

5123:2-9-19

Home and community-based services waivers - general requirements for adult day support, supported employment-community, supported employment-enclave, vocational habilitation, and non-medical transportation under the individual options and level one waivers.

(A) Purpose

The purpose of this rule is to establish general requirements governing provision of and payment for adult day support, supported employment-community, supported employment-enclave, vocational habilitation, and non-medical transportation provided to individuals enrolled in home and community-based services waivers administered by the department.

(B) Definitions

- (1) "Acuity assessment instrument" means the standardized instrument utilized by the department to assess the relative non-residential services needs and circumstances of an adult individual compared to other adult individuals for purposes of receiving adult day support, supported employment-community, supported employment-enclave, and vocational habilitation. Scores resulting from administration of the acuity assessment instrument have been grouped into ranges and subsequently linked with staffing intensity ratio expectations that result in four payment rates calibrated on group size that apply to adult day support, supported employment-enclave, and vocational habilitation.
- (2) "Administrative review" means the processes internal to the department and subject to oversight by the Ohio department of job and family services available to individuals who believe that their 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, supported employment-community, supported employment-enclave, and/or vocational habilitation services they have selected. This review is not applicable to non-medical transportation or individuals with placement in group C.
- (3) "Adult day support" has the same meaning as in rule 5123:2-9-17 of the Administrative Code.
- (4) "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.
- (5) "Budget limitation" means the funding amount available to enable an individual to receive adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation within each waiver eligibility span. A separate budget limitation shall be established to enable an

individual to receive non-medical transportation within each waiver eligibility span. The budget limitation applicable to adult day support, supported employment-community, supported employment-enclave, and vocational habilitation and the budget limitation applicable to non-medical transportation are above and beyond the funding range to which an individual enrolled in the individual options waiver has been assigned.

- (6) "County board" means a county board of developmental disabilities.
- (7) "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 supported employment-enclave or vocational habilitation or a combination of adult day support and vocational habilitation are provided by the same agency provider to the same individual during one calendar day.
- (8) "Department" means the Ohio department of developmental disabilities.
- (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, 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.
- (10) "Funding range" means one of the dollar ranges contained in appendix A to rule 5123:2-9-06 of the Administrative Code to which individuals enrolled in the individual options waiver have been assigned for the purpose of funding services other than adult day support, supported employment-community, supported employment-enclave, vocational habilitation, and non-medical transportation.
- (11) "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.
- (12) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (13) "Integrated community work setting" means paid employment of an individual in competitive employment, supported employment (as one person or as a member of a group), or self-employment through the operation of a business that takes place outside of a segregated, sheltered, or facility-based program.

- (14) "Non-medical transportation" has the same meaning as in rule 5123:2-9-18 of the Administrative Code.
- (15) "Professional staff" includes licensed nurses, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, psychologists, speech therapists/audiologists, social workers, dieticians, and physicians.
- (16) "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.
- (17) "Staff intensity" means the minimum portion of time, as calculated in decimals and reflected in appendix A to this rule, that one direct services staff position is required to provide adult day support, supported employment-enclave, and/or vocational habilitation 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 acuity assessment instrument score, an agency provider may aggregate the staff intensity ratio needs for all individuals (including those who are enrolled in home and community-based services waivers and those who are not) receiving services in one service delivery location during one calendar day.
- (18) "Supported employment-community" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.
- (19) "Supported employment-enclave" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.
- (20) "Vocational habilitation" has the same meaning as in rule 5123:2-9-14 of the Administrative Code.
- (21) "Waiver eligibility span" means the twelve-month period following either an individual's initial enrollment date or a subsequent eligibility re-determination date.

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

- (1) Service and support administrators shall review and approve information contained on the acuity assessment instrument for each individual enrolled in a waiver for whom adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation services have been authorized through the individual service plan development process.
- (2) Information needed to complete the assessment shall be provided by informants

who know the capabilities and needs of the individual outside of his or her residence, in the adult day service setting. Informants may include the individual, direct services providers, guardians, advocates, and family members. The service and support administrator and/or a person designated by the service and support administrator shall submit information in electronic format to the department. The information will be automatically scored.

