

TO BE RESCINDED

5123:2-9-16

HCBS waivers - supported employment-enclave and supported employment-community.

(A) Purpose

The purpose of this rule is to specify the service definitions for supported employment-enclave and supported employment-community and to set forth the certification standards required under section 5123.16 of the Revised Code for individual providers, agencies, county boards, and subcontractors of agencies and/or county boards and their employees who provide supported employment-enclave and supported employment-community services to individuals enrolled in HCBS waivers administered by the department.

(B) Definitions

- (1) "Agency" means an entity, other than a county board, that employs persons for the purpose of providing supported employment-enclave and/or supported employment-community services.
- (2) "Applicant" means an agency or county board seeking to become a certified provider of supported employment-enclave and/or supported employment-community services or a person seeking to become a certified provider of supported employment-community services.
- (3) "Certified provider" means an agency or county board certified to provide supported employment-enclave and/or supported employment-community services in accordance with this rule and/or a person certified to provide supported employment-community services in accordance with this rule.
- (4) "Continuing professional development" means department-approved training that is provided by approved trainers and is used by certified providers, their employees, their subcontractors, and employees of subcontractors to maintain continuing certification standards in accordance with this rule. A unit of continuing professional development is fifty minutes of instruction.
- (5) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.
- (6) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.

- (7) "Direct services staff" means personnel who meet certification requirements promulgated by the department necessary to provide supported employment-enclave and/or supported employment-community waiver services.
- (8) "GED" means general educational development, a diploma equivalent to a high school diploma issued by the Ohio department of education.
- (9) "Habilitation management" includes the responsibilities prescribed in section 5126.14 of the Revised Code.
- (10) "Individual" means a person with mental retardation or other developmental disability who is eligible to receive HCBS waiver services as an alternative to placement in an intermediate care facility for the mentally retarded under the applicable HCBS waiver. A guardian may take action on behalf of an individual, may make choices for an individual, or may receive notice on behalf of an individual to the extent permitted by law.
- (11) "Individual provider" means a self-employed person who provides supported employment-community services to individuals enrolled in an HCBS waiver administered by the department and does not employ, either directly, or through a contract, anyone else to provide the services.
- (12) "ISP" means the individual service plan, a written description of the services, supports, and activities to be provided to an individual.
- (13) "Orientation program" means thirty hours of training completed within ninety days of employment that shall include, but is not limited to, the following areas:
 - (a) Overview of mental retardation and developmental disabilities;
 - (b) Operations and organization of the agency or county board;
 - (c) Individual rights;
 - (d) Incidents adversely affecting health and safety as outlined in rule 5123:2-17-02 of the Administrative Code; and
 - (e) Principles of self-determination and service plan development.

- (14) "Provider" means an agency, county board, or individual provider that:
- (a) Is certified by the department to provide medicaid-funded home and community-based services; and
 - (b) Has a medicaid provider agreement from the Ohio department of job and family services (ODJFS).
- (15) "Seminar" means thirty hours of department-approved instruction by a provider approved by the department.
- (a) Each of the following shall be the topic of a thirty-hour seminar:
 - (i) Introduction to mental retardation and developmental disabilities;
 - (ii) Principles of work or principles of habilitation programming; and
 - (iii) Principles of behavior support.
 - (b) The chief executive officer of the certified agency and/or county board provider may request the department to approve other seminar topics, as determined by the certified provider, that more appropriately meet the needs of individuals served by the provider. These seminars may be substituted for one or more of the topical areas specified in paragraph (B)(15)(a) of this rule upon approval by the department.
- (16) "SSA" means a service and support administrator who is certified in accordance with rules adopted by the department under Chapter 5123:2-5 of the Administrative Code and who performs the functions of service and support administration.
- (17) "Supported employment services" means intensive, ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provisions of supports, and who because of their disabilities need supports, to perform in a regular work setting. "Supported employment" does not include sheltered work or other similar types of vocational services furnished in specialized facilities.
- (a) Supported employment services are available to individuals who are no longer eligible for educational services based on their graduation and/or

receipt of a diploma/equivalency certificate and/or their permanent discontinuation of educational services within parameters established by the Ohio department of education.

