

TO BE RESCINDED

5123:2-9-14 **Home and community-based services waivers - vocational habilitation under the individual options, level one, and self-empowered life funding waivers.**

(A) Purpose

The purpose of this rule is to define vocational habilitation and set forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

(B) Definitions

- (1) "Acuity assessment instrument" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (2) "Adult day support" has the same meaning as in rule 5123:2-9-17 of the Administrative Code.
- (3) "Agency provider" means an entity that employs persons for the purpose of providing services for which the entity must be certified under rules adopted by the department.
- (4) "Budget limitation" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (5) "County board" means a county board of developmental disabilities.
- (6) "Daily billing unit" means a billing unit and corresponding payment rate that shall be used when between five and seven hours of adult day support, supported employment-enclave, vocational habilitation, or a combination of adult day support and vocational habilitation are provided by the same provider to the same individual during one calendar day.
- (7) "Department" means the Ohio department of developmental disabilities.
- (8) "Fifteen-minute billing unit" means a billing unit that is equivalent to fifteen minutes of actual service delivery time. Minutes of service provided to an eligible individual for adult day support, supported employment-community, supported employment-enclave, vocational habilitation, and/or a combination of adult day support and vocational habilitation may be accrued by one provider over one calendar day. The number of units is equivalent to the total

number of minutes of each type of service, as distinguished by service codes, provided during the day to the individual, divided by fifteen minutes. One additional unit of service may be added to this quotient if the remainder equals eight or more minutes of service.

- (9) "Independent provider" means a self-employed person who provides services for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.
- (10) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
- (11) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (12) "Integrated community work setting" means the paid employment of an individual in competitive employment, supported employment (as one person or as a member of a group), or self-employment through the operation of a business that takes place outside of a segregated, sheltered, or facility-based program.
- (13) "Mentor" means a person with experience providing direct services to persons with developmental disabilities who is available on a regular basis to provide guidance to new direct support staff regarding techniques and practices that enhance the effectiveness of the direct provision of vocational habilitation.
- (14) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.
- (15) "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.
- (16) "Staff intensity" has the same meaning as in rule 5123:2-9-19 of the

Administrative Code.

- (17) "Supported employment-community" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.
- (18) "Supported employment-enclave" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.
- (19) "Vocational habilitation" means services designed to teach and reinforce habilitation concepts related to work including responsibility, attendance, task completion, problem solving, social interaction, motor skill development, and safety. Activities that constitute vocational habilitation include:
 - (a) Vocational assessment that is conducted through formal and informal means for the purpose of developing a vocational profile and employment goals. The profile may contain information about the individual's educational background, work history, and job preferences; will identify the individual's strengths, values, interests, abilities, available natural supports, and access to transportation; and will identify the earned and unearned income available to the individual.
 - (b) Ongoing support which includes direct supervision, telephone and/or in-person monitoring and/or counseling, and the provision of some or all of the following supports to promote the individual's adjustment and retention.
 - (i) Developing a systematic plan of instruction and support, including task analyses.
 - (ii) Assisting the individual to perform activities that result in his or her social integration with other individuals and persons employed at the worksite.
 - (iii) Supporting and training the individual in the use of generic and/or individualized transportation services.
 - (iv) Providing services and training that assist the individual with problem-solving and meeting job-related expectations.
 - (v) Assisting the individual to use natural supports and generic community resources.

- (vi) Providing training to the individual to maintain current skills, enhance personal hygiene, learn new work skills, attain self-determination goals, improve social skills, and/or modify behaviors that would interfere with employment.
- (vii) Developing and implementing a plan to assist the individual to transition from his or her vocational habilitation setting to supported and/or competitive employment, emphasizing the use of natural supports.
- (viii) Assisting the individual with self-medication or provision of medication administration for prescribed medication and assisting the individual with or performing health-related activities as identified in rule 5123:2-6-01 of the Administrative Code, which a licensed nurse agrees to delegate in accordance with the requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters. With nursing delegation, a provider may:
 - (a) Perform health-related activities;
 - (b) Administer oral and topical prescribed medications;
 - (c) Administer prescribed medications through gastronomy and jejunostomy tubes if the tubes are stable and labeled; and/or
 - (d) Perform routine tube feedings if the gastronomy and jejunostomy tubes are stable and labeled.

(C) Provider qualifications

- (1) Vocational habilitation shall be provided by an agency provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of job and family services.
- (2) Vocational habilitation shall not be provided by an independent provider.
- (3) An applicant seeking approval to provide vocational habilitation shall complete and submit an application and adhere to the requirements of rule 5123:2-2-01 of the Administrative Code.

