

**Department of
Developmental Disabilities****Mike DeWine**, Governor**Kim Hauck**, Director**Hearing Summary Report****Hearing Date:** 05/17/2022**Today's Date:** 05/20/2022**Rule Numbers:****Adopt:** 5123-9-26, 5123-9-28, 5123-9-36, 5123-9-37, 5123-9-38**Rescind:** 5123-9-27, 5123:2-9-28, 5123:2-9-36, 5123:2-9-37, 5123:2-9-38**Amend:** 5123-9-06, 5123-9-18, 5123-9-19, 5123-9-20, 5123-9-23, 5123-9-25, 5123-9-29, 5123-9-35, 5123-9-40, 5123-9-41, 5123-9-43, 5123-9-45, 5123-9-46**If no comments at hearing, please check the box.**☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

- Rachel Barr, Attorney at Law, Legal Aid Society of Greater Cincinnati
- Thomas W. Frazier, Ph.D., National Board Member, Autism Speaks
- Nathan Jensen, Senior Vice President of Sales and Business Development, Mom's Meals

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

Rachel Barr:

The current proposed rules contain several cost caps and service limitations that will harm individuals' abilities to meet their needs. Some were already included in the rules, and others are included in the amendments. We would encourage the Department to eliminate these limitations while the rules are being revised. Specifically:

- 5123-9-23 (F)(3) - Environmental Accessibility Adaptations projects are capped at \$10,000 per project,

- 5123-9-25 (F)(2) - Specialized Medical Equipment and Supplies is capped at \$10,000 per item,
- 5123-9-26 (F)(3)(b) - Self-Directed Transportation services are capped at \$12 per one-way trip, and
- 5123-9-45 (F)(3) - Participant-Directed Goods and Services [under the Level One Waiver] are capped at \$2,500.

While these cost limits may be reasonable for most scenarios, we imagine that there will be situations where, for example, an adaptation or piece of equipment might cost more than \$10,000. We recommend that these rules be amended to allow for a prior authorization request to be submitted to the Department and the necessity reviewed for services, items, or modifications with costs above these cost caps, rather than disallowing these all together. If such a prior authorization system already exists, we recommend making this clear in the rules.

Additionally, the amendments to rule 5123-9-45 (D)(3) regarding Participant-Directed Goods and Services, has further limited the list of goods and services that could be covered. For example, a pool, spa, or sauna cannot be covered by Participant-Directed Goods and Services funds, even though previously it could be covered after a review process. Additionally, internet service cannot be covered. There are scenarios where a pool or sauna could be necessary to help relieve symptoms or address medical conditions, or where internet access would be necessary to treat a condition, for example, to access telehealth therapy services. The treatment of conditions and relief of symptoms may further increase independence and a consumer's ability to participate in the community. See 5123-9-45 (B)(8). Rather than a blanket prohibition on the coverage of these goods and services, we recommend that the rule be amended to allow a prior authorization request to be submitted for review of these items, so that individuals who will need these goods and services to help with their conditions are able to access them.

Department's Response: The rule actions to simplify Home and Community-Based Services waivers reflect the efforts of a Waiver Simplification and Improvement workgroup which included a diverse group of stakeholders that met 12 times during 2021. Additionally, to gather perspectives of people with disabilities and their families and other interested people, a survey was conducted from February 12 through April 16, 2021 and four virtual town hall meetings were conducted in April 2021. More than 800 people provided feedback through one of these modes. The service limitations were developed through consultation with stakeholders and determined reasonable and appropriate to meet individuals' needs. We believe the rules achieve the necessary balance between expanding access to needed services and maintaining manageable costs and reflect the feedback expressed by system stakeholders during the yearlong process.

Pools, saunas, and spas are recreational in nature and Medicaid funds cannot be used for recreation. If an individual has an assessed need, the team can work to find ways to access available resources, such as through a community pool pass or membership to a wellness center. Similarly, the federal Centers for Medicare and Medicaid Services issued a clear directive that internet service is not covered under Home and Community-Based Services.

Thomas W. Frazier:

We are pleased to see that the Department is working to simplify and improve Level One and Self-Empowered Life Funding (SELF) waivers. We are also pleased to see many services being added to the Level One Waiver including:

- Participated-Directed Goods and Services (5123-9-45)
- Self-Directed Transportation (5123-9-26)

- Functional Behavioral Assessment (5123-9-43)
- Participant/Family Stability Assistance (5123-9-46)

We strongly support the Department's expansion of Clinical/Therapeutic Interventions (CTI) in rule 5123-9-41 to the Level One Waiver and increasing reimbursements for CTI for the SELF Waiver. Given the nature of CTI as an intervention to address intensive behavioral needs, we strongly urge the department ensure CTI is also added to the Individual Options Waiver.

