TO BE RESCINDED

5123:2-9-19 **HCBS waivers - payment standards for adult day support, vocational habilitation, supported employment-enclave, supported employment-community, and non-medical transportation.**

(A) Purpose

The purpose of this rule is to establish the standards governing payment for adult day support, vocational habilitation, supported employment-enclave, supported employment-community, and non-medical transportation services provided to individuals enrolled in HCBS waivers administered by the department and to implement sections 5111.871 and 5111.873 of the Revised Code.

(B) Definitions

(1) "Administrative review" means the processes internal to the department and subject to ODJFS oversight that will be available to individuals who believe that their ODMRDD acuity assessment instrument scores, their placement in group A, A-1, or B and the subsequent calculation of their budget limitation prohibit their access to or continuation in the adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services they have selected. This review is not applicable to non-medical transportation services or individuals with placement in group C.

(2) "Adult day support" means an HCBS waiver service as defined in rule 5123:2-9-17 of the Administrative Code.

(3) "Agency provider" means a person, other than an individual provider or county board, that provides adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services and/or non-medical transportation services to access adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services to individuals enrolled in HCBS waivers administered by the department.

(4) "Budget limitation" means the funding amount available to enable each individual to receive adult day support, vocational habilitation, supported employment-enclave, and supported employment-community services within each waiver eligibility span. A separate annual budget limitation amount will be established to enable each individual to receive non-medical transportation services to access adult day support, vocational habilitation, supported employment-enclave, and supported employment-community services within

each waiver eligibility span.

(5) "County board" means a county board of mental retardation and developmental disabilities that performs HCBS waiver administration functions either independently, within a regional council of governments formed under Chapter 167. of the Revised Code, or through a private entity that contracts with a county board for administration of HCBS waivers and the entity does not provide any service other than administration to the individuals of that county.

(6) "Daily billing unit" means a billing unit and corresponding rate that shall be used when between five and seven hours of adult day support or vocational habilitation or supported employment-enclave services or a combination of adult day support and vocational habilitation services are provided by the same provider to the same individual during one calendar day.

(7) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.

(8) "Direct services staff" means personnel who meet the certification requirements promulgated by the department necessary to provide one or more of the HCBS waiver services of adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community.

(9) "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, vocational habilitation, a combination of these two services, supported employment-enclave, and/or supported employment-community services 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.

(10) "Funding range" means one of the dollar ranges contained in appendix C to rule 5123:2-9-06 of the Administrative Code to which individuals have been assigned for the purpose of funding waiver services. The budget limitations defined in this rule that are applicable to the provision of adult day support, vocational habilitation, supported employment-enclave, and supported employment-community services as well as non-medical transportation services are not subject to the funding ranges to which individuals have been

assigned. When these services are provided to individuals participating in the level one waiver they are not subject to benefit package limitations described in Chapter 5123:2-8 of the Administrative Code.

(11) "Guardian" means a guardian appointed by the probate court under Chapter 2111. of the Revised Code. If the individual is a minor for whom no guardian has been appointed under that chapter, "guardian" means the individual's parents. If no guardians have been appointed for a minor and the minor is in the legal or permanent custody of a government agency or person other than the minor's natural or adoptive parents, "guardian" means that government agency or person. "Guardian" also includes an agency under contract with the department for the provision of protective services under sections 5123.55 to 5123.59 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) "Individual provider" means a self-employed person who provides supported employment-community services and/or non-medical transportation services to access adult day support, vocational habilitation, supported employment-enclave, and/or 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.

(14) "ISP" means the individual service plan, a written description of the services, supports, and activities to be provided to an individual.

(15) "Non-medical transportation" means an HCBS waiver service as defined in rule 5123:2-9-18 of the Administrative Code.

(16) "ODJFS" means the Ohio department of job and family services as established by section 121.02 of the Revised Code.

(17) "ODMRDD acuity assessment instrument" means the standardized instrument utilized by the department to assess the relative needs and circumstances of an individual compared to other adults in a non-residential setting when receiving adult day support, vocational habilitation, and supported employment-enclave services. Scores resulting from administration of the

ODMRDD acuity assessment instrument have been grouped into ranges and subsequently linked with staffing intensity ratio expectations that result in four payment rates that have been calibrated on group size.

