.
- Correct citations to the Administrative Code.
- 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 Social Security Act, 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 Social Security Act is

available at libraries and on the internet. 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.

PARAGRAPH (C)(4) REVISED FROM:

An applicant seeking approval to provide shared living 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 shared living 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.

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

The billing unit, service codes, and payment rates for shared living 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 shared living provided January 1, 2024 through June 30, 2024 are contained in appendix A to this rule.

TITLE OF APPENDIX A (ENACTED, SEQUENCE INDEX 3) REVISED FROM:

Billing Unit, Service Codes, And Payment Rates For Shared Living Provided On Or Before June 30, 2024

TO:

Billing Unit, Service Codes, And Payment Rates For Shared Living 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 Shared Living 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 an agency provider or independent 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 residential facility to comply with this rule and Chapter 5123-3 of the Administrative Code may result in denial, suspension, or revocation of the residential facility's license.

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

Paragraph (C) requires a provider of services to submit an application to the Department.

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? 29

5123-9-33 (B)(17): "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.

5123-9-33 (C)(1): Shared living shall be provided by an agency provider or an independent provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of medicaid.

5123-9-33 (C)(2): Shared living 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.

5123-9-33 (C)(4): An applicant seeking approval to provide shared living shall complete and submit an application through the department's website (<http://dodd.ohio.gov/>).

5123-9-33 (D)(1): Shared living shall be authorized for an individual when one or more adult caregivers who reside with the individual provide twenty per cent or more of the individual's personal care and support services.

5123-9-33 (D)(2): Shared living shall be provided pursuant to an individual service plan that conforms to the requirements of rule 5123-4-02 of the Administrative Code.

5123-9-33 (D)(3): The total number of persons with developmental disabilities living in a home in which an individual receives shared living shall not exceed four.

5123-9-33 (D)(4): An independent provider shall reside in the home where shared living is provided and that home shall be the independent provider's primary, legal residence.

5123-9-33 (D)(5): An agency provider shall employ or contract with a person to be the caregiver who shall reside in the home where shared living is provided and that home shall be the person's primary, legal residence.

5123-9-33 (D)(5): An agency provider shall employ or contract with a person to be the caregiver who shall reside in the home where shared living is provided and that home shall be the person's primary, legal residence.

5123-9-33 (D)(6): Shared living shall not be provided to an individual who is receiving foster care services funded through Title IV-E of the Social Security Act as in effect on the effective date of this rule.

5123-9-33 (D)(7): An independent provider of shared living shall not bill homemaker/personal care or deliver state plan home health aide services as an employee of an agency to an individual for whom he or she provides shared living.

5123-9-33 (D)(12)(a): Independent providers shall work with the individual's service and support administrator to arrange for substitute coverage when needed.

5123-9-33 (D)(13): A provider of shared living shall develop, maintain, and implement for each individual for whom shared living is provided, a detailed written protocol to be followed in the event that substitute coverage is necessary.

5123-9-33 (D)(13): The protocol shall include contact information for and a requirement to notify:

5123-9-33 (E): Service documentation for shared living shall include each of the following to validate payment for medicaid services:

5123-9-33 (F)(2): Payment for shared living shall be at a daily rate billing unit

5123-9-33 (F)(4): The rate paid to a provider of shared living shall be adjusted to reflect the group size:

5123-9-33 (F)(4)(a): Payment for one individual shall be at one hundred per cent of the daily rate for the individual's Ohio developmental disabilities profile range.

5123-9-33 (F)(4)(b): Payment for a group size of two shall be at eighty-five per cent of the daily rate for the Ohio developmental disabilities profile range for each individual.

5123-9-33 (F)(4)(c): Payment for a group size of three shall be at seventy-five per cent of the daily rate for the Ohio developmental disabilities profile range for each individual.

5123-9-33 (F)(4)(d): Payment for a group size of four shall be at sixty-five per cent of the daily rate for the Ohio developmental disabilities profile range for each individual.

5123-9-33 (F)(5): Shared living shall not be billed on the same day as community respite at the full day billing unit or residential respite.

5123-9-33 (F)(7): In no instance shall prior authorization result in a daily rate in excess of the highest rate within the applicable county cost-of-doing-business category as set forth in appendix A to this rule.

5123-9-33 Appendix A: The rate paid to a provider of shared living shall be adjusted to reflect the group size.

5123-9-33 Appendix A: Payment for one individual shall be at one hundred per cent of the daily rate for the individual's Ohio developmental disabilities profile (ODDP) range.

5123-9-33 Appendix A: Payment for a group size of two shall be at eighty-five per cent of the daily rate for the ODDP range of each individual.

5123-9-33 Appendix A: Payment for a group size of three shall be at seventy-five per cent of the daily rate for the ODDP range of each individual.

5123-9-33 Appendix A: Payment for a group size of four shall be at sixty-five per cent of the daily rate for the ODDP range of each individual.

- 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