Department's Response: We appreciate your support. We are exploring adding CTI or an alternative service to address intensive behavioral support needs of individuals enrolled in the Individual Options Waiver.

Nathan Jensen:

Mom's Meals supports adding Home-Delivered Meals to the SELF Waiver (5123-9-40). This addition will bolster Ohio's mission to promote the health of its citizens by reaching additional individuals.

Department's Response: We appreciate your support.

Mom's Meals recommends the following changes to rule 5123-9-29:

Revise paragraph (B)(4):

"Home-delivered meals" means the preparation, packaging, and delivery of one or more meals to individuals who are unable to prepare or obtain nourishing meals. Meals can be ready to eat, frozen, vacuum-packed, modified-atmosphere-packed, or shelf-stable.

Department's Response: Paragraph (B)(4) was revised in accordance with your recommendation.

Revise paragraph (D)(2)(b)(i):

Contains at least one-third of the daily recommended dietary allowances in accordance with "Recommended Dietary Allowances," tenth edition, ~~published by the national academies press (available at <https://doi.org/10.17226/1349>)~~ the guidelines published by the United States departments of agriculture and health and human services on (www.health.gov/dietaryguidelines/); and

Department's Response: Paragraph (D)(2)(b)(i) was revised in accordance with your recommendation.

Eliminate paragraph (D)(2)(e):

~~Maintain a roster of delivery drivers who are trained and have available backup staff for scheduled meal deliveries; and~~

Department's Response: Without further discussion with stakeholders, we are not inclined to eliminate this requirement.

Revise paragraph (D)(3):

The provider shall prepare a ~~noontime and/or evening~~ meal as specified in the individual service plan and deliver the meal during the range of time specified in the individual service plan. On condition that appropriate methods exist to ensure proper and safe handling by the provider and safe consumption by the individual, the provider may:

(a) Deliver ~~the evening meal with the noontime meal~~ meals together.

(b) If frozen, ~~vacuum-packed, modified-atmosphere-packed, or shelf-stable~~ meals are used, deliver all meals for a ~~week at one time during the week~~ one or two weeks at one time. Each frozen, vacuum-packed, modified-atmosphere-packed, or shelf-stable meal shall be individually

packaged and labeled with the words, "use before," or "use by" followed by the month, day, and year by which the meal is to be used.

Department's Response: The rule permits up to 14 meals to be delivered at the same time. We are maintaining the requirement, however, that the meals be delivered weekly. Paragraph (D)(3)(b) was revised to include vacuum-packed, modified-atmosphere-packed, and shelf-stable meals and "use by" in accordance with your recommendation.

Revise paragraph (D)(4) and add paragraph (D)(5):

(4) The provider shall ~~not~~:

(a) ~~Leave food unrefrigerated or unattended;~~ or Ensure delivery provided by the provider or commercial or common carrier meets applicable federal, state and local food safety, storage and sanitation requirements.

(b) ~~Leave food at a residence unless the individual or his or her the individual's representative is there to receive the food.~~

(5) The provider shall replace any item lost or stolen between the time of delivery and receipt by the individual at no cost to the individual or the Department.

Department's Response: Without further discussion with stakeholders, we are not inclined to permit meals to be left unattended. Based on your feedback, however, we eliminated what had been paragraph (D)(4)(a) and added the concept you suggested for (D)(4)(a) as new paragraph (D)(2)(d).

Revise paragraph (E)(9) and eliminate paragraphs (E)(10) and (E)(13):

(9) ~~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.~~ Delivery driver's attestation that delivery occurred. If a provider uses a common carrier to deliver meals, the provider shall verify the success of the delivery by retaining the common carrier's tracking statement or returned postage-paid delivery invoice. Nothing shall prohibit the provider from using an electronic system to verify delivery.

(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.~~

(13) ~~Name of person accepting delivery of meals.~~

Department's Response: At this time, we are not permitting meals to be left unattended, so we are maintaining paragraphs (E)(9) and (E)(13). Paragraph (E)(10) was eliminated in accordance with your recommendation.

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

The Department incorporated comments as indicated above.