(18) "Payment authorization for waiver services" (PAWS) means the process followed and the form used to communicate the amount of payment for each waiver service that has been established through the approved ISP process and is contained in the ISP for an eligible HCBS waiver enrollee.

(19) "Professional staff" includes licensed nurses, physical therapists and physical therapy assistants, occupational therapists and occupational therapy assistants, psychologists, speech therapists/audiologists, social workers, dieticians, and physicians.

(20) "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 ODJFS.

(21) "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.

(22) "Staff intensity" means the minimum portion of time, as calculated in decimals and reflected in appendix D to this rule, that one direct services staff position is required to provide adult day support, vocational habilitation, and/or supported employment-enclave services to an individual. When determining that a sufficient number of direct services staff are available to provide services at the staff intensity ratio indicated by each individual's ODMRDD acuity assessment score, a certified provider may aggregate the staff intensity ratio needs for all waiver enrollees and non-waiver enrollees receiving services in one service delivery location during one calendar day.

(23) "Supported employment-community" means an HCBS waiver service as defined in rule 5123:2-9-16 of the Administrative Code.

(24) "Supported employment-enclave" means an HCBS waiver service as defined in rule 5123: 2-9-16 of the Administrative Code.

(25) "Transportation" means an HCBS waiver service as defined in rule 5123:2-9-06 of the Administrative Code.

(26) "Vocational habilitation" means an HCBS waiver service as defined in rule 5123:2-9-17 of the Administrative Code.

(27) "Waiver eligibility span" means the twelve-month period following either an individual's initial enrollment date or the subsequent eligibility re-determination date.

(C) Payment rate requirements

Providers shall be reimbursed at the lesser of the charges that they include on the claims they submit for payment or the statewide payment rate for each waiver service that is delivered. A single provider may charge different amounts for the same service when the service is provided in different geographic areas of the state. Payment rates are contained in appendix C to this rule.

(D) Statewide payment rates

(1) ODJFS retains the final authority, based on the recommendation of the department, to establish payment rates for all waiver services included in HCBS waivers administered by the department. The service codes and payment rates for adult day support, vocational habilitation, supported employment-enclave, supported employment-community, and non-medical transportation services are included in appendix C to this rule.

(2) The billing codes and payment rates for supported employment waiver services are contained in rule 5123:2-9-06 of the Administrative Code.

(3) Direct services staff are required to deliver waiver services to an individual in order to justify billing for adult day support and/or vocational habilitation services. When providing supported employment-enclave and/or supported employment-community services, direct services staff responsibilities and associated billing for waiver services may include those times when the individual is not physically present and staff is performing supported employment-enclave and supported employment-community services, as defined in rule 5123:2-9-16 of the Administrative Code, on behalf of the individual.

(4) Payment rates for services shall include an adjustment factor for geography based on the county cost of doing business category. The county cost of doing

business category for an individual is the category assigned to the county in which the waiver service is actually provided for the preponderance of time. The cost of doing business categories and the counties assigned to each are contained in appendix A to this rule.

(5) The department shall periodically collect reimbursement information for a comprehensive, statistically valid sample of individuals from the agencies and individuals providing HCBS at the time the information is collected. Based upon the department's review of the information, the department shall recommend to ODJFS any changes necessary to assure that the payment amounts are sufficient to enlist enough waiver providers so that waiver services are readily available to individuals, to the extent that these types of services are available to the general population, and that provider reimbursement is consistent with efficiency, economy, and quality of care. ODJFS retains the final authority to make this determination.

(E) Acuity assessments, staff intensity group assignments, and budget limitations

(1) SSAs employed by county boards shall review and approve information contained on the ODMRDD acuity assessment instrument for each waiver enrollee for whom adult day support, vocational habilitation, supported employment-enclave, or supported employment-community services have been authorized through the individual planning process that is submitted to the department. Application of the ODMRDD acuity assessment instrument ensures that similarly situated individuals have access to comparable waiver services reimbursed in accordance with this rule on a statewide basis.

