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## 5123:X -X-XX     **Home and community-based services waivers – functional behavioral assessment under the self-empowered life funding waiver.**

### (A) Purpose

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

### (B) Definitions

- (1) "Agency provider" means an entity that employs persons for the purpose of providing services.
- (2) "County board" means a county board of developmental disabilities.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Family member" means a person who is related to the individual by blood, marriage, or adoption.
- (5) "Functional behavioral assessment" means an assessment not otherwise available under the state medicaid program to determine why an individual engages in intensive behaviors and how the individual's behaviors relate to the environment. Functional behavioral assessments describe the relationship between a skill or performance problem and the variables that contribute to its occurrence. Functional behavioral assessments can provide information to develop a hypothesis as to why the individual engages in the behavior, when the individual is most likely to demonstrate the behavior, and situations in which the behavior is least likely to occur.
- (6) "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 parent. If no guardian has 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 parent, "guardian" means that government agency or person.
- (7) "Independent provider" means a person who provides services and does not employ, either directly or through contract, anyone else to provide the services.
- (8) "Individual" means a person with a developmental disability. A guardian or non-legal representative may take any action on behalf of the individual, may make

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choices for the individual, or may receive notice on behalf of the individual to the extent permitted by applicable law.

- (9) "Individual service plan" (ISP) means the written description of services, supports, and activities to be provided to an individual.
- (10) "Medicaid program" has the same meaning as in section 5111.01 of the Revised Code.
- (11) "Non-legal representative" means a person who is freely chosen and designated in writing by an adult individual and who unless otherwise limited by the individual, has direction over the ISP, the budget, selection of residence and providers, and negotiation of payment rates for services. If the individual objects to a decision made by the non-legal representative, the individual's decision prevails. The individual may revoke the designation at any time; the revocation must be in writing. The representative may not be employed by a county board or a provider, or a contractor of either. The representative also may not be a paid provider. The ISP process, along with the involvement of the service and support administrator and support broker, will provide the mechanism for ensuring decisions are made in the best interests of the individual.
- (12) "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.
- (13) "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 (F) of this rule to validate payment for medicaid services.
- (14) "Usual and customary charge" means the amount charged to other persons for the same service.
- (15) "Waiver eligibility span" means the twelve-month period following either an individual's initial enrollment date or the subsequent eligibility re-determination date.

### (C) Provider qualifications

- (1) Functional behavioral assessment shall be provided by either of the following:
  - (a) An independent provider or an agency provider that:

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- (i) Meets the requirements of this rule;
    - (ii) Has a medicaid provider agreement with the Ohio department of job and family services; and
    - (iii) Has completed and submitted an application and adheres to the requirements of rule 5123:2-2-01 of the Administrative Code; or
  - (b) An independent provider or agency provider that:
    - (i) Meets the requirements of this rule; and
    - (ii) Has contracted with a financial management services entity under contract with the state to submit claims for functional behavioral assessment on the independent provider's or agency provider's behalf and that entity operates as an organized health care delivery system.
  - (2) Neither a county board nor a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards shall be approved to provide functional behavioral assessment.
  - (3) Functional behavioral assessment shall be provided by persons who have the experience necessary to perform psychometric tests that assess an individual's functional behavioral level and who are appropriately licensed under the laws of the state as licensed professional clinical counselors, licensed professional counselors, licensed independent social workers, or licensed social workers working under the supervision of licensed independent social workers. In addition, if a provider of functional behavioral assessment is described in paragraph (C)(1)(b) of this rule, the financial management services entity under contract with the state shall ensure that the provider meets the requirements of paragraphs [insert applicable paragraphs] of rule 5123:2-2-01 of the Administrative Code. [We are still reviewing 5123:2-2-01 to determine which requirements should apply.]
  - (4) Failure to comply with the requirements of this rule and rule 5123:2-2-01 of the Administrative Code, as applicable, may result in denial, suspension, or revocation of the provider's certification or in the case of a provider of functional behavioral assessment described in paragraph (C)(1)(b) of this rule, loss of the provider's approval to provide services under the self-empowered life funding waiver.
- (D) Requirements for service delivery

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- (1) Functional behavioral assessment shall be provided pursuant to an ISP that conforms to the requirements of rule 5101:3-XX-XX of the Administrative Code. [Insert number of ODJFS authorization rule.]
- (2) A provider of functional behavioral assessment shall coordinate with the individual/guardian, family members, and designated persons including, but not limited to, the individual's service and support administrator and support broker, as applicable, to assist in the coordination of services.

### (E) Payment standards

- (1) Providers of functional behavioral assessment shall be reimbursed not more than their usual and customary charge for the service.
- (2) The service code for functional behavioral assessment is contained in appendix A to this rule. [We are still working on Appendix A.]
- (3) An individual may receive only one functional behavioral assessment in a waiver eligibility span, the cost of which shall not exceed \$1,500.
- (4) Providers of functional behavioral assessment are prohibited from submitting claims under both the self-empowered life funding waiver and the state medicaid program for the same functional behavioral assessment.
- (5) Except for paragraphs [insert applicable paragraphs], rule 5123:2-9-06 of the Administrative Code does not apply to payment for functional behavioral assessment. [We are still reviewing 2-9-06 to determine which of its provisions should apply.]

### (F) Documentation of services

- (1) Rule 5123:2-9-05 of the Administrative Code does not apply to service documentation for functional behavioral assessment. [We are still reviewing 5123:2-9-05 to determine which of its provisions should apply.]
- (2) Service documentation for functional behavioral assessment shall include each of the following to validate payment for medicaid services:
  - (a) Date of service.
  - (b) Place of service.
  - (c) Name of individual served.
  - (d) Medicaid identification number of individual served.

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- (e) Name of provider.
- (f) Provider identifier/contract number.
- (g) 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.
- (h) Forms that identify, for each individual served, the particular support(s) delivered as a component of the functional behavioral assessment as specified in the individual's ISP. The forms shall be checked off and initialed by the provider for each date of service.
- (i) Number of units of the delivered service or continuous amount of uninterrupted time during which the service was provided.
- (j) Times the delivered service started and stopped.

Effective: XX/XX/XXXX

R.C. 119.032 review dates: XX/XX/XXXX

Promulgated Under: 119.03

Statutory Authority: 5111.871, 5111.873, 5123.04, 5123.045,  
5123.049, 5123.16

Rule Amplifies: 5111.871, 5111.873, 5123.04, 5123.045,  
5123.049, 5123.16