

*****Proposed Amendments - August 15, 2019*****

5123-9-32 Home and community-based services waivers - participant-directed homemaker/personal care under the individual options, level one, and self-empowered life funding waivers.

(A) Purpose

This rule defines participant-directed homemaker/personal care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

(B) Definitions

For the purposes of this rule, the following definitions shall apply:

- (1) "Adult day support" has the same meaning as in rule 5123:2-9-17 of the Administrative Code.
- (2) "Agency provider" means an entity that directly employs at least one person in addition to the chief executive officer for the purpose of providing services for which the entity must be certified in accordance with rule 5123:2-2-01 of the Administrative Code.
- (3) "Agency with choice" means an arrangement available to an individual enrolled in the self-empowered life-funding waiver whereby an agency provider acts as a co-employer with the individual for purposes of provision of participant-directed homemaker/personal care. Under this arrangement, the individual is responsible for recruiting, selecting, training, and supervising the persons providing participant-directed homemaker/personal care. Agency with choice enables the individual to exercise choice and control over services without the burden of carrying out financial matters and other legal responsibilities associated with the employment of workers. The agency provider is considered the employer of staff and assumes responsibility for:
 - (a) Employing and paying staff who have been selected by the individual;
 - (b) Reimbursing allowable services;
 - (c) Withholding, filing, and paying federal, state, and local income and employment taxes; and
 - (d) Providing other supports to the individual as described in the individual service plan.
- (4) "Co-employer" means an arrangement available to an individual enrolled in the self-empowered life funding waiver whereby either an agency with choice or a financial management services entity under contract with the state functions as the employer of staff recruited by the individual. The individual directs the staff and is considered their co-employer. The agency with choice or financial management services entity conducts all necessary payroll functions and is legally responsible for the

*****Proposed Amendments - August 15, 2019*****

employment-related functions and duties for individual-selected staff based on the roles and responsibilities identified in the individual service plan for the two co-employers.

- (5) "Common law employee" means a natural person certified by the department to provide participant-directed homemaker/personal care to an individual who is exercising employer authority. A common law employee shall not employ, either directly or through contract, anyone else to provide participant-directed homemaker/personal care.
- (6) "Common law employer" means an arrangement available to an individual enrolled in the individual options, level one, or self-empowered life funding waiver whereby the individual is the legally responsible employer of persons selected by the individual to furnish supports. The individual hires, supervises, and discharges those persons. The individual is liable for the performance of necessary employment-related tasks and uses a financial management services entity under contract with the state to perform necessary payroll and other employment-related functions as the individual's agent in order to ensure that the employer-related legal obligations are fulfilled.
- (7) "County board" means a county board of developmental disabilities.
- (8) "Department" means the Ohio department of developmental disabilities.
- (9) "Employer authority" means the individual has the authority to recruit, hire, supervise, and direct the persons who furnish participant-directed homemaker/personal care and functions as either the co-employer or the common law employer of those persons.
- (10) "Family" means a person who is related to the individual by blood, marriage, or adoption.
- (11) "Fifteen-minute billing unit" means a billing unit that equals fifteen minutes of service delivery time or is greater or equal to eight minutes and less than or equal to twenty-two minutes of service delivery time. Minutes of service delivery time accrued throughout a day ~~may~~ shall be added together for the purpose of calculating the number of fifteen-minute billing units for the day.
- (12) "Financial management services" means services provided to an individual who directs some or all of his or her waiver services. When used in conjunction with employer authority, financial management services includes, but is not limited to, operating a payroll service for individual-employed staff and making required payroll withholdings.
- (13) "Group employment support" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.
- (14) "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

Proposed Amendments - August 15, 2019

accordance with section 5126.043 of the Revised Code or other person authorized to give consent.