(2) Information needed to complete the assessment shall be provided by informants who know the capabilities and limitations of the individual outside of his/her residence, in the adult day service setting. Informants may include the individual himself/herself, direct services providers, guardians, advocates, and family members. The SSA and/or an individual designated by the SSA shall submit information in electronic format to the department. The information will be automatically scored as the result of completion of each assessment.

(3) The score resulting from administration of the ODMRDD acuity assessment instrument will result in the assignment of the individual by the SSA to one of four groups that correlate with the staff intensity ratios required. These group assignments will be applied to determine the rates paid when individuals receive adult day support, vocational habilitation, and/or supported employment-enclave services only. The scores and related staffing calculations are contained in appendix D to this rule.

(4) Following assignment of the individual to one of four staff intensity groups, the SSA will determine the budget limitations for individuals receiving adult day support, vocational habilitation, supported employment-enclave, or supported employment-community services. The budget limitations are contained in appendix B to this rule.

(5) In addition, the SSA will assign to the individual the budget limitation for the provision of non-medical transportation services to access adult day support, vocational habilitation, supported employment-enclave, or supported employment-community services when the need for the service(s) has been identified through the ISP planning process. These budget limitations are also contained in appendix B to this rule.

(6) The SSA shall inform each waiver enrollee/guardian of the assessment score, the resulting group assignment, and related budget limitations:

(a) At the time the ODMRDD acuity assessment instrument is initially administered;

(b) At any time the ODMRDD acuity assessment instrument is re-administered and results in a score that places an individual in a different group; and

(c) At any time the individual receives the preponderance of adult day services in a new county that results in a change in the cost of doing business factor applied to the rate.

(7) A budget limitation established for an individual shall change only when changes in assessment variable scores on the ODMRDD acuity assessment instrument that justify assignment of a new staff intensity group have occurred and/or the individual receives the preponderance of adult day services in a county with a different cost of doing business factor. Responses to any or all ODMRDD acuity assessment instrument variables can be revised at any time at the request of the individual or at the discretion of the SSA, with the individual's knowledge.

(8) The department shall re-examine the scoring of the ODMRDD acuity assessment instrument and the linkage of the scores to staff intensity ratios no later than twenty-four months following the effective date of this rule and, at the department's discretion, periodically thereafter.

(F) Calculation of budget limitations

(1) The budget limitations for adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services, as reflected in appendix B to this rule, have been determined by use of a projected service utilization of two hundred forty days per year multiplied by 6.25 hours of attendance each day multiplied by four fifteen-minute units per hour to obtain the maximum base of six thousand fifteen-minute units of service that may be received per person per twelve-month waiver eligibility span. The six thousand units are then multiplied by the rate for adult day support/vocational habilitation services that corresponds to the group to which each individual would be assigned based on completion of the ODMRDD acuity assessment instrument. The rate selected when calculating an individual's budget limitation is further determined by the cost of doing business factor that applies to the county in which the individual is anticipated to receive the preponderance of these services. This budget limitation is calculated on a per-person basis and is applicable to the twelve-month waiver eligibility span for each eligible individual.

(2) The budget limitation for non-medical transportation services to access adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services is reflected in appendix B to this rule. This budget limitation has been determined by multiplying the value of two one-way trips by two hundred forty days per year by the per-trip value adjusted by the cost of doing business factor that applies to the county in which the individual is anticipated to receive the preponderance of non-medical transportation services. This budget limitation is calculated on a per-person basis and is applicable to the twelve-month waiver eligibility span for each eligible individual.

(3) The budget limitations applicable to non-medical transportation services shall not be combined with the budget limitations applicable to adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services to enable an individual to increase the availability of one or more of these services or for any other purpose.

(G) ISP planning process

(1) An eligible individual may elect to receive one, some, or all of the adult day support, vocational habilitation, supported employment-enclave, and supported employment-community service choices plus non-medical transportation to access one or more of these services. These services shall be delivered in accordance with ISPs that are developed through the ISP planning process defined in rule 5123:2-1-11 of the Administrative Code.

