

TO BE RESCINDED

5123:2-9-17

HCBS waivers - adult day support and vocational habilitation.

(A) Purpose

The purpose of this rule is to specify the service definitions for adult day support and vocational habilitation and to set forth the certification standards required under section 5123.16 of the Revised Code for agencies, county boards, subcontractors of agencies and/or county boards and their employees who provide adult day support and vocational habilitation services to individuals enrolled in HCBS waivers administered by the department.

(B) Definitions

(1) "Adult day support" means non-vocational day services needed to assure the optimal functioning of individuals who participate in these activities in a non-residential setting.

(a) Adult day support 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) Adult day support services shall take place in a non-residential setting separate from any home or facility in which an individual resides. 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 individual service plan (ISP).

(c) Activities that constitute adult day support include:

(i) "Assessment" that is conducted through formal and informal means for the purpose of developing components of an ISP pertaining to the provision of adult day support services.

(ii) "Personal care" includes providing 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.

(iii) "Skill reinforcement" includes the implementation of behavioral

intervention plans and assistance in the use of communication and mobility devices. Activities also include the reinforcement of skills learned by the individual that are necessary to ensure his/her initial and continued participation in community living, including training in self-determination.

- (iv) "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.
 - (v) "Recreation and leisure" includes supports identified in the individual's 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.
 - (vi) 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 in Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters. In the case of individuals receiving adult day support services, with nursing delegation, a certified provider and/or sub-contractor of the certified provider may:
 - (a) Perform health-related activities;
 - (b) Administer oral and topical prescribed medications;
 - (c) Administer prescribed medications through gastrostomy and jejunostomy tubes if the tubes are stable and labeled; and/or
 - (d) Perform routine tube feedings if the gastrostomy and jejunostomy tubes are stable and labeled.
- (2) "Adult day support subcontracted service" means adult day support services provided by a certified adult day support service provider 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.

- (3) "Agency" means an entity, other than a county board, that employs persons for the purpose of providing adult day support and/or vocational habilitation services.
- (4) "Applicant" means an agency or county board seeking to become a certified provider of adult day support and/or vocational habilitation services.
- (5) "Certified provider" means an agency or county board certified to provide adult day support and/or vocational habilitation services in accordance with this rule.
- (6) "Continuing professional development" means department-approved training that is provided by approved trainers and is used by employees of certified providers, 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.
- (7) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.
- (8) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (9) "Direct services position" means personnel who meet certification requirements promulgated by the department necessary to provide adult day support and/or vocational habilitation waiver services.
- (10) "GED" means general educational development, a diploma equivalent to a high school diploma issued by the Ohio department of education.
- (11) "Habilitation management" includes the responsibilities prescribed in section 5126.14 of the Revised Code.
- (12) "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 applicable law.

- (13) "ISP" means the individual service plan, a written description of the services, supports, and activities to be provided to an individual.
- (14) "Orientation program" means thirty hours of training completed within ninety days of employment which 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.
 - (e) Principles of self-determination and service plan development.
- (15) "Provider" means an agency or county board 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).
- (16) "Seminar" means thirty hours of department-approved instruction by a provider approved by the department:
- (a) Each of the following shall be the sole topic of one thirty-hour seminar:
 - (i) Introduction to mental retardation and developmental disabilities.
 - (ii) Principles of work or principles of habilitation programming.

- (iii) Principles of behavior support.
- (b) The chief executive officer of the certified 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 areas specified in paragraph (B)(16)(a) of this rule upon approval by the department.
- (17) "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.
- (18) "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.
- (a) Vocational habilitation 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) Vocational habilitation is 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 July 1, 2005).
 - (c) Services take place in a non-residential setting separate from any home or facility in which an individual resides.
 - (d) Vocational habilitation 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.
 - (e) Activities that constitute vocational habilitation services include:

- (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) "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) 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 services and training that assist the individual with problem solving and meeting job-related expectations.

 - (e) Assisting the individual to use natural supports and generic community resources.

 - (f) Providing training to the individual to maintain current skills, enhance personal hygiene, learn new work skills, attain self-determination goals, and improve social skills and/or modify behaviors that are interfering with the continuation of his/her employment.

 - (g) 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. In the case of individuals receiving vocational habilitation services, with nursing delegation, a certified provider and/or subcontractor of the certified 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.

(h) Developing and implementing a plan to assist the individual to transition from his/her vocational setting to supported and/or competitive employment, emphasizing the use of natural supports.