- (15) "Individual employment support" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.
- (16) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (17) "Money management" has the same meaning as in rule 5123-9-20 of the Administrative Code.
- (18) "Non-medical transportation" has the same meaning as in rule ~~5123:2-9-18~~ 5123-9-18 of the Administrative Code.
- (19) "Ohio developmental disabilities profile" means the standardized instrument utilized by the department to assess the relative needs and circumstances of an individual compared to other individuals.
- (20) "On-site/on-call" means a rate ~~paid~~ authorized when no need for supervision or supports is anticipated because the individual is expected to be asleep for a continuous period of no less than five hours, and a provider must be ~~on-site~~ present in the individual's residence and available to provide participant-directed homemaker/personal care if an unanticipated need arises but is not required to remain awake.
- (21) "Participant-directed homemaker/personal care" means the coordinated provision of a variety of services, supports, and supervision necessary to ensure the health and welfare of an individual who lives in the community and chooses to exercise employer authority. Participant-directed homemaker/personal care advances the individual's independence within his or her home and community and helps the individual meet daily living needs. Examples of supports that may be provided as participant-directed homemaker/personal care include:
 - (a) Self-advocacy training to assist in the expression of personal preferences, self-representation, self-protection from and reporting of abuse, neglect, and exploitation, asserting individual rights, and making increasingly responsible choices.
 - (b) Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements and life activities.
 - (c) Daily living skills including training in and providing assistance with routine household tasks, meal preparation, personal care, self-administration of medication, and other areas of day-to-day living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and communication skills such as using the telephone.

*****Proposed Amendments - August 15, 2019*****

- (d) Implementation of recommended therapeutic interventions under the direction of a professional or extension of therapeutic services, which consist of reinforcing physical, occupational, speech, and other therapeutic programs for the purpose of increasing the overall effective functioning of the individual.
 - (e) Behavioral support strategies including training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially-appropriate behaviors, or extension of therapeutic services for the purpose of increasing the overall effective functioning of the individual.
 - (f) Medical and health care services that are integral to meeting the daily needs of the individual such as routine administration of medication or tending to the needs of individuals who are ill or require attention to their medical needs on an ongoing basis.
 - (g) Emergency response training including development of responses in case of emergencies, prevention planning, and training in the use of equipment or technologies used to access emergency response systems.
 - (h) Community access services that explore community services available to all people, natural supports available to the individual, and develop methods to access additional services, supports, and activities needed by the individual to be integrated in and have full access to the community.
 - (i) When provided in conjunction with other components of participant-directed homemaker/personal care, assistance with personal finances which may include training, planning, and decision-making regarding the individual's personal finances.
- (22) "Provider" means an agency with choice or a common law employee.
- (23) "Residential respite" has the same meaning as in rule 5123-9-34 of the Administrative Code.
- ~~(24) "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. [Term not used in this rule.]~~
- ~~(25)~~ (24) "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.
- ~~(26)~~ (25) "Shared living" has the same meaning as in rule 5123:2-9-33 of the Administrative Code.

*****Proposed Amendments - August 15, 2019*****

~~(27)~~(26) "Team" has the same meaning as in rule 5123:2-1-11 of the Administrative Code.

~~(28)~~(27) "Vocational habilitation" has the same meaning as in rule 5123:2-9-14 of the Administrative Code.

~~(29)~~(28) "Waiver eligibility span" means the twelve-month period following either an individual's initial waiver enrollment date or a subsequent eligibility re-determination date.

(C) Provider qualifications

- (1) Participant-directed homemaker/personal care provided to an individual enrolled in the individual options waiver or the level one waiver shall be provided by a common law employee.
- (2) Participant-directed homemaker/personal care provided to an individual enrolled in the self-empowered life funding waiver shall be provided by a common law employee or an agency with choice.
- (3) A provider of participant-directed homemaker/personal care shall meet the requirements of this rule and have a medicaid provider agreement with the Ohio department of medicaid.
- (4) 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 provide participant-directed homemaker/personal care.
- (5) A provider of participant-directed homemaker/personal care is subject to the requirements of rule 5123:2-2-01 of the Administrative Code except that:
 - (a) A common law employee need not hold a high school diploma or general education development certificate, "American Red Cross" or equivalent certification in first aid, or "American Red Cross" or equivalent certification in cardiopulmonary resuscitation unless specifically required to do so by the individual receiving services; and
 - (b) A common law employee need not complete the eight hours of training described in paragraph (C)(2)(b) of that rule unless specifically required to do so by the individual receiving services, but in any case shall complete, prior to providing participant-directed homemaker/personal care and annually thereafter, training in accordance with standards established by the department in:
 - (i) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and
 - (ii) The requirements of rule 5123-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department.