- (b) Supported employment services, other than self-employment as described in paragraph (B)(17)(d)(ii)(a) of this rule, shall take place in a non-residential setting separate from any home or facility in which an individual resides.
- (c) Supported employment services furnished under the waiver are not available under a program funded by the "Rehabilitation Act of 1973," 29 U.S.C. 701, as amended and in effect on the effective date of approval of this waiver service by the centers for medicare and medicaid services. The form contained in the appendix to this rule shall be signed and retained in an individual's record as verification that this requirement has been met.
- (d) "Supported employment services" are defined as two discrete waiver services:
 - (i) "Supported employment-enclave" means supported employment services provided to waiver enrollees who work as a team at a single work site of the host community business or industry with initial training, supervision, and ongoing support provided by on-site staff.
 - (a) Supported employment-enclave services are provided to eligible waiver enrollees 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," and in accordance with the requirements of 29 C.F.R. Part 525: "Employment of Workers with Disabilities Under Special Certificates" (revised as of July 1, 2005).
 - (b) Supported employment-enclave services shall normally 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 ISP.
 - (c) Two unique service arrangements have been identified in

which supported employment-enclave services are provided:

- (i) "Dispersed enclaves" in which individuals work as a self-contained unit within a company or service site in the community or perform multiple jobs in the company, but are not integrated with non-disabled employees of the company.
 - (ii) "Mobile work crews" comprised solely of individuals operating as distinct units and/or self-contained businesses working in several locations within the community.
- (ii) "Supported employment-community" means supported employment services provided to waiver enrollees in an integrated community work setting where waiver enrollees and persons without disabilities are employed to perform the same or similar work tasks.
 - (a) Supported employment-community may also include services and supports that assist an individual to achieve self-employment through the operation of a business. Such assistance may be provided in the individual's home or the residence of another person and may include:
 - (i) Aiding the individual to identify potential business opportunities;
 - (ii) Participating in developing a business plan, including identifying potential sources of business financing and gaining assistance to launch a business;
 - (iii) Identifying supports necessary for the individual to operate the business; and
 - (iv) Providing ongoing counseling and guidance once the business has been launched.
 - (b) Supported employment-community waiver funds may not be used to either start-up or operate a business.

(e) Activities that constitute supported employment-enclave and supported employment-community services follow:

(i) "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.

(ii) "Job development and placement" includes some or all of the following activities provided directly or on behalf of the individual:

(a) Developing a resume that identifies the individual's job related and/or relevant vocational experiences;

(b) Training and assisting the individual to develop job-seeking skills;

(c) Targeting jobs on behalf of the individual that are available in the individual's work location of choice;

(d) Assisting the individual to find jobs that are well matched to his/her employment goals;

(e) Developing job opportunities on behalf of the individual through direct and indirect promotional strategies and relationship-building with employers;

(f) Conducting work-site analyses, including customizing jobs; and

(g) Increasing potential employers' awareness of available incentives that could result from employment of the individual.

(iii) "Job training/coaching" includes some or all of the following activities:

- (a) Developing a systematic plan of on-the-job instruction and support, including task analyses;
 - (b) Assisting the individual to perform activities that result in his/her social integration with disabled and non-disabled employees on the work-site;
 - (c) Supporting and training the individual in the use of generic and/or individualized transportation services;
 - (d) Providing off-site services and training that assist the individual with problem solving and meeting job-related expectations; and
 - (e) Developing and implementing a plan to assist the individual to transition from his/her prior vocational or educational setting to employment, emphasizing the use of natural supports.
- (iv) "Ongoing job support" 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 job adjustment and retention.
- (a) Following-up with the employer and/or the individual at the frequency required to assist the individual to retain employment;
 - (b) Assisting the individual to use natural supports and generic community resources;
 - (c) Providing training to the individual to maintain work skills, enhance personal hygiene, learn new work skills, improve social skills, and/or modify behaviors that are interfering with the continuation of his/her employment; and
 - (d) 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 requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.

