

TO BE RESCINDED

5123:2-9-17 **Home and community-based services waivers - adult day support under the individual options, level one, and self-empowered life funding waivers.**

(A) Purpose

The purpose of this rule is to define adult day support 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" means non-vocational day services provided in a non-residential setting. Activities that constitute adult day support include:
 - (a) Assessment that is conducted through formal and informal means for the purpose of developing components of an individual service plan pertaining to the provision of adult day support.
 - (b) Personal care including supports and supervision in the areas of personal hygiene, eating, communication, mobility, toileting, and dressing to ensure an individual's ability to experience and participate in community living.
 - (c) Skill reinforcement including the implementation of behavior support plans, assistance in the use of communication and mobility devices, and other activities that reinforce skills learned by the individual that are necessary to ensure his or her initial and continued participation in community living.
 - (d) Training in 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.
 - (e) Recreation and leisure including supports identified in the individual service plan as being therapeutic in nature, rather than merely providing a diversion, and/or as being necessary to assist the individual to develop

and/or maintain social relationships and family contacts.

- (f) 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:
 - (i) Perform health-related activities;
 - (ii) Administer oral and topical prescribed medications;
 - (iii) Administer prescribed medications through gastrostomy and jejunostomy tubes if the tubes are stable and labeled; and /or
 - (iv) Perform routine tube feedings if the gastrostomy and jejunostomy tubes are stable and labeled.
- (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) "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 adult day support.
- (13) "Non-medical transportation" has the same meaning as in rule 5123:2-9-18 of the Administrative Code.
- (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 5132:2-9-19 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" has the same meaning as in rule 5123:2-9-14 of the Administrative Code.

(C) Provider qualifications

- (1) Adult day support 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) Adult day support shall not be provided by an independent provider.
- (3) An applicant seeking approval to provide adult day support 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 adult day support 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;

- (c) Successfully completes at least eight hours of training specific to the provision of adult day support that includes, but is not limited to:
 - (i) Skill building in assessment, personal care, skill reinforcement, recreation and leisure as therapeutic activities, and community inclusion/living;
 - (ii) Developing natural supports; and
 - (iii) 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 adult day support. 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 adult day support, 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 adult day support.

(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 adult day support 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) Adult day support 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) Adult day support 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.

(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 adult day support has been identified through development of the individual service plan.

- (4) Adult day support 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 the individual service plan.
- (5) Adult day support shall take place in a non-residential setting separate from any home or facility in which any individual resides.
- (6) A provider of adult day support shall comply with applicable laws, rules, and regulations of the federal, state, and local governments pertaining to the physical environment (building and grounds) where adult day support is provided. A provider of adult day support shall be informed of and comply with standards (e.g., Americans with Disabilities Act of 1990) applicable to the service setting.
- (7) A provider of adult day support 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 adult day support 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/contract 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.

(F) Payment standards

- (1) The billing units, service codes, and payment rates for adult day support 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.

(G) Providers certified by the Ohio department of aging

- (1) An agency provider certified by the department to provide adult day support may contract with and reimburse a provider certified by the Ohio department of aging for adult day support provided to individuals enrolled in individual options, level one, and self-empowered life funding waivers.
- (2) A provider certified by the Ohio department of aging that is under contract with an agency provider certified by the department to provide adult day support is not subject to the requirements set forth in paragraph (C) of this rule.

- (3) A provider certified by the Ohio department of aging that is under contract with an agency provider certified by the department to provide adult day support shall:
 - (a) Meet the conditions of participation for a long-term care agency provider in accordance with rule 173-39-02 of the Administrative Code;
 - (b) Be certified as a long-term care agency to provide enhanced adult day service and/or intensive adult day service in adult day service centers, as defined in rule 173-39-02.1 of the Administrative Code;
 - (c) Require all employees and contractors who provide adult day support to comply with rule 5123:2-17-02 of the Administrative Code relating to incidents affecting health and safety;
 - (d) Participate in annual on-site provider structural compliance reviews conducted by the Ohio department of aging in accordance with rule 173-39-04 of the Administrative Code; and
 - (e) Meet the requirements of rule 173-39-04 of the Administrative Code within forty-five business days from each date a structural compliance review report is mailed from the Ohio department of aging designee.
- (4) The agency provider certified by the department to provide adult day support shall retain documentation that verifies that the provider certified by the Ohio department of aging complies with the requirements set forth in paragraph (G)(3) of this rule.
- (5) Notwithstanding paragraph (D)(3) of rule 5123:2-9-19 of the Administrative Code, the individual service plan of an individual who receives adult day support provided through contract with a provider certified by the Ohio department of aging need not indicate the staff intensity ratio at which adult day support is provided.
- (6) A unit of adult day support provided through contract with a provider certified by the Ohio department of aging does not include transportation time.
- (7) Notwithstanding paragraph (E) of this rule, service documentation for the provision of adult day support provided through contract with a provider certified by the Ohio department of aging shall comply with the provisions of rule 173-39-02.1 of the Administrative Code.

- (8) Notwithstanding the requirements of paragraph (F) of rule 173-39-02.1 of the Administrative Code, a provider certified by the Ohio department of aging is not required to arrange or provide non-medical transportation for individuals, but may provide non-medical transportation directly or through a contract, if selected by the individual.
- (9) Except as otherwise set forth in this rule, all of the provisions of this rule and rule 5123:2-9-19 of the Administrative Code are applicable to adult day support provided through contract with a provider certified by the Ohio department of aging.

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Certification

Date

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