*****Proposed Amendments - August 15, 2019*****

- (6) A provider of participant-directed homemaker/personal care shall not administer medication or perform health-related activities unless the provider meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.
 - (7) An applicant seeking certification to provide participant-directed homemaker/personal care shall complete and submit an application through the department's website (<http://dodd.ohio.gov>).
 - (8) The individual receiving participant-directed homemaker/personal care shall determine training to be completed by the common law employee or staff of the agency with choice as necessary to meet the individual's unique needs.
 - (9) Failure of a provider to comply with this rule and applicable provisions of rule 5123:2-2-01 of the Administrative Code may result in denial, suspension, or revocation of the provider's certification.
- (D) Requirements for service delivery
- (1) The individual receiving participant-directed homemaker/personal care or the individual's guardian or the individual's designee must be willing and able to perform the duties associated with participant direction.
 - (2) Participant-directed homemaker/personal care shall be provided pursuant to an individual service plan that conforms to the requirements of rule 5123:2-1-11 of the Administrative Code.
 - (3) An individual enrolled in the individual options waiver or the level one waiver may receive participant-directed homemaker/personal care only when living alone or with family.
 - (4) A provider of participant-directed homemaker/personal care shall not also provide money management or shared living to the same individual.
 - (5) Participant-directed homemaker/personal care shall not be provided to an individual at the same time as residential respite.
 - (6) Participant-directed homemaker/personal care services involving direct contact with an individual receiving the services shall not be provided at the same time the individual is receiving adult day support, group employment support, individual employment support, or vocational habilitation.
 - (7) Participant-directed homemaker/personal care services may extend to those times when the individual is not physically present and the common law employee is performing homemaker activities on behalf of the individual.
 - (8) A provider shall not bill for participant-directed homemaker/personal care provided by the driver during the same time non-medical transportation [at the per-trip rate](#) is provided.

*****Proposed Amendments - August 15, 2019*****

- (9) The ratio of persons providing participant-directed homemaker/personal care to the individuals being served shall not exceed one to three.

(10) A provider of participant-directed homemaker/personal care shall arrange for substitute coverage, when necessary, only from a provider certified or approved by the department and as identified in the individual service plan; notify the individual or legally responsible persons 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.

(E) Documentation of services

- (1) Service documentation for participant-directed homemaker/personal care shall include each of the following to validate payment for medicaid services:
- (a) Type of service.
 - (b) Date of service.
 - (c) Place of service.
 - (d) Name of individual receiving service.
 - (e) Medicaid identification number of individual receiving service.
 - (f) Name of provider.
 - (g) Provider identifier/contract number.
 - (h) Written or electronic signature of the person delivering the service.
 - (i) Group size in which the service was provided.
 - (j) 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.
 - (k) Number of units of the delivered service or continuous amount of uninterrupted time during which the service was provided.
 - (l) Times the delivered service started and stopped.
- (2) A common law employee shall prepare an accurate timesheet to be verified by the individual receiving participant-directed homemaker/personal care prior to submission to the financial management services entity.

(F) Payment standards

- (1) The billing unit, service codes, and payment rates for participant-directed homemaker/personal care are contained in the appendix to this rule.
- (2) The payment rates for participant-directed homemaker/personal care provided by a

*****Proposed Amendments - August 15, 2019*****

common law employee shall be negotiated by the individual and the common law employee subject to the minimum and maximum payment rates contained in the appendix to this rule and shall be recorded in the individual service plan. An individual who meets the criteria for a rate modification described in paragraph (F)(4), (F)(5), or (F)(6) of this rule may choose to add the applicable rate modification to the negotiated base payment rate.

- (3) The payment rates for participant-directed homemaker/personal care shall be adjusted to reflect the number of individuals being served and the number of persons providing services.
- (4) Payment rates for routine participant-directed homemaker/personal care may be adjusted by the behavioral support rate modification to reflect the needs of an individual requiring behavioral support upon determination by the department that the individual meets the criteria set forth in paragraph (F)(4)(a) of this rule. The amount of the behavioral support rate modification applied to each fifteen-minute billing unit of service is contained in the appendix to this rule.
 - (a) The department shall determine that an individual meets the criteria for the behavioral support rate modification when:
 - (i) The individual has been assessed within the last twelve months to present a danger to self or others or have the potential to present a danger to self or others; and
 - (ii) A behavioral support strategy that is a component of the individual service plan has been developed in accordance with the requirements in rules established by the department; and
 - (iii) The individual either:
 - (a) Has a response of "yes" to at least four items in question thirty-two of the behavioral domain of the Ohio developmental disabilities profile; or
 - (b) Requires a structured environment that, if removed, will result in the individual's engagement in behavior destructive to self or others.
 - (b) The duration of the behavioral support rate modification shall be limited to the individual's waiver eligibility span, may be determined needed or no longer needed within that waiver eligibility span, and may be renewed annually.
 - (c) The purpose of the behavioral support rate modification is to provide funding for the implementation of behavioral support strategies by staff who have the level of training necessary to implement the strategies; the department retains the right to verify that staff who implement behavioral support strategies have received training (e.g., specialized training recommended by clinicians or the team or training regarding an individual's behavioral support strategy) that is adequate to meet the needs of the individuals served.