- (v) "Worksite accessibility" includes some or all of the following activities:
 - (a) Time spent identifying the need for and assuring the provision of reasonable job site accommodations that allow the individual to gain and retain employment;
 - (b) Time spent assuring the provision of these accommodations through partnership efforts with the employer; and
 - (c) Purchasing or modifying equipment that will be retained by the individual on the current employment site and/or in other settings. Service codes and rates that shall be used to obtain payment for the purchase and/or modification of equipment obtained in accordance with this paragraph are contained in appendix C to rule 5123:2-9-19 of the Administrative Code.
 - (vi) "Training in self-determination" includes assisting the individual to develop self-advocacy skills, to exercise his/her civil rights, to exercise control and responsibility over the services he/she receives, and to acquire skills that enable him/her to become more independent, productive, and integrated within the community.
- (18) "Supported employment subcontracted service" means supported employment-enclave and/or supported employment-community services provided by a certified agency and/or county board provider of supported employment-enclave and/or supported employment-community services pursuant to a subcontract, when the program(s) or service(s) is/are designed and operated primarily to serve individuals with mental retardation or other developmental disability, including a program or service provided by an entity licensed or certified by the department. For purposes of certification under this rule, a generic community service or other program or service available to the general public is not subject to certification requirements when said service is subcontracted.

(C) General requirements for certified providers

- (1) Certified providers of supported employment-enclave and supported employment-community services shall:
 - (a) Participate in the individual's ISP meetings if and when the individual requests them to attend.
 - (b) Perform tasks and duties according to the individual's ISP.
 - (c) Recognize changes in the individual's condition and behavior, report to the SSA, and record the changes in the individual's written record.
 - (d) Document all services provided to and on behalf of the individual in accordance with rule 5123:2-9-05 of the Administrative Code and, for supported employment-enclave services, also in accordance with appendix E to rule 5123:2-9-19 of the Administrative Code.
 - (e) Report identified safety and sanitation hazards that occur on the work-site to employers having the responsibility to remedy the condition.
 - (f) Maintain documentation from the department of the certified provider's certification under this rule.
- (D) Standards and requirements for initial and continuing certification of individual, agency, and county board providers

An applicant shall meet the following requirements in order to ensure the health and welfare of individuals receiving supported employment-enclave and/or supported employment-community services:

- (1) Submit an application in accordance with rule 5123:2-9-09 of the Administrative Code.
- (2) For agency and county board applicants, provide to the department written assurance that the applicant employs a chief executive officer or a person responsible for administration who has either a bachelor's degree from an accredited institution or at least two years of paid experience in mental retardation or developmental disabilities, health care, social services, or the provision of supported employment-enclave and/or supported employment-community waiver services.
- (3) For an individual provider applicant, provide to the department written

assurance that the applicant has at least one year of paid experience providing supported employment-community services or has successfully completed thirty hours of formal training in supported employment or related services.

- (4) For an individual provider applicant, provide to the department written assurance that the applicant is at least eighteen years of age and has a high school diploma or GED.
- (5) For agency and county board applicants, provide to the department written assurance that the chief executive officer or person responsible for administration shall be responsible for the following functions:
 - (a) Personnel matters;
 - (b) Supervision of employees;
 - (c) Program services; and
 - (d) Financial management.
- (6) For agency and county board applicants, provide to the department written assurance that the applicant has written policies and procedures that address the applicant's management practices in the following areas and implements the policies and procedures:
 - (a) Confidentiality of individuals' records;
 - (b) Individual satisfaction;
 - (c) A description of internal monitoring and evaluating procedures to improve services delivered;
 - (d) A table of organization;
 - (e) Staff training plan;
 - (f) Habilitation management; and
 - (g) A requirement that employees who provide supported employment-enclave and/or supported employment-community

services shall be at least eighteen years of age and have a high school diploma or GED.

(7) Provide to the department written assurance that:

- (a) The agency or county board applicant complies and will comply with the requirements for background investigations established under section 5126.281 of the Revised Code and rules 5123:2-1-05 and 5123:2-1-05.1 of the Administrative Code for its executive director/superintendent and all employees providing supported employment-enclave and/or supported employment-community services, and for subcontractors and employees of subcontractors who provide these services.
- (b) The agency or county board applicant shall require any employee, subcontractor of the applicant, or employee of a subcontractor who is in a direct services position to report, in writing, to the certified provider if the subcontractor and/or employee is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code no later than fourteen calendar days after the date of such charge, conviction, or guilty plea.
- (c) The individual provider applicant complies and will comply with the requirements for background investigations established under section 5126.281 of the Revised Code and rules 5123:2-1-05 and 5123:2-1-05.1 of the Administrative Code.
- (d) The individual provider applicant will report, in writing, to the department if the applicant is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code no later than fourteen calendar days after the date of such charge, conviction, or guilty plea.