(2) ISPs shall indicate the staff intensity ratios at which adult day support, vocational habilitation, and supported employment-enclave services are to be delivered, as defined in appendix D to this rule. When a waiver enrollee receives one or more of these services in a group setting with one or more individuals who do not receive waiver services, the staff intensity ratios of the non-waiver enrollees shall be identified through the ISP development process applicable to them. Providers are not required to use, but may use, the ODMRDD acuity assessment instrument to determine the staff intensity ratios of non-waiver enrollees.

(3) The county board shall determine whether the annualized cost for adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services can be met by or exceeds the assigned budget limitation for the individual. The county board also shall determine whether the annualized cost for non-medical transportation services to access these services can be met by or exceeds the assigned budget limitation for the individual. The SSA shall inform the individual of these determinations in accordance with procedures developed by the department.

(4) If an individual requests a change in the frequency and/or duration of adult day support, vocational habilitation, supported employment-enclave, supported employment-community, and/or non-medical transportation services, the request may result in an increase or decrease in the annual cost for these services, based on the outcome of the ISP planning process. The county board has the authority and responsibility to make changes, which result from the ISP planning process when the services are within the budget limitations determined in accordance with paragraph (E) of this rule.

(5) No prior state level review will be required for the initiation and/or changes in services that can occur within the annual budget limitation resulting from a change in ISP services that have been agreed to by an individual through the ISP planning process.

(6) Changes in the assignment of annual budget limitations made by county boards are subject to review by the department and approval by ODJFS.

(7) Neither the department nor the county board shall approve a change in an individual budget limitation or assign a new budget limitation after notification that the individual has requested a hearing concerning the approval, denial, reduction, or termination of services in an ISP that has been developed within the funding parameters of this rule by requesting a hearing pursuant to section 5101.35 of the Revised Code.

(H) Implementation schedule for conducting acuity assessments, completing staff intensity group assignments, and assigning budget limitations

(1) Individuals who were receiving day habilitation services, as defined in rule 5123:2-9-10 of the Administrative Code, prior to the effective date of this rule and who are eligible for and wish to receive one or more of adult day support, vocational habilitation, supported employment-enclave, supported employment-community, or non-medical transportation services shall be assigned to a staff intensity group and shall have applicable budget limitations established for these services according to a transition schedule submitted by the county board and approved by the department. In no instance shall any individual receive day habilitation services, as defined in rule 5123:2-9-10 of the Administrative Code, beyond the date agreed to by the federal centers for medicare and medicaid services.

(2) Individuals who were receiving supported employment services, as defined in rule 5123:2-9-13 of the Administrative Code, prior to the effective date of this rule and who are eligible for and wish to receive one or more of supported employment-enclave, supported employment-community, or non-medical transportation services shall be assigned to a staff intensity group and shall have applicable budget limitations established for these services according to a transition schedule submitted by the county board and approved by the department. In no instance shall any individual receive supported employment services, as defined in rule 5123:2-9-13 of the Administrative Code, beyond the date agreed to by the federal centers for medicare and medicaid services.

(3) Within forty-five calendar days following the effective date of this rule, each county board shall provide to the department a plan of how the county board will implement paragraphs (H)(1) and (H)(2) of this rule. The information shall be provided in accordance with timelines and in the format prescribed by the department.

(a) The county board plan shall be subject to modification by the department.

(b) Nothing in this paragraph shall be interpreted to prevent a county board, an individual, and a provider from agreeing to accelerate the transition timelines contained in paragraph (H) of this rule when the department approves the accelerated phase-in period and activities.

(c) The county board shall participate in a quarterly process of reporting the progress of the transition to the department. Any modifications of the

county board plan initially approved by the department shall be reported as a component of the quarterly report.

(4) Individuals who transition to receiving adult day support, vocational habilitation, and/or supported employment-enclave services shall not be eligible to receive day habilitation services, as defined in rule 5123:2-9-10 of the Administrative Code, effective on the date of transition. Individuals who transition to receiving supported employment-enclave and/or supported employment-community services shall not be eligible to receive day habilitation services, as defined in rule 5123:2-9-10 of the Administrative Code, or supported employment services, as defined in rule 5123:2-9-13 of the Administrative Code, effective on the date of transition.