- (4) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of vocational habilitation successfully completes, within ninety days of employment or contract, either:
- (a) The "Ohio Alliance of Direct Support Professionals Professional Advancement Through Training and Education in Human Services (PATHS) Certificate of Initial Proficiency" program; or
 - (b) An orientation program of at least eight hours that addresses, but is not limited to:
 - (i) Organizational background of the agency provider, including:
 - (a) Mission, vision, values, principles, and goals;
 - (b) Organizational structure;
 - (c) Key policies, procedures, and work rules;
 - (d) Ethical and professional conduct and practice;
 - (e) Avoiding conflicts of interest; and
 - (f) Working effectively with individuals, families, and other team members.
 - (ii) Components of quality care for individuals served, including:
 - (a) Interpersonal relationships and trust;
 - (b) Cultural and personal sensitivity;
 - (c) Effective communication;
 - (d) Person-centered philosophy and practice;
 - (e) Development of individual service plans;
 - (f) Roles and responsibilities of team members; and

- (g) Recordkeeping including progress notes and incident/accident reports.
 - (iii) Health and safety, including:
 - (a) Signs and symptoms of illness or injury and procedure for response;
 - (b) Building/site-specific emergency response plans; and
 - (c) Program-specific transportation safety.
 - (iv) Positive behavior support, including:
 - (a) Principles of positive intervention culture;
 - (b) Role of direct service staff in creating a positive culture;
 - (c) General requirements for behavior support plans and intervention strategies and direct service staff role including documentation;
 - (d) Behavior support review and human rights committees; and
 - (e) Crisis intervention techniques.
 - (v) Services that comprise vocational habilitation as it is defined in paragraph (B)(19) of this rule including the expectation that vocational habilitation will eventually lead to an individual's employment in an integrated community work setting.
- (5) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of vocational habilitation, during the first year of employment or contract with the agency provider:
 - (a) Is assigned and has access to a mentor employed by the agency provider or contractor;
 - (b) Successfully completes on-the-job training specific to each individual he

or she serves that includes, but is not limited to:

- (i) Requirements set forth in the individual service plan including skill development goals, service/support activities, behavior support plan, planned interventions, and related documentation requirements;
 - (ii) The individual's preferences and strengths;
 - (iii) The individual's diagnoses and related needs;
 - (iv) The individual's care needs including nutrition, diet and mealtime support, restroom assistance, mobility needs, lifting, and general supervision/support requirements;
 - (v) Medication administration and delegated nursing, as applicable;
 - (vi) Teaching techniques and related documentation requirements; and
 - (vii) The employee's or contractor's role regarding management of the individual's funds and related documentation requirements.
- (c) Successfully completes at least eight hours of training specific to the provision of vocational habilitation that includes, but is not limited to:
- (i) Skill building in vocational assessment, ongoing job supports, task analysis, job-seeking skills, on-the-job instruction and support, developing natural supports, identifying community resources, personal adjustment, work adjustment, and vocational planning; and
 - (ii) Self-determination which includes assisting the individual to develop self-advocacy skills, to exercise his or her civil rights, to exercise control and responsibility over the services he or she receives, and to acquire skills that enable him or her to become more independent, productive, and integrated within the community.
- (6) An agency provider shall develop and implement a written plan identifying training priorities for employees, contractors, and employees of a contractor who are engaged in direct provision of vocational habilitation. The training

priorities shall be consistent with the needs of individuals served, best practice, and the provider's mission, vision, and strategic plan. The written plan of training priorities shall describe the method (e.g., written test, skills demonstration, or documented observation by supervisor) that will be used to establish employees' and contractors' competency in areas of training. The written plan of training priorities shall be updated at least once every twelve months and shall identify who is responsible for arranging or providing the training and projected timelines for completion of the training.

- (7) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of vocational habilitation, commencing in the second year of employment or contract with the agency provider, annually completes at least eight hours of training, in accordance with the written plan of training priorities.
- (a) The training shall enhance the skills and competencies of the employee or contractor relevant to his or her job responsibilities and shall include, but is not limited to:
- (i) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
 - (ii) The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety including a review of health and safety alerts issued by the department since the previous year's training;
 - (iii) The requirements relative to the employee's or contractor's role in providing behavior support to the individuals he or she serves; and
 - (iv) Best practices related to the provision of vocational habilitation.
- (b) The training may be structured or unstructured and may include, but is not limited to, lectures, seminars, formal coursework, workshops, conferences, demonstrations, visitations or observations of other facilities/services/programs, distance and other means of electronic learning, video and audio-visual training, and staff meetings.
- (8) An agency provider shall ensure that a written record of training completed for each employee, contractor, and employee of a contractor who is engaged in direct provision of vocational habilitation is maintained. The written record

shall include a description of the training completed including a training syllabus and copies of training materials, the date of training, the duration of training, and the instructor's name, if applicable.

- (9) Failure to comply with this rule and rule 5123:2-2-01 of the Administrative Code may result in denial, suspension, or revocation of the provider's certification.