(8) Provide to the department written assurance that:

- (a) For agency and county board applicants, as of the date of the application, neither the applicant, employees of the applicant, subcontractors of the applicant, nor employees of subcontractors who provide supported employment-enclave and/or supported employment-community services to an individual with mental retardation or other developmental disability are listed on the abuser registry established pursuant to sections 5123.50 to 5123.54 of the Revised Code and that the applicant and subcontractors of the applicant will follow the requirements of sections 5123.50 to 5123.54 of the Revised Code.

- (b) For an individual provider applicant, as of the date of the application, the applicant is not listed on the abuser registry established pursuant to sections 5123.50 to 5123.54 of the Revised Code and that the applicant will follow the requirements of sections 5123.50 to 5123.54 of the Revised Code.

(9) Provide to the department written assurance that:

- (a) For agency and county board applicants, as of the date of the application, no employees, subcontractors of the applicant, and employees of subcontractors who provide supported employment-enclave or supported employment-community services to an individual with mental retardation or other developmental disability are listed on the nurse aide registry established under section 3721.32 of the Revised Code indicating that the director of the Ohio department of health has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the person.
- (b) For agency and county board applicants, the applicant will neither employ nor subcontract with agencies that employ persons to provide supported employment-enclave and/or supported employment-community services who are listed on the nurse aide registry established under section 3721.32 of the Revised Code indicating that the director of the Ohio department of health has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the person.
- (c) For an individual provider applicant, as of the date of the application, the applicant is not listed on the nurse aide registry established under section 3721.32 of the Revised Code indicating that the director of the Ohio department of health has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the person.

(10) Provide to the department written assurance that:

- (a) For agency and county board applicants, at least one employee or one employee of a subcontractor with a valid certification in "American Red Cross" or equivalent first aid training and a valid certification in cardiopulmonary resuscitation shall be present when an individual is receiving supported employment-enclave or supported

employment-community services that require the provider to be in direct contact with the individual.

- (b) For an individual provider applicant, the applicant shall have a valid certification in "American Red Cross" or equivalent first aid training and a valid certification in cardiopulmonary resuscitation when an individual is receiving supported employment-community services that require the provider to be in direct contact with the individual.

(11) Provide to the department written assurance that:

- (a) Employees of an agency or county board applicant or a subcontractor of the applicant and/or employees of a subcontractor of the applicant shall not administer any medication to or perform health care tasks for individuals who receive supported employment-enclave and/or supported employment-community services unless the employees and/or subcontractor and/or employees of the subcontractor meet the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.

- (b) An individual provider applicant shall not administer any medication to or perform health care tasks for individuals who receive supported employment-community services unless the applicant meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.

(12) Provide to the department written assurance that an individual provider applicant and all employees, subcontractors, and employees of subcontractors with agency and county board applicants who provide supported employment services shall complete training in and comply with the requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety.

(13) Provide to the department written assurance that an individual provider applicant and all employees, subcontractors, and employees of subcontractors with agency and county board applicants who provide supported employment services shall complete training in and comply with the provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code.

(14) Provide to the department written assurance that an individual provider applicant and all employees, subcontractors of the applicant, and employees of subcontractors with agency and county board applicants who provide

supported employment services shall take all reasonable steps necessary to prevent the occurrence or reoccurrence of incidents adversely affecting health and safety.

- (15) Provide to the department written assurance that an individual provider applicant and all employees, subcontractors, and employees of subcontractors with agency and county board applicants who provide supported employment services shall:
 - (a) Comply with the requirements of behavior supports established under rules adopted by the department.
 - (b) Assure that the individual provider applicant and direct services staff employed directly or through subcontracts by agency and county board applicants and who are responsible for implementing behavior support plans receive training in the plan components prior to implementation of the plans.
- (16) Provide to the department written assurance that an individual provider applicant and agency and county board applicant and the subcontractors of the agency and county board applicant shall only agree to provide supported employment services to an individual whose needs the applicant can meet.
- (17) Provide to the department written assurance that the applicant and subcontractors of the applicant shall implement supported employment services in accordance with the ISP.
- (18) Provide to the department written assurance that an individual provider applicant and agency and county board applicant and the subcontractors of the agency and county board applicant shall provide habilitation management to individuals receiving supported employment services.
- (19) Provide to the department written assurance that neither the applicant, subcontractors of the applicant, nor any employee of either the applicant or its subcontractors shall provide supported employment services to his/her minor child (under age eighteen) or his/her spouse.
- (20) Provide to the department written assurance that the applicant, all employees, subcontractors of the applicant, and employees of subcontractors who provide supported employment services shall meet the initial and continuing standards for certification as outlined in paragraphs (E) and (F) of this rule.