(5) Individuals enrolled in an HCBS waiver administered by the department on or after the effective date of this rule may elect to receive day habilitation services, as defined in rule 5123:2-9-10 of the Administrative Code or, as an alternative, may elect to receive adult day support, vocational habilitation, and/or supported employment-enclave services. These same individuals may elect to receive supported employment services, as defined in rule 5123:2-9-13 of the Administrative Code, or as an alternative, may elect to receive supported employment-community services. Neither day habilitation nor supported employment services shall be available to these individuals beyond the date agreed to by the federal centers for medicare and medicaid services.

(6) Individuals enrolled in an HCBS waiver administered by the department on or after the effective date of this rule and authorized by the ISP and reflected in PAWS to receive adult day support, vocational habilitation, supported employment-enclave, supported employment-community, and/or non-medical transportation services shall be assigned to a staff intensity group for applicable services and also shall have budget limitations established for these services within thirty days following enrollment.

(7) At no time shall an individual receive day habilitation services when receiving adult day support, vocational habilitation, or supported employment-enclave services. At no time shall an individual receive supported employment services when receiving supported employment-community services.

(I) Group size, billing units, and payment conditions

(1) When an individual has been assigned to a staff intensity group for the purposes of receiving adult day support, vocational habilitation, and/or supported employment-enclave services, billing must correspond to the rates assigned

for that group. Because ODMRDD acuity assessment scores relating to assignment of an individual to the A and A-1 staff intensity groups are identical, assignment of an individual to one of these two groups will be based upon the staffing needs of the individual as identified in the ISP planning process and reflected in the ISP. These payment rates, as adjusted for cost of doing business factors, as well as applicable service codes are contained in appendix C to this rule.

(2) Changes in group assignments, other than changes between groups A and A-1, may be made only as the result of a change in the acuity assessment score of an individual or as the result of an administrative review decision made by the department or receipt of a formal due process appeal decision rendered by ODJFS.

(3) When the same certified provider provides less than five or more than seven hours of adult day support, vocational habilitation, and/or supported employment-enclave or a combination of adult day support and vocational habilitation services during one calendar day to the same individual, the provider shall use fifteen-minute billing units for all services.

(4) When more than one certified provider provides adult day support, vocational habilitation, or supported employment-enclave services or a combination of these services during one calendar day to the same individual, all providers shall use fifteen-minute billing units for all services.

(5) When only one certified provider provides adult day support, vocational habilitation, or supported employment-enclave services or a combination of adult day support and vocational habilitation services during any one calendar day to the same individual, the provider shall use a daily billing unit when providing between five and seven hours of one or more of these services.

(6) Daily billing units and fifteen-minute billing units may not be combined during the same calendar day for the same individual.

(7) For purposes of calculating staff intensity assignments, staff ratios do not change during those times when individuals, for whom staff is responsible, are not present physically, but are within verbal, visual, or technological supervision of the staff providing the service. Technological supervision includes staff contact with individuals through telecommunication and/or electronic signaling devices.

(8) Billing for adult day support, vocational habilitation, and/or supported employment-enclave services shall not be adjusted for group size since rates

have been constructed using an expected and published staff intensity ratio for groups of individuals served.

(9) Certified providers of non-medical transportation service who are using wheelchair accessible vehicles of any capacity and/or non-wheelchair-accessible vehicles with a capacity of nine or more passengers are eligible to bill on a per-trip basis when the providers of this service and the drivers/attendants of these vehicles meet the certification standards contained in rule 5123:2-9-18 of the Administrative Code. Individuals must be in the vehicle to access the per-trip rate. Per-trip billing shall occur on a per-person-served basis and shall not be adjusted for group size.

(10) Certified providers of non-medical transportation service who are using vehicles with a capacity of eight or fewer passengers that are not adapted to accommodate wheelchairs or who are using wheelchair-accessible vehicles that do not meet the certification standards necessary to bill on a per-trip basis are eligible to bill on a per-mile basis when providers of this service and the drivers/attendants of these vehicles meet the certification standards contained in rule 5123:2-9-18 of the Administrative Code. Individuals shall be in the vehicle during the times the provider bills the per-mile rate except that billing may occur on a per-mile basis when non-medical transportation is being provided on behalf of an individual who is receiving job development and placement services as defined in rule 5123:2-9-16 of the Administrative Code. Per-mile billing shall occur on a per-person-served basis, adjusted for group size.