(D) Requirements for service delivery

- (1) Vocational habilitation is available to individuals who are no longer eligible for educational services based on their graduation and/or receipt of a diploma or equivalency certificate and/or their permanent discontinuation of educational services within parameters established by the Ohio department of education.
- (2) Vocational habilitation shall be provided pursuant to an individual service plan that conforms to the requirements of paragraph (H) of rule 5101:3-40-01 of the Administrative Code, paragraph (H) of rule 5101:3-42-01 of the Administrative Code, or paragraph (K) of rule 5123:2-9-40 of the Administrative Code, as applicable. The optimal outcome of vocational habilitation is competitive, integrated employment; accordingly, vocational habilitation is expected to occur over a defined period of time and employment-related goals shall be specified in the individual service plan.
- (3) The service and support administrator shall ensure that an acuity assessment instrument is completed, the individual is assigned to a staff intensity group, and a budget limitation is determined in accordance with rule 5123:2-9-19 of the Administrative Code when the need for vocational habilitation has been identified through development of the individual service plan.
- (4) The service and support administrator shall ensure that documentation is maintained to demonstrate that the service provided as vocational habilitation to an individual enrolled in a waiver is not otherwise available as vocational rehabilitation services funded under section 110 of the Rehabilitation Act of 1973, 29 U.S.C. 730.
- (5) Individuals receiving vocational habilitation shall be compensated in accordance with applicable federal laws and regulations. Individuals who participate in a work program that meets the criteria for employment of workers with disabilities under certificates at special minimum wage rates issued by the department of labor, as required by the Fair Labor Standards Act of 1938, and in accordance with the requirements of 29 C.F.R. Part 525, "Employment of Workers with Disabilities Under Special Certificates," are

eligible for vocational habilitation.

- (6) Vocational habilitation shall generally be made available four or more hours per day on a regularly scheduled basis for one or more days per week, unless provided as an adjunct to other day activities included in an individual service plan.
- (7) Vocational habilitation shall take place in a non-residential setting separate from any home or facility in which any individual resides.
- (8) A provider of vocational habilitation shall ensure that appropriate staff are knowledgeable in benefits, work incentives, and employer tax credits for individuals with developmental disabilities and ensure that individuals served receive this information.
- (9) A provider of vocational habilitation shall comply with applicable laws, rules, and regulations of the federal, state, and local governments pertaining to the physical environment (building and grounds) where vocational habilitation is provided. A provider of vocational habilitation shall be informed of and comply with standards (e.g., Americans with Disabilities Act of 1990) applicable to the service setting.
- (10) A provider of vocational habilitation shall recognize changes in the individual's condition and behavior as well as safety and sanitation hazards, report to the service and support administrator, and record the changes in the individual's written record.

(E) Documentation of services

Service documentation for vocational habilitation shall include each of the following to validate payment for medicaid services:

- (1) Type of service.
- (2) Date of service.
- (3) Place of service.
- (4) Name of individual receiving service.
- (5) Medicaid identification number of individual receiving service.

- (6) Name of provider.
- (7) Provider identifier/contact number.
- (8) Written or electronic signature of the person delivering the service, or initials of the person delivering the service if a signature and corresponding initials are on file with the provider.
- (9) Description and details of the services delivered that directly relate to the services specified in the approved individual service plan as the services to be provided.
- (10) Number of units of the delivered service or continuous amount of uninterrupted time during which the service was provided.
- (11) Staff intensity ratio (i.e., the portion of one direct services staff needed per individual served as expressed in decimals in appendix A to rule 5123:2-9-19 of the Administrative Code).
- (12) Service codes that correlate to the service codes listed in appendix A to this rule and the billing documents submitted by the provider for payment of waiver services delivered.
- (13) Minutes of service delivered each day, by service code. When adult day support and vocational habilitation are provided to the same individual on one day by one provider, the minutes of service may be documented for the day and billed using the adult day support and vocational habilitation service code identified in appendix A to this rule.
- (14) Verification of staff intensity ratios per calendar day for each individual enrolled in a waiver, including:
 - (a) The names of other individuals present when waiver services are provided.
 - (b) The names of the direct services staff who delivered services.
 - (c) The initials of the direct services staff indicating all time periods/spans during which they provided waiver services to the individual. (Legends indicating signatures and initials of direct services staff may be retained)

separately from documentation sheets.)

(d) The average staff intensity ratio for the combined time periods when one or more waiver services are provided during the calendar day by direct services staff employed by the same provider.

(15) As applicable, the name of the individual's employer, the number of hours worked by the individual, and the hourly wage earned by the individual.

(F) Payment standards

- (1) The billing units, service codes, and payment rates for vocational habilitation are contained in appendix A to this rule. Payment rates include an adjustment based on the county cost-of-doing-business category. The cost-of-doing-business category for an individual is the category assigned to the county in which the service is actually provided for the preponderance of time. The cost-of-doing-business categories are contained in appendix B to this rule.
- (2) The minimum number of direct services staff required to support the billing for adult day support, supported employment-enclave, and/or vocational habilitation may be determined by aggregating the staff intensity needs for all individuals (including individuals who are enrolled in waivers and those who are not) receiving services from one provider in one service delivery location during a calendar day. Calculation of the minimum number of direct services staff required to meet the staff intensity needs at a waiver service delivery location will depend on the number of individuals receiving services in one day, the times during the day in which they receive services, and their staff intensity needs. A provider shall bill only for those times during the day in which waiver services were delivered to individuals whose staff intensity needs were met.
- (3) Payment for adult day support, supported employment-community, supported employment-enclave, and vocational habilitation, alone or in combination, shall not exceed the budget limitations contained in appendix C to rule 5123:2-9-19 of the Administrative Code.

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