

TO BE RESCINDED

5123:2-9-33

Home and community-based services waivers - adult foster care under the individual options waiver.

(A) Purpose

The purpose of this rule is to define adult foster care and set forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

(B) Definitions

- (1) "Adult" means an individual eighteen years of age or older.
- (2) "Adult foster care" means personal care and support services provided to an adult by a caregiver who is not related to and lives with the individual receiving the services. Adult foster care is provided in conjunction with residing in the home and is part of the rhythm of life that naturally occurs when people live together in the same home. Due to the environment provided by living together in the same home, segregating these activities into discrete services is impractical. Examples of supports that may be provided as a component of adult foster care include:
 - (a) Basic personal care and grooming, including bathing, care of the hair, and assistance with clothing.
 - (b) Assistance with bladder and/or bowel requirements or problems, including helping the individual to and from the bathroom or assisting the individual with bedpan routines.
 - (c) Assisting the individual with self-medication or provision of medication administration for prescribed medications and assisting the individual with, or performing, health care activities.
 - (d) Performing household services essential to the individual's health and comfort in the home (e.g., necessary changing of bed linens or rearranging of furniture to enable the individual to move about more easily in his or her home).
 - (e) Assessing, monitoring, and supervising the individual to ensure the individual's safety, health, and welfare.

- (f) Light cleaning tasks in areas of the home used by the individual.
 - (g) Preparation of a shopping list appropriate to the individual's dietary needs and financial circumstances, performance of grocery shopping activities as necessary, and preparation of meals.
 - (h) Personal laundry.
 - (i) Incidental neighborhood errands as necessary, including accompanying the individual to medical and other appropriate appointments and accompanying the individual for walks outside the home.
 - (j) Skill development to prevent the loss of skills and enhance skills that are already present that lead to greater independence and community integration.
- (3) "Agency provider" means an entity that employs persons for the purpose of providing services for which the entity must be certified under rules adopted by the department.
 - (4) "Community respite" has the same meaning as in rule 5123:2-9-34 of the Administrative Code.
 - (5) "County board" means a county board of developmental disabilities.
 - (6) "Department" means the Ohio department of developmental disabilities.
 - (7) "Group size" means the number of individuals who are sharing services, regardless of the funding source for those services.
 - (8) "Homemaker/personal care" has the same meaning as in rule 5123:2-9-30 of the Administrative Code.
 - (9) "Independent provider" means a self-employed person who provides services for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through a contract, anyone else to provide the services.
 - (10) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her

guardian in accordance with section 5126.043 of the Revised Code.

- (11) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (12) "Ohio developmental disabilities profile" means the standardized instrument utilized by the department to assess the relative needs and circumstances of an individual enrolled in the individual options waiver compared to others. The individual's responses are scored and the individual is linked to a funding range, which enables similarly situated individuals to access comparable waiver services paid in accordance with rules adopted by the department.
- (13) "Related to" means the caregiver is related to the individual by blood, marriage, or adoption. This definition includes a caregiver who is the individual's:
 - (a) Parent or stepparent.
 - (b) Sibling or stepsibling.
 - (c) Grandparent.
 - (d) Aunt, uncle, nephew, or niece.
 - (e) Cousin.
 - (f) Child or stepchild.
- (14) "Residential respite" has the same meaning as in rule 5123:2-9-34 of the Administrative Code.
- (15) "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.
- (16) "Service documentation" means all records and information on one or more documents, including documents that may be created or maintained in electronic software programs, created and maintained contemporaneously with the delivery of services, and kept in a manner as to fully disclose the nature and extent of services delivered that shall include the items delineated

in paragraph (E) of this rule to validate payment for medicaid services.

(C) Provider qualifications

- (1) Adult foster care shall be provided by an independent provider or an agency provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of job and family services.
- (2) Adult foster care shall not be provided by a county board or a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards.
- (3) An applicant seeking approval to provide adult foster care shall meet the requirements of this rule and complete and submit an application and adhere to the requirements of either rule 5123:2-2-01 or 5123:2-3-19 of the Administrative Code, as applicable.
- (4) Providers of adult foster care shall not be related to an individual for whom they provide adult foster care.
- (5) Providers of adult foster care shall not be the guardian of an individual for whom they provide adult foster care.
- (6) Providers licensed under section 5123.19 of the Revised Code seeking to provide adult foster care shall:
 - (a) Meet all of the requirements set forth in and maintain a license issued under section 5123.19 of the Revised Code.
 - (b) Maintain a current medicaid provider agreement with the Ohio department of job and family services.
 - (c) Provide to the department written assurance to arrange for substitute coverage, if necessary, only from a provider certified by the department and as identified in the individual service plan; notify the individual or legally responsible person in the event that substitute coverage is necessary; and notify the person identified in the individual service plan when substitute coverage is not available to allow such person to make other arrangements.
- (7) Each independent provider and each employee, contractor, and employee of a

contractor of an agency provider who has direct contact with individuals receiving adult foster care shall annually complete at least eight hours of training, in accordance with standards established by the department.