(J) Eligible service providers and documentation of service delivery

(1) Documentation and payment for services other than non-medical transportation, shall be based on fifteen-minute units or a daily unit or both types of units. A combination of daily and fifteen-minute units may be used for the same individuals during any calendar week, subject to the provisions contained in paragraph (I) of this rule.

(2) To justify billing for an individual at the rate that correlates with the assigned group of A, A-1, B, or C on each day of service, each provider of services must complete all elements of documentation described in appendix E to this rule. These documentation elements address staff intensity ratio requirements and are in addition to the documentation requirements for the delivery of HCBS waiver services contained in rule 5123:2-9-05 of the Administrative Code.

(3) Each provider is responsible to document that sufficient numbers of staff are assigned to provide adult day support, vocational habilitation, and/or supported employment-enclave services to one waiver enrollee and/or waiver enrollee and non-waiver enrollees, when combined in one grouping, at the staff intensity ratio required by each individual. The determination of each individual's staff intensity ratio is to be derived using the procedures described in paragraphs (E) and (F) of this rule.

(4) For purposes of delivering adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community waiver services, not more than sixteen individuals may be combined into one program group, irrespective of the waiver enrollment/non-enrollment status or funding source of the individual participants.

(5) Providers billing on a daily unit basis or fifteen-minute unit basis must assure that individuals receive waiver services at the staff intensity ratios for their assigned groups, based upon their acuity assessment scores, for seventy-five per cent of the time they receive adult day support, vocational habilitation, or supported employment-enclave services or when a combination of adult day support and vocational habilitation services are provided by the same service provider during one calendar day.

As an example, assume that in a six-hour day, an individual is receiving four hours of adult day support and two hours of vocational habilitation from the same provider. The individual is assigned to group B and the provider is billing a daily rate. The individual must receive waiver services at a staff intensity ratio of 0.166667 at least 4.5 hours during that day. During the other 1.5 hours in the day, the individual may receive services at a larger staff intensity ratio and the provider may bill the daily rate for the individual.

(6) Calculation of the seventy-five per cent expectation contained in paragraph (J)(5) of this rule related to group size applies to the numbers of persons present in the group at the time during each day when the provider actually bills the waiver for services provided.

(7) Only direct services staff who meet certification standards for the waiver service being provided and who are providing waiver services are eligible to bill for the provision of adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services. The daily responsibilities of direct services staff are to assist, supervise, and provide supports to individuals with mental retardation and developmental disabilities who receive these services. Direct services are intended to reinforce the objectives contained in the ISP developed for each individual.

(8) Neither supervisors nor professional staff are considered to be direct services staff for the purposes of meeting the staff intensity ratio requirements related to implementation of the services addressed in this rule unless they meet the certification requirements to provide and are providing one or more of the adult day support, vocational habilitation, and/or supported employment-enclave services.

(K) Administrative review

(1) Individuals eligible for an administrative review process are limited to waiver applicants and/or enrollees who demonstrate that situational demands associated with the adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services in which they desire to participate require a staffing ratio and resulting budget limitation that is greater than the group assignment resulting from administration of the ODMRDD acuity assessment instrument. Administrative review requests shall not be accepted for individuals having a group C assignment.

As an example, an individual participating in supported employment-enclave services whose assessment results indicate his/her placement in group B may require the 0.333333 staff intensity ratio of group C for several weeks in order to learn the steps required for him/her to complete a new enclave assignment. Through the administrative review process, the individual would be eligible to request and obtain department approval to increase his/her funding level for a specified period of time to accommodate this enriched staffing pattern, based upon the supporting documentation submitted.