- (3) The score resulting from administration of the acuity assessment instrument will result in the assignment of the individual by the service and support administrator 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, supported employment-enclave, and/or vocational habilitation. The scores and related staffing calculations are contained in appendix A to this rule.
- (4) Following assignment of the individual to one of four staff intensity groups, the service and support administrator will determine the individual's budget limitation for adult day support, supported employment-community, supported employment-enclave, and vocational habilitation. When the need for non-medical transportation has been identified through the individual service plan development process, the service and support administrator will also determine the individual's budget limitation for non-medical transportation. Budget limitations are calculated on a per-person basis for each waiver eligibility span and are adjusted by the cost-of-doing-business category that applies to the county in which the individual receives the preponderance of services. The cost-of-doing-business categories are contained in appendix B to this rule. The budget limitations are contained in appendix C to this rule. The budget limitation for non-medical transportation shall not be combined with the budget limitation for adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation to enable an individual to increase the availability of one or more of these services or for any other purpose.
- (5) The service and support administrator shall inform each individual of the acuity assessment instrument score, the resulting group assignment, and related budget limitations:

 - (a) At the time the acuity assessment instrument is initially administered;
 - (b) At any time the acuity assessment instrument is re-administered and results in a score that places an individual in a different staff intensity 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 category applied to the payment rate.

- (6) A budget limitation established for an individual shall change only when changes in assessment variable scores on the 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 category. Responses to any or all acuity assessment instrument variables can be revised at any time at the request of the individual or at the discretion of the service and support administrator, with the individual's knowledge.
- (7) The department shall periodically re-examine the scoring of the acuity assessment instrument and the linkage of the scores to staff intensity ratios.

(D) Individual service plan development process

- (1) An eligible individual may elect to receive one, some, or all of the adult day support, supported employment-community, supported employment-enclave, and vocational habilitation services plus non-medical transportation to access one or more of these services. The services 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 or paragraph (H) of rule 5101:3-42-01 of the Administrative Code, as applicable, and developed through the process set forth in rule 5123:2-1-11 of the Administrative Code.
- (2) Home and community-based services are intended to increase an individual's community participation. Therefore, the individual service plans of individuals who begin receiving adult day support and/or vocational habilitation in sheltered environments on or after the effective date of this rule shall include a justification as to why a sheltered environment is more appropriate than an integrated community setting.
- (3) Individual service plans shall indicate the staff intensity ratios at which adult day support, supported employment-enclave, and vocational habilitation are to be delivered, in accordance with appendix A to this rule. When an individual enrolled in a waiver receives one or more of these services in a group setting with one or more individuals who are not enrolled in a waiver, the staff intensity ratios of the individuals who are not enrolled in a waiver shall be identified through the applicable individual service plan development process. Providers are not required to use, but may use, the acuity assessment instrument to determine the staff intensity ratios of individuals who are not enrolled in a waiver.
- (4) The county board shall determine whether the annual cost for adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation can be met by or exceeds the assigned budget

limitation for the individual. The county board also shall determine whether the annual cost for non-medical transportation can be met by or exceeds the assigned budget limitation for the individual. The service and support administrator shall inform the individual of these determinations in accordance with procedures developed by the department.

- (5) If an individual requests a change in the frequency and/or duration of adult day support, supported employment-community, supported employment-enclave, vocational habilitation, and/or non-medical transportation, the request may result in an increase or decrease in the annual cost for these services, based on the outcome of the individual service plan development process. The county board has the authority and responsibility to make changes which result from the individual service plan development process when the services are within the budget limitations determined in accordance with paragraph (E) of this rule.
- (6) Prior state level review shall not be required for the initiation and/or changes in services that can occur within the budget limitation resulting from a revision to the individual service plan that has been agreed to by an individual through the individual service plan development process.
- (7) Changes in the assignment of budget limitations made by county boards are subject to review by the department and approval by the Ohio department of job and family services.
- (8) Neither the department nor the county board shall approve a change in a budget limitation or assign a new budget limitation after notification that the individual has requested a hearing pursuant to section 5101.35 of the Revised Code concerning the approval, denial, reduction, or termination of services in an individual service plan that has been developed within the funding parameters of this rule.

(E) Group size, billing units, documentation, and payment conditions

- (1) When an individual has been assigned to a staff intensity group for the purposes of receiving adult day support, supported employment-enclave, and/or vocational habilitation, billing must correspond to the rates assigned for that group. Because acuity assessment instrument 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 individual service plan development process and reflected in the individual service plan.
- (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 instrument score of an individual, an administrative review decision made by

the department, or receipt of a formal due process appeal decision rendered by the Ohio department of job and family services.