- (a) The training shall enhance the skills and competencies of the independent provider or employee/contractor of the agency provider relevant to his or her job responsibilities and shall include, but is not limited to:
 - (i) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code.
 - (ii) The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety including a review of health and safety alerts issued by the department since the previous year's training.
 - (iii) The requirements relative to the independent provider's or employee's/contractor's role in providing behavior support to the individuals he or she serves.
 - (b) The training may be structured or unstructured and may include, but is not limited to, lectures, seminars, formal coursework, workshops, conferences, demonstrations, visitations or observations of other facilities/services/ programs, distance and other means of electronic learning, video and audio-visual training, and staff meetings.
 - (c) The provider shall maintain a written record, which may include an electronic record, of training. This information shall be presented upon request by the Ohio department of job and family services, the department, or the county board. Documentation shall include the name of the person receiving the training, date of training, training topic, duration of training, instructor's name if applicable, and a brief description of the training.
- (8) Failure of a certified provider to comply with this rule and rule 5123:2-2-01 of the Administrative Code may result in denial, suspension, or revocation of the provider's certification.
- (9) Failure of a licensed provider to comply with this rule and Chapter 5123:2-3 of the Administrative Code may result in denial, suspension, or revocation of the provider's license.

(D) Requirements for service delivery

- (1) Adult foster care 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.
- (2) The total number of persons with developmental disabilities living in a home in which an individual receives adult foster care shall not exceed four.
- (3) A provider shall not provide both a residence and adult foster care or other services to more than three persons with developmental disabilities living in a home unless the home is licensed under section 5123.19 of the Revised Code.
- (4) An independent provider of adult foster care shall reside in the home where the services are delivered and that home shall be the provider's primary, legal residence.
- (5) An agency provider of adult foster care shall employ or contract with another person to be the caregiver who shall reside in the home where the services are delivered and that home shall be the person's primary, legal residence.
 - (a) Caregivers of adult foster care shall not be related to an individual for whom they provide adult foster care.
 - (b) Caregivers of adult foster care shall not be the guardian of an individual for whom they provide adult foster care.
- (6) Individuals who choose to receive personal care services and supports in adult foster care settings shall receive adult foster care in lieu of homemaker/personal care except as provided in paragraph (D)(8) of this rule. The service and support administrator shall explain the implications of this choice to the individual.
- (7) Adult foster care is not available to individuals who are eligible to receive reimbursement for foster care under Title IV-E as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and the Balanced Budget Act of 1997, Pub. L. No. 105-33.
- (8) Individuals may receive homemaker/personal care when the individuals choose services that take place outside the adult foster care setting and the services are provided by a certified provider of homemaker/personal care.

- (a) An agency provider may contract for these services. If the agency provider opts to contract, the daily rate for adult foster care may be billed by the adult foster care provider for that day.
 - (b) In situations where an agency provider does not contract for these services or in situations where an individual served by an independent provider seeks homemaker/personal care services outside of the adult foster care setting, the adult foster care provider shall not bill for adult foster care on a day when homemaker/personal care is rendered. This prohibition exists regardless of whether claims for homemaker/personal care are submitted to the department for the entire twenty-four-hour period or for a lesser amount of time that day.
 - (c) In circumstances where a caregiver of adult foster care is temporarily unavailable to provide services, substitute coverage may be provided as follows:
 - (i) In the individual's adult foster care setting or in another community setting agreed to by the individual.
 - (ii) For independent providers, a certified provider of homemaker/personal care is arranged to deliver substitute coverage and the service is billed as homemaker/personal care. Independent providers shall work with the individual's service and support administrator to arrange for substitute coverage when needed.
 - (iii) For agency providers, an adult foster care provider is arranged to deliver substitute coverage and the service is billed as adult foster care.
 - (d) Homemaker/personal care shall not be billed on the same day as adult foster care.
 - (e) Independent providers of adult foster care shall not bill homemaker/personal care for services to individuals for whom they provide adult foster care.
- (9) An individual who receives adult foster care may also choose to use community respite or residential respite during a short-term absence or need for relief of the caregiver.

(E) Documentation of services

Service documentation for adult foster care shall include each of the following to validate payment for medicaid services:

- (1) Type of service.
- (2) Date of service.
- (3) Place of service.
- (4) Name of individual receiving service.
- (5) Medicaid identification number of individual receiving service.
- (6) Name of provider.
- (7) Provider identifier/contract number.
- (8) Written or electronic signature of the person delivering the service, or initials of the person delivering the service if a signature and corresponding initials are on file with the provider.
- (9) Group size in which the service was provided.
- (10) Description and details of the services delivered that directly relate to the services specified in the approved individual service plan as the services to be provided.

(F) Payment standards

- (1) The billing unit, service codes, and payment rates for adult foster care are contained in appendix A to this rule.
- (2) Payment for adult foster care shall be at a daily rate. Payment rates include an adjustment based on the county cost-of-doing-business category. The cost-of-doing-business categories are contained in appendix B to this rule.
- (3) Payment rates for adult foster care are established separately for services

provided by independent providers and services provided through agency providers.

- (4) The rate paid to a provider of adult foster care shall be adjusted to reflect the group size:
 - (a) Payment for one individual shall be at one hundred per cent of the daily rate for the range assigned by the Ohio developmental disabilities profile.
 - (b) Payment for a group size of two shall be at eighty-five per cent of the daily rate for the range for each individual.
 - (c) Payment for a group size of three shall be at seventy-five per cent of the daily rate for the range for each individual.
 - (d) Payment for a group size of four shall be at sixty-five per cent of the daily rate for the range for each individual.
- (5) Agency providers of adult foster care may bill for each day the individual receives adult foster care through the agency.
- (6) Independent providers of adult foster care may bill for each day adult foster care is delivered. Adult foster care shall not be billed on the same day as homemaker/personal care.
- (7) An individual who receives adult foster care may request prior authorization in accordance with rule 5101:3-41-12 of the Administrative Code. In no instance shall prior authorization result in a per diem rate in excess of the highest rate within the applicable cost-of-doing-business category as set forth in appendix A to this rule.
- (8) Payment for adult foster care does not include room and board, items of comfort or convenience, or costs for the maintenance, upkeep, and improvement of the foster home.

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Certification

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