(2) The department considers the budget limitations contained in appendix B to this rule sufficient to meet the service requirements of any adult participating in out-of-facility day services. Therefore, in no instance will the group assignment and resulting total annual budget limitation approved through the administrative review process exceed the published amount for group C in the cost of doing business category in which the individual receives the preponderance of the services addressed in this rule.

(3) An individual or the county board, with the concurrence of the individual, may submit a request for administrative review to the department. County boards shall assist an individual to complete an administrative review request when asked to do so by the individual.

(4) The individual or county board requesting administrative review shall submit the information requested by the department, including, but not limited to:

(a) The proposed staff intensity ratio for each waiver service;

(b) The duration of the proposed staff intensity ratio for each waiver service; and

(c) A statement justifying the proposed staff intensity ratio with supporting documentation.

(5) The department shall make a determination within thirty calendar days following receipt of all documentation as defined in paragraph (K)(4) of this rule and shall notify the individual and county board in writing of the determination.

(6) The duration of each administrative review approval shall be limited to the individual's twelve-month waiver eligibility span that occurs prior to each re-determination date. The duration of the approval may be determined by the department to extend to each month or a portion of the months in the twelve-month waiver eligibility span. Requests for administrative review may be submitted on an as-needed basis and will be considered for approval if the individual continues to meet the criteria established by the department.

(7) Within fifteen days following the determination by the department that the individual's request for administrative review approval has been granted, the county board shall submit to the department a PAWS to initiate services that reflect this approval.

(8) Following its completion of the administrative review process, the department shall also inform the individual in writing, and in a form and manner the individual can understand, of his/her due process rights and responsibilities as set forth in section 5101.35 of the Revised Code.

(9) ODJFS retains the final authority, based on the recommendation of the department, to review, revise, and approve any element of the decision process resulting in a determination made under this paragraph.

(L) Payment authorization

(1) The county board shall complete a PAWS and the SSA shall assure waiver services are initiated for an individual whose combined annualized costs for adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services and whose combined

annualized costs for non-medical transportation to access one or more of these services are within or below the budget limitations determined in accordance with this rule. The SSA shall also inform the individual in writing, and in a form and manner the individual can understand, of his/her due process rights and responsibilities as set forth in section 5101.35 of the Revised Code.

(2) When the annualized costs for adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services exceed the assigned budget limitations:

(a) The SSA shall inform the individual of his/her right to request an administrative review to obtain adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services that results in a new staff intensity group assignment and budget limitation that exceeds the budget limitation calculated initially by the county board in accordance with the process described in paragraph (E) of this rule.

(b) If, through the administrative review process, the department approves the request for an increased budget limitation, the county board shall assure a PAWS is completed within fifteen days following the determination by the department and shall assure that waiver services are initiated.

(c) If, through the administrative review process, the request for an increased budget limitation is denied, or the service is not subject to an administrative review, the SSA shall initiate the ISP planning process to determine if an ISP can be developed that is acceptable to the individual and is within the assigned budget limitation.

(i) If an ISP that meets these conditions is developed, the county board shall assure a PAWS is completed and shall assure waiver services are initiated.

(ii) If an ISP that meets these conditions cannot be developed, the county board shall propose to deny the initial or continuing provision of adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services and inform the individual of his/her due process rights and responsibilities as set forth in section 5101.35 of the Revised Code.

(3) The department shall use the twelve-month period following either an

individual's initial enrollment date or the date the individual transitions to one or more of the services addressed in this rule to verify that cumulative payments made for waiver services remain within the approved budget limitations specified in this rule for each individual.

(M) State level authorization

(1) ODJFS retains the final authority, based upon the recommendation of the department, to review and approve each service identified in the ISP that is funded through the HCBS waiver and the payment rate for the service.

(2) ODJFS retains the final authority, based upon the recommendation of the department, to authorize the provision and payment of waiver services through the PAWS process.

(3) When combined, payment amounts for waiver services shall not exceed the amounts authorized through the PAWS process for the corresponding time period for an individual.