*****Proposed Amendments - August 15, 2019*****

- (5) Payment rates for routine participant-directed homemaker/personal care may be adjusted by the medical assistance rate modification to reflect the needs of an individual requiring medical assistance upon determination by the county board that the individual meets the criteria set forth in paragraph (F)(5)(a) of this rule. The amount of the medical assistance rate modification applied to each fifteen-minute billing unit of service is contained in the appendix to this rule.
- (a) The county board shall determine that an individual meets the criteria for the medical assistance rate modification when:
- (i) The individual requires routine feeding and/or the administration of prescribed medication through gastrostomy and/or jejunostomy tubes, and/or requires the administration of routine doses of insulin through subcutaneous injections and insulin pumps; or
 - (ii) The individual requires oxygen administration that a licensed nurse agrees to delegate in accordance with rules in Chapter 4723-13 of the Administrative Code; or
 - (iii) The individual requires a nursing procedure or nursing task that a licensed nurse agrees to delegate in accordance with rules in Chapter 4723-13 of the Administrative Code, which is provided in accordance with section 5123.42 of the Revised Code, and when such procedure or nursing task is not the administration of oral prescribed medication or topical prescribed medication or a health-related activity as defined in rule 5123:2-6-01 of the Administrative Code.
- (b) The duration of the medical assistance rate modification shall be limited to the individual's waiver eligibility span, may be determined needed or no longer needed within that waiver eligibility span, and may be renewed annually.
- (6) Payment rates for routine participant-directed homemaker/personal care provided to individuals enrolled in the individual options waiver may be adjusted by the complex care rate modification to reflect the needs of an individual requiring total support from others upon determination by the county board that the individual meets the criteria set forth in paragraph (F)(6)(a) of this rule. The amount of the complex care rate modification applied to each fifteen-minute billing unit of service is contained in the appendix to this rule.
- (a) The county board shall determine that an individual meets the criteria for the complex care rate modification based on the individual's responses to specific questions on the Ohio developmental disabilities profile that indicate that the individual:
- (i) Must be transferred and moved; and
 - (ii) Cannot walk, roll from back to stomach, or pull himself or herself to a standing position; and

Proposed Amendments - August 15, 2019

- (iii) Requires total support in toileting, taking a shower or bath, dressing/undressing, and eating.
- (b) The duration of the complex care rate modification shall be limited to the individual's waiver eligibility span, may be determined needed or no longer needed within that waiver eligibility span, and may be renewed annually.
- (7) The team shall use a department-approved tool to assess and document in the individual service plan when on-site/on-call may be appropriate.
 - (a) In making the assessment, the team shall consider:
 - (i) Medical or psychiatric condition which requires supervision or supports throughout the night;
 - (ii) Behavioral needs which require supervision or supports throughout the night;
 - (iii) Sensory or motor function limitations during sleep hours which require supervision or supports throughout the night;
 - (iv) Special dietary needs, restrictions, or interventions which require supervision or supports throughout the night;
 - (v) Other safety considerations which require supervision or supports throughout the night; and
 - (vi) Emergency action needed to keep the individual safe.
 - (b) A provider shall be paid at the on-site/on-call rate for participant-directed homemaker/personal care contained in the appendix to this rule when:
 - (i) Based upon assessed and documented need, the individual service plan indicates the days of the week and the beginning and ending times each day when it is anticipated that an individual will require on-site/on-call; and
 - ~~(ii) The individual is asleep and requires staff to be available to provide participant-directed homemaker/personal care; and [Redundant - addressed in paragraph (B)(20).]~~
 - ~~(iii) The needs of the individual require staff to be on-site but not to remain awake; and [Redundant - addressed in paragraph (B)(20).]~~
 - ~~(iv)~~ (ii) On-site/on-call does not exceed eight hours for the individual in any twenty-four-hour period.
 - (c) ~~A~~ During an authorized on-site/on-call period, a provider shall be paid the routine participant-directed homemaker/personal care rate instead of the on-site/on-call rate for a period of time when an individual receives supports ~~during the night~~. In these instances, the provider shall document the date and beginning and ending times during which supports were provided to the individual.