(19) "Vocational habilitation subcontracted service" means vocational habilitation services provided by a certified provider of vocational habilitation services pursuant to a subcontract, which 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

Certified providers of adult day support and vocational habilitation services shall:

(1) Participate in the individual's ISP meetings if and when the individual requests them to attend;

(2) Perform tasks and duties according to the individual's ISP;

(3) Recognize changes in the individual's condition and behavior as well as safety

and sanitation hazards, report to the SSA, and record the changes in the individual's written record;

- (4) Document all services provided to and on behalf of the individual in accordance with rule 5123:2-9-05 of the Administrative Code and appendix E to rule 5123:2-9-19 of the Administrative Code;
 - (5) Meet all federal, state, and local requirements pertaining to the physical environment (building and grounds) where the adult day support and/or vocational habilitation services will be provided; and
 - (6) Maintain documentation from the department of the certified provider's certification under this rule.
- (D) Standards and requirements for initial and continuing certification of agency and county board providers

An applicant shall meet the following requirements in order to ensure the health and welfare of individuals receiving adult day support and/or vocational habilitation services:

- (1) Submit an application in accordance with rule 5123:2-9-09 of the Administrative Code.
- (2) 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 adult day support and/or vocational habilitation waiver services.
- (3) 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.
- (4) 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 adult day support and/or vocational habilitation services shall be at least eighteen years of age and have a high school diploma or GED.
- (5) Provide to the department written assurance that the applicant:
- (a) Complies and shall 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, all employees providing adult day support and/or vocational habilitation services, and for subcontractors and employees of subcontractors who provide these services.
 - (b) 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.

(6) Provide to the department written assurance that:

- (a) As of the date of the application, no employees, subcontractors of the applicant, and employees of subcontractors who provide adult day support and/or vocational habilitation services to an individual with mental retardation or other developmental disability as defined in division (G) of section 5123.50 of the Revised Code are listed on the abuser registry established pursuant to sections 5123.50 to 5123.54 of the Revised Code.
- (b) The applicant and subcontractors of the applicant shall follow the requirements of sections 5123.50 to 5123.54 of the Revised Code.

(7) Provide to the department written assurance that:

- (a) As of the date of the application, no employees, subcontractors of the applicant, and employees of subcontractors who provide adult day support and/or vocational habilitation services to an individual with mental retardation or other developmental disability as defined in division (G) of section 5123.50 of the Revised Code 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) The applicant will neither employ nor subcontract with agencies that employ individuals to provide adult day support and/or vocational habilitation 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.

(8) Provide to the department written assurance that 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 adult day support and/or vocational habilitation services that require the provider to be in direct contact with the individual.

(9) Provide to the department written assurance that 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 adult day support and/or vocational habilitation 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.

- (10) Provide to the department written assurance that all employees, subcontractors of the applicant, and employees of subcontractors who provide adult day support and/or vocational habilitation 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.
- (11) Provide to the department written assurance that all employees, subcontractors, and employees of subcontractors who provide adult day support and/or vocational habilitation 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.
- (12) Provide to the department written assurance that all employees, subcontractors of the applicant, and employees of subcontractors who provide adult day support and/or vocational habilitation services shall take all reasonable steps necessary to prevent the occurrence or reoccurrence of incidents adversely affecting health and safety.
- (13) Provide to the department written assurance that all employees, subcontractors, and employees of subcontractors who provide adult day support and/or vocational habilitation services shall:
 - (a) Comply with the requirements of behavior supports established under rules adopted by the department.
 - (b) Assure that direct services staff who are responsible for implementing behavior support plans receive training in the plan components prior to implementation of the plans.
- (14) Provide to the department written assurance that the applicant and subcontractors of the applicant shall only agree to provide adult day support and/or vocational habilitation services to an individual whose needs the applicant can meet.

- (15) Provide to the department written assurance that the applicant and subcontractors of the applicant shall implement adult day support and/or vocational habilitation services in accordance with the ISP.
- (16) Provide to the department written assurance that the applicant and subcontractors of the applicant shall provide habilitation management to individuals receiving adult day support and/or vocational habilitation services.
- (17) 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 adult day support and/or vocational habilitation services to his/her minor child (under age eighteen) or his/her spouse.
- (18) Provide to the department written assurance that all employees, subcontractors of the applicant, and employees of subcontractors who provide adult day support and/or vocational habilitation services shall meet the initial and continuing standards for certification as outlined in paragraphs (D) and (E) 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 adult day support and/or vocational habilitation services:
 - (a) During the year of initial employment, the employee of a certified agency, county board, or subcontractor of the certified agency or county board shall successfully complete an orientation program and at least one seminar.
 - (b) Beginning in the second year of employment and ending in the third year of employment, the employee of a certified agency, county board or subcontractor of the certified agency or county board shall successfully complete a total of two seminars.
 - (c) Beginning in the fourth year of employment, the employee of a certified agency, county board, or subcontractor of the certified agency or county board shall successfully complete fifty units of continuing professional development during every successive five-year period of employment.

- (2) 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.
- (3) The agency and county board that is certified to provide adult day support and/or vocational habilitation 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 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 adult day support and/or vocational habilitation.
- (2) A certified provider of adult day support and/or vocational habilitation 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 adult day support and/or vocational habilitation services.

(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 each employee, subcontractor, and each employee of a subcontractor who provides adult day support and/or vocational habilitation. 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, contractors, or employees of contractors 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 adult day support provider and a certified vocational habilitation provider on the effective date of this 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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