(N) Payment limitations for HCBS waiver services

Payment for an HCBS waiver service constitutes payment-in-full. Payment shall be made for HCBS waiver services when:

(1) The service is identified in an approved ISP;

(2) The service is recommended for payment through the PAWS process;

(3) The service is provided by a certified HCBS waiver service provider selected by an individual enrolled on the waiver;

(4) No greater than twenty-four hourly units of each type of waiver services, or equivalent fifteen-minute units, are authorized through the PAWS process; and

(5) Payment for waiver services is the lesser of the provider's charge or the statewide payment rate as described in paragraph (D) of this rule.

(O) Claims for payment of HCBS waiver services

(1) Claims for payment of HCBS waiver services shall be submitted to the

department in the format prescribed by the department in billing instructions for HCBS waiver services. The department shall inform county boards of the billing information submitted by providers in a manner and at the frequency necessary to assist the county boards to manage the waiver expenditures being authorized.

(2) Claims for payment shall be submitted within three hundred thirty days after the HCBS waiver service is provided. Payment shall be made in accordance with the requirements of rule 5101:3-1-19.7 of the Administrative Code, except that claims submitted beyond the three-hundred-thirty-day deadline shall be rejected.

(3) All HCBS waiver service providers shall take reasonable measures to identify any third-party health care coverage available to the individual and file a claim with that third party in accordance with the requirements of rule 5101:3-1-08 of the Administrative Code.

(4) For individuals with a monthly patient liability for the cost of HCBS waiver services, as defined in rule 5101:1-39-95 of the Administrative Code, and determined by the county department of job and family services for the county in which the individual resides, payment is available only for the HCBS waiver service(s) delivered to the individual that exceeds the amount of the individual's monthly patient liability. Verification that patient liability has been satisfied shall be accomplished as follows:

(a) The department shall provide notification to the appropriate county board identifying each individual who has a patient liability for HCBS waiver services and the monthly amount of the patient liability.

(b) The county board shall assign the HCBS waiver service(s) to which each individual's patient liability shall be applied and assign the corresponding monthly patient liability amount to an HCBS waiver service provider. The county board shall notify each individual and HCBS waiver service provider, in writing, of this assignment.

(c) Upon submission of a claim for payment, the designated HCBS waiver service provider shall report the HCBS waiver service to which the patient liability was assigned and the applicable patient liability amount on the claim for payment using the format prescribed by the department in billing instructions for HCBS waiver services.

(5) The department, ODJFS, the centers for medicare and medicaid services, and/or the state auditor may audit any funds a provider of HCBS waiver services

receives pursuant to this rule, including any source documentation supporting the claiming and/or receipt of such funds.

(6) An HCBS waiver service provider shall maintain the records necessary and in such form to disclose fully the extent of HCBS waiver services provided, for a period of six years from the date of receipt of payment or until an initiated audit is resolved, whichever is longer. The records shall be made available upon request to the department, ODJFS, the centers for medicare and medicaid services, and/or the state auditor. Providers who fail to produce the records requested within thirty days following the request will be subject to de-certification and/or loss of their medicaid provider agreement.

(7) In accordance with the provisions outlined in rule 5123:2-9-08 of the Administrative Code, the department shall monitor the compliance of providers with the conditions of this rule and its appendices as well as with rules 5123:2-9-16, 5123:2-9-17, and 5123:2-9-18 of the Administrative Code. Technical support, as determined necessary by the department, shall be provided upon request and through regional and statewide trainings.

(P) Due process rights and responsibilities

(1) Any recipient or applicant for waiver services administered by the department may utilize the process set forth in section 5101.35 of the Revised Code, in accordance with division 5101:6 of the Administrative Code, for any purpose authorized by that statute and the rules implementing the statute. The process set forth in section 5101.35 of the Revised Code is available only to applicants, recipients, and their lawfully appointed authorized representatives. Providers shall have no standing in an appeal under this section.

(2) Applicants for and recipients of waiver services administered by the department shall use the process set forth in section 5101.35 of the Revised Code for any challenge related to the administration and/or scoring of the ODMRDD acuity assessment instrument or to the type, amount/level, scope, or duration of services included or excluded from an ISP. For purposes of clarity, a change in staff to waiver recipient service ratios does not automatically result in a change in the level of services received by an individual.

Effective:

R.C. 119.032 review dates: 12/30/2011

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Certification

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Date

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