*****Proposed Amendments - August 15, 2019*****

- (d) The payment rate modifications described in paragraphs (F)(4), (F)(5), and (F)(6) of this rule are not applicable to the on-site/on-call payment rates for participant-directed homemaker/personal care.
- (8) Payment for participant-directed homemaker/personal care shall not include room and board, items of comfort and convenience, or costs for the maintenance, upkeep, and improvement of the home.
- (9) Under the level one waiver, participant-directed homemaker/personal care is subject to the payment limitation set forth in paragraph (D)(1) of rule 5123-9-06 of the Administrative Code.

Proposed Amendments - August 15, 2019

APPENDIX

BILLING UNIT, SERVICE CODES, AND PAYMENT RATES FOR PARTICIPANT-DIRECTED HOMEMAKER/PERSONAL CARE

Participant-Directed Homemaker/Personal Care (Routine) - Common Law Employee

Billing Unit: Fifteen minutes

Service Codes: Individual Options Waiver ADC
Level One Waiver FDC
Self-Empowered Life Funding Waiver SDD

Payment Rates: Negotiable from the equivalent of minimum wage to the maximum rate of ~~\$4.49~~ \$5.17. When rate modifications apply, the payment rate is negotiable from the equivalent of minimum wage to the maximum rate of ~~\$4.49~~ \$5.17 plus applicable rate modifications. Payment for a group size of two shall be at seventy-five per cent of the rate for each individual. Payment for a group size of three shall be at seventy-five per cent of the rate of each individual.

Participant-Directed Homemaker/Personal Care (Routine) - Agency With Choice

Billing Unit: Fifteen minutes

Service Codes: Self-Empowered Life Funding Waiver SDC

Payment Rates: Payment for a group size of two shall be at seventy-five per cent of the rate for each individual.
Payment for a group size of three shall be at seventy-five per cent of the rate of each individual.

Serving 1 Individual	Serving 2 Individuals	Serving 3 Individuals
\$4.91 <u>\$5.87</u>	\$3.68 <u>\$4.40</u>	\$3.68 <u>\$4.40</u>

*****Proposed Amendments - August 15, 2019*****

Participant-Directed Homemaker/Personal Care (Routine) Behavioral Support Rate Modification

Billing Unit: Fifteen minutes

Rate Modification Amount: \$0.63

Instructions: Applicable to Participant-Directed Homemaker/Personal Care (Routine) rate. Indicate modification on the cost projection and payment authorization.

Participant-Directed Homemaker/Personal Care (Routine) Medical Assistance Rate Modification

Billing Unit: Fifteen minutes

Rate Modification Amount: \$0.12

Instructions: Applicable to Participant-Directed Homemaker/Personal Care (Routine) rate. Indicate modification on the cost projection and payment authorization.

Participant-Directed Homemaker/Personal Care (Routine) Complex Care Rate Modification

Billing Unit: Fifteen minutes

Rate Modification Amount: \$0.63

Instructions: Applicable to Participant-Directed Homemaker/Personal Care (Routine) rate provided to individuals enrolled in the Individual Options Waiver. Indicate modification on the cost projection and payment authorization.

*****Proposed Amendments - August 15, 2019*****

Participant-Directed Homemaker/Personal Care (On-Site/On-Call) - Common Law Employee

Billing Unit: Fifteen minutes

Service Codes: Individual Options Waiver AZC
Level One Waiver FZC
Self-Empowered Life Funding Waiver SZD

Payment Rates: The equivalent of minimum wage plus thirteen per cent to cover employer-related expenses. Payment for a group size of two shall be at seventy-five per cent of the rate for each individual. Payment for a group size of three shall be at seventy-five percent of the rate for each individual.

Participant-Directed Homemaker/Personal Care (On-Site/On-Call) - Agency With Choice

Billing Unit: Fifteen minutes

Service Codes: Self-Empowered Life Funding Waiver SZC

Payment Rates: The equivalent of minimum wage. Payment for a group size of two shall be at seventy-five per cent of the rate for each individual. Payment for a group size of three shall be at seventy-five percent of the rate for each individual.