- (3) When a single agency provider provides between five and seven hours of adult day support, supported employment-enclave, vocational habilitation, or a combination of adult day support and vocational habilitation during one calendar day to the same individual, the provider shall use a daily billing unit.
- (4) When a single agency provider provides less than five or more than seven hours of adult day support, supported employment-enclave, vocational habilitation, or a combination of adult day support and vocational habilitation during one calendar day to the same individual, the provider shall use fifteen-minute billing units.
- (5) When more than one agency provider provides adult day support, supported employment-enclave, vocational habilitation, or a combination of these services during one calendar day to the same individual, all providers shall use fifteen-minute billing units.
- (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) Documentation and payment for adult day support, supported employment-community, supported employment-enclave, and vocational habilitation shall be based on fifteen-minute billing units or a daily billing unit or both types of units. A combination of daily billing units and fifteen-minute billing units may be used for the same individuals during any calendar week, subject to the provisions contained in paragraph (E) of this rule.
- (9) Each provider is responsible to document that sufficient numbers of staff are assigned to provide adult day support, supported employment-enclave, and/or vocational habilitation to one individual who is enrolled in a waiver and/or individual who is enrolled in a waiver and individuals who are not enrolled in a waiver, 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 paragraph (E) of this rule.
- (10) For purposes of delivering adult day support, supported employment-community, supported employment-enclave, and/or vocational

habilitation, 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.

- (11) Providers billing on a daily billing unit basis or fifteen-minute billing unit basis must ensure that individuals receive waiver services at the staff intensity ratios for their assigned groups, based upon their acuity assessment instrument scores, for seventy-five per cent of the time they receive adult day support, supported employment-enclave, vocational habilitation, or a combination of adult day support and vocational habilitation by the same provider during one calendar day. Calculation of the seventy-five per cent expectation related to group size applies to the number of persons present in the group at the time during each day when the provider actually bills the waiver for services provided.
- (12) 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, supported employment-community, supported employment-enclave, and/or vocational habilitation. The daily responsibilities of direct services staff are to assist, supervise, and provide supports to individuals who receive these services. Direct services are intended to reinforce the objectives contained in the individual service plan developed for each individual.
- (13) Neither supervisors nor professional staff are considered to be direct services staff for the purposes of meeting the staff intensity ratio requirements related to provision of the services addressed in this rule unless they meet the certification standards to provide and are providing one or more of the services.

(F) Payment authorization and administrative review

- (1) The county board shall complete a payment authorization and the service and support administrator shall ensure waiver services are initiated for an individual whose annual cost for adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation and whose annual cost for non-medical transportation are within or below the budget limitations determined in accordance with this rule. The service and support administrator shall inform the individual in writing, and in a form and manner the individual can understand, of his or her due process rights and responsibilities as set forth in section 5101.35 of the Revised Code.
- (2) When the annual cost for adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation exceeds the assigned budget limitation, the service and support administrator shall inform the individual of his or her right to request an administrative review to obtain

adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation services that result 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 (C) of this rule.

- (3) Applicants for and recipients of waiver services who demonstrate that situational demands associated with the adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation 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 acuity assessment instrument may submit a request for administrative review. Administrative review requests shall not be accepted for individuals having a group C assignment.
- (4) The department considers the budget limitations contained in appendix C 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 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.
- (5) 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.
- (6) 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.
- (7) The department shall make a determination within thirty calendar days following receipt of all documentation as defined in paragraph (F)(6) of this rule and shall notify the individual and county board in writing of the determination.
- (8) The administrative review approval shall apply to the individual's current waiver eligibility span. The department may extend the approval to one or more months in the consecutive 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.

- (9) Following completion of the administrative review process, the department shall inform the individual in writing, and in a form and manner the individual can understand, of his or her due process rights and responsibilities as set forth in section 5101.35 of the Revised Code.
- (10) If, through the administrative review process, the department approves the request for an increased budget limitation, the county board shall ensure a payment authorization is completed within fifteen days following the determination by the department and shall ensure that waiver services are initiated.
- (11) If, through the administrative review process, the department denies the request for an increased budget limitation or if the service is not subject to an administrative review, the service and support administrator shall initiate the individual service plan development process to determine if an individual service plan can be developed that is acceptable to the individual and is within the assigned budget limitation.
- (a) If an individual service plan that meets these conditions is developed, the county board shall ensure a payment authorization is completed and shall ensure waiver services are initiated.
- (b) If an individual service plan that meets these conditions cannot be developed, the county board shall propose to deny the initial or continuing provision of adult day support, supported employment-community, supported employment-enclave, and/or vocational habilitation and inform the individual of his or her due process rights and responsibilities as set forth in section 5101.35 of the Revised Code.
- (12) 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.
- (13) The Ohio department of job and family services 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.

(G) Due process rights and responsibilities

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 acuity assessment instrument or to the type, amount/level, scope, or duration of services included or excluded from an individual service plan. 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.

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