(E) Standards and requirements for training

- (1) The certified agency and/or county board shall maintain appropriate documentation to verify that only employees who complete the following continuing certification requirements provide supported employment-enclave services:
 - (a) Completion of the annual training requirements identified in paragraph (D) of this rule.
 - (b) During the year of initial employment, successful completion of an orientation program and at least one seminar.
 - (c) Beginning in the second year of employment and ending in the third year of employment, successful completion of a total of two seminars.
 - (d) Beginning in the fourth year of employment, successful completion of fifty units of continuing professional development during every successive five-year period of employment.
- (2) The certified individual provider and agency and county board provider's employees, subcontractors, and employees of the subcontractor shall maintain appropriate documentation to verify completion of the following certification requirements to provide supported employment-community services:
 - (a) Completion of the annual training requirements identified in paragraph (D) of this rule.
 - (b) Completion of a minimum of ten units of continuing professional development during each year following the year in which initial certification of the provider was obtained.
- (3) Any training programs, seminars, and/or orientation programs completed by an employee of a provider certified as a day habilitation provider in accordance with rule 5123:2-9-10 of the Administrative Code or by a subcontractor of the certified provider or employee of a subcontractor may be applied to meet the training requirements outlined in this rule.
- (4) The agency and county board that is certified to provide supported employment-enclave and/or supported employment-community services shall be responsible to ensure that employees, subcontractors, and employees of

subcontractors meet the training requirements of this rule.

(F) Deeming of certification and training requirements

- (1) An agency and/or county board may request the department to deem that its employees meet the requirements outlined in paragraph (E)(1) of this rule when the agency and/or county board provides evidence that it has received and maintains certification or accreditation from a nationally recognized entity for service categories comparable to supported employment-enclave and/or supported employment-community.
- (2) A certified provider of supported employment-enclave and/or supported employment-community that subcontracts for these services may deem that the subcontractor meets the requirements outlined in paragraph (E)(1) of this rule when the subcontractor provides evidence that it has received and maintains certification or accreditation from a nationally recognized entity for service categories comparable to supported employment-enclave and/or supported employment-community.

(G) Training documentation

The certified provider shall maintain a written record, which may include an electronic record, of the orientation program, seminars, and continuing professional development completed by the individual provider, each employee, subcontractor, and each employee of a subcontractor who provides supported employment-enclave and/or supported employment-community services. This information shall be presented upon request by the department or ODJFS. Documentation shall include the following elements:

- (1) The name of the person receiving the training;
- (2) Date(s) of training;
- (3) Length of training;
- (4) Training topic;
- (5) Instructor's name, if applicable;
- (6) Brief description of the content of the training; and

- (7) Documentation of department approval when required by this rule.
- (H) Certification and denial, suspension, or revocation of certification
- (1) The department may deny the certification application of an applicant for failure to comply with the standards set forth in this rule pursuant to rule 5123:2-9-09 of the Administrative Code.
 - (2) After being certified in accordance with this rule, providers shall comply with the continuing certification standards set forth in this rule. Certified providers shall be subject to monitoring and compliance reviews conducted as set forth in rule 5123:2-9-08 of the Administrative Code. Failure to comply with the standards set forth in this rule for continuing certification and/or training of certified providers, employees of certified providers, subcontractors, or employees of subcontractors may result in corrective action by the department up to and including suspension or revocation of provider certification as set forth in rule 5123:2-9-08 of the Administrative Code.
 - (3) When denying, suspending, or revoking certification under this rule, the department shall comply with the notice and hearing requirements of Chapter 119. of the Revised Code.
- (I) Notwithstanding any requirements of this rule to the contrary, a county board or an agency that has been certified as a day habilitation provider in accordance with rule 5123:2-9-10 of the Administrative Code prior to the effective date of this rule shall be considered to be a certified supported employment-enclave provider on the effective date of this rule. An agency, county board, or individual provider that has been certified as a supported employment provider in accordance with rule 5123:2-9-13 of the Administrative Code prior to the effective date of this rule shall be considered to be a certified supported employment-community provider on the effective date of the rule. Within twelve months following the effective date of this rule, the department shall communicate the duration of the certifications and the conditions for renewal of the certifications to the certified provider.

Effective:

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Certification

Date

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