

# \*\*\* DRAFT - September 21, 2010 \*\*\*

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

### (A) Purpose

The purpose of this rule is to define support brokerage 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) "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.
- (6) "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.
- (7) "Support broker" means a person who is responsible, on a continuing basis, for providing an individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services (particularly those associated with participant direction) in accordance with the ISP. The support broker

## \*\*\* DRAFT - September 21, 2010 \*\*\*

assists the individual with the individual's responsibilities regarding participant direction, including understanding employer authority and budget authority, negotiating rates, locating and selecting providers, and keeping the focus of the services and support delivery on the individual and his or her desired outcomes. The support broker, working in conjunction with the service and support administrator, will assist the individual with creating the ISP, developing the budget, and doing day-to-day monitoring of the provision of services as specified in the ISP.

- (8) "Support brokerage" means the services of a support broker.
- (9) "Independent provider" means a person who provides services and does not employ, either directly or through contract, anyone else to provide the services.
- (10) "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 choices for the individual, or may receive notice on behalf of the individual to the extent permitted by applicable law.
- (11) "Individual service plan" (ISP) means the written description of services, supports, and activities to be provided to an 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) "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) Support brokerage shall be provided by one of the following:
  - (a) An independent provider or an agency provider that:
    - (i) Meets the requirements of this rule;

\*\*\* DRAFT - September 21, 2010 \*\*\*

- (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;
  - (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 support brokerage on the independent provider's or agency provider's behalf and that entity operates as an organized health care delivery system; or
  - (c) An unpaid volunteer who has the qualifications specified in paragraph (C)(2) of this rule.
- (2) Support brokerage shall be provided by persons who:
- (a) Have at least an associate's degree from an accredited college or university or at least two years of experience providing one-to-one care for an individual with developmental disabilities;
  - (b) Have successfully completed the support broker training established by the department prior to providing support brokerage;
  - (c) Have the additional qualifications determined by an individual and identified in the individual's ISP. The additional qualifications that the individual establishes must not conflict with the requirements of this rule and be compatible with the generally-accepted standards for support brokerage; and
  - (d) If a provider of support brokerage 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.]
- (3) The following persons or entities shall not be approved to provide support brokerage:
- (a) A county board;
  - (b) An employee of a county board;

## \*\*\* DRAFT - September 21, 2010 \*\*\*

- (c) A housing or adult service non-profit corporation affiliated with a county board;
  - (d) A regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards;
  - (e) An employee of a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards;
  - (f) A provider of another self-empowered life funding waiver service; and
  - (g) A related entity affiliated with a provider of another self-empowered life funding waiver service including, but not limited to, contractors of the provider.
- (4) Support brokerage shall not be provided on a paid basis by the parents of a minor child (under age eighteen) or an individual's spouse, guardian, non-legal representative, or family member if the family member resides with the individual.
- (5) 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 support brokerage described in paragraph (C)(1)(b) or (C)(1)(c) of this rule, loss of the provider's approval to provide services under the self-empowered life funding waiver.

### (D) Requirements for service delivery

- (1) Support brokerage 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 support brokerage shall coordinate with the individual/guardian, family members, and designated persons including, but not limited to, the individual's service and support administrator, as applicable, to assist in the coordination of services.

### (E) Payment standards

- (1) The payment rates, billing units, and service codes for support brokerage are contained in appendix A to this rule. [We are still working on Appendix A.]
- (2) The cost of support brokerage shall not exceed \$8,000 per waiver eligibility span.

# \*\*\* DRAFT - September 21, 2010 \*\*\*

- (3) Except for paragraphs [insert applicable paragraphs], rule 5123:2-9-06 of the Administrative Code does not apply to payment for support brokerage. [We are still reviewing 5123:2-9-06 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 support brokerage. [We are still reviewing 5123:2-9-05 to determine which of its provisions should apply.]
- (2) Service documentation for support brokerage 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.
  - (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 support brokerage 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

# \*\*\* DRAFT - September 21, 2010 \*\*\*

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