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5123:2-9-40 **Home and community-based services - self-empowered life funding waiver.**

(A) Purpose

The purpose of this rule is to establish the self-empowered life funding waiver as a component of the medicaid home and community-based services program pursuant to sections 5111.85 and 5111.87 of the Revised Code. The self-empowered life funding waiver provides necessary waiver services to individuals who meet the level of care criteria for an intermediate care facility for the mentally retarded ("intermediate care facility") as set forth in rule 5101:3-3-07 of the Administrative Code, as well as other eligibility requirements established in this rule. The department, through an interagency agreement with the Ohio department of job and family services, administers the self-empowered life funding waiver on a daily basis in accordance with section 5111.91 of the Revised Code. Individuals enrolled in the self-empowered life funding waiver exercise participant direction through budget authority and/or employer authority.

(B) Definitions

- (1) "Adult" means an individual who is at least twenty-two years old or an individual who is under twenty-two years old and eligible for adult day support, integrated employment, supported employment-enclave, or vocational habilitation.
- (2) "Agency with choice" means an agency provider that acts as a co-employer with an individual. Under this arrangement, the individual acts as the "managing employer" and is responsible for hiring, managing, and dismissing staff. The agency with choice enables the individual to exercise choice and control over services while relieving him or her of the burden of carrying out financial matters and other legal responsibilities associated with the employment of workers. The agency with choice is considered the employer of staff who are selected, hired, and trained by the individual 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.
- (3) "Budget authority" means the individual has the authority and responsibility to manage his or her budget. This authority supports the individual in determining

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the budgeted dollar amount for each waiver service that will be provided to the individual and making decisions about the acquisition of waiver services that are authorized in the individual service plan (e.g., negotiating payment rates to providers within the applicable range as specified in rules adopted by the department).

- (4) "Child" means an individual who is under twenty-two years old and is not eligible for adult day support, integrated employment, supported employment-enclave, or vocational habilitation.
- (5) "Co-employer" means either an agency with choice or a financial management services entity under contract with the state that functions as the employer of staff recruited by the individual. The individual directs the staff and is considered their co-employer (also known as "managing employer"). The co-employer conducts all necessary payroll functions and is legally responsible for discharging the employment-related functions and duties for individual-selected staff with the individual based on the roles and responsibilities identified in the individual service plan for the two co-employers. The co-employer may function solely to support the individual's employment of workers or it may provide other employer-related supports to the individual, including providing traditional agency-based staff.
- (6) "Common law employer" means the individual is the legally responsible and liable employer of staff selected by the individual. The individual hires, supervises, and discharges staff. 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 staff who furnish supports. The individual functions as the common law employer or the co-employer of these staff.
- (10) "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 budget authority, financial management services includes, but is not limited to, paying invoices for waiver goods and services and tracking expenditures against the individual's budget. 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.

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Financial management services also includes acting as the employer of staff on behalf of an individual under the co-employer model of employer authority.

- (11)"Home and community-based services" means any federally approved medicaid waiver service provided to an individual enrolled in a waiver as an alternative to institutional care under Section 1915(c) of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C.A. 1396n, as amended, under which federal reimbursement is provided for designated home and community-based services to eligible individuals.
- (12)"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. An individual who is his or her own guardian may designate another person to assist the individual with development of the individual service plan and budget, selection of residence and providers, and negotiation of payment rates for services; the individual's designee shall not be employed by a county board or a provider, or a contractor of either.
- (13)"Individual service plan" means a written description of the services, supports, and activities to be provided to an individual.
- (14)"Participant direction" means the individual has authority to make decisions about some or all of his or her waiver services and accepts responsibility for taking a direct role in managing the services. Participant direction includes the exercise of budget authority and employer authority as set forth in paragraph (I) of this rule.
- (15)"Provider" means a person or agency certified or licensed by the department that has met the provider qualification requirements to provide the specific self-empowered life funding waiver service as specified in paragraph (M)(1) of this rule and holds a valid medicaid provider agreement in accordance with paragraph (M)(2) of this rule.
- (16) "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.
- (17) "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 individual service plan. The support broker 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

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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, assists the individual with creating the individual service plan, developing the budget, and doing day-to-day monitoring of the provision of services as specified in the individual service plan.

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

(C) Financial management services entity

The state shall contract with one or more entities to provide financial management services to individuals enrolled in the self-empowered life funding waiver.

(D) Application for the self-empowered life funding waiver

- (1) Individuals enrolling in the self-empowered life funding waiver must complete the Ohio department of job and family services form 02399, "Request for Medicaid Home and Community-Based Services." Forms are to be used in accordance with rule 5101:1-38-01.2 of the Administrative Code.
- (2) The county board is responsible for explaining to individuals requesting home and community-based services the services available through the self-empowered life funding waiver benefit package including the amount, scope, and duration of services and any applicable benefit package limitations.

(E) Eligibility criteria for the self-empowered life funding waiver

- (1) The individual enrolling in the self-empowered life funding waiver must be determined to require the level of care provided in an intermediate care facility and be eligible for intermediate care facility services upon initial enrollment and no later than every twelve months thereafter, as specified in rules 5101:3-3-07 and 5123:2-9-01 of the Administrative Code and in accordance with the process set forth in rule 5101:3-3-15.5 of the Administrative Code; and
- (2) The individual's medicaid eligibility has been established in accordance with Chapters 5101:1-37 to 5101:1-42 of the Administrative Code; and
- (3) The individual's health and welfare needs can be met through the utilization of self-empowered life funding waiver services at or below the federally-approved cost limitation and other formal and informal supports regardless of funding source; and
- (4) The individual must require, at a minimum, one waiver service, as described in paragraph (H) of this rule, to be considered eligible for this waiver; and

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- (5) The individual or the individual's guardian or the individual's designee must be willing and able to perform the duties associated with participant-direction (i.e., development of the individual service plan and budget, selection of residence and providers, and negotiation of payment rates for services) and is required to exercise budget authority or employer authority for at least one service the individual receives under the waiver.

(F) Eligibility criteria for reserved capacity for children with intensive behavioral needs

The department shall reserve capacity under the self-empowered life funding waiver for children with intensive behavioral needs who qualify based on an assessment approved by the department.

(G) Self-empowered life funding waiver enrollment, continued enrollment, and disenrollment

- (1) An individual who meets the eligibility criteria in paragraph (E) of this rule, or the individual's guardian, or the individual's designee, as applicable, shall be informed of the following:
 - (a) All services available on the self-empowered life funding waiver, as delineated in paragraph (H) of this rule, and any choices that the individual may make regarding those services;
 - (b) Any feasible alternative to the waiver; and
 - (c) The right to choose either institutional or home and community-based services.
- (2) The department shall allocate waiver slots to the county board in accordance with section 5111.872 of the Revised Code.
- (3) The county board shall offer available self-empowered life funding waiver slots to eligible individuals in accordance with applicable waiting list requirements set forth in rules 5101:3-41-05 and 5123:2-1-08 of the Administrative Code.
- (4) An individual's continued enrollment in the self-empowered life funding waiver shall be redetermined no less frequently than every twelve months beginning with the individual's initial enrollment date or subsequent redetermination date. Individuals must continue to meet the eligibility criteria specified in paragraph (E) of this rule to continue enrollment in the waiver.
- (5) The maximum number of individuals that can be enrolled in the self-empowered life funding waiver statewide shall not exceed the allowable number specified in the federally-approved waiver document.

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- (6) The individual must require at least one waiver service monthly, or, if less than monthly as described in the individual service plan, require monthly monitoring of the individual's health and welfare. If no services are planned to be delivered in a month, monthly monitoring of the individual's health and welfare must be required in the individual service plan, as designated in paragraph (K) of this rule, and must include at least periodic face-to-face monitoring.
- (7) Individuals enrolled in the self-empowered life funding waiver who are recommended for disenrollment from the waiver shall be given notification of hearing rights as established in paragraph (P) of this rule.
- (H) Self-empowered life funding waiver benefit package, as included in the federally-approved waiver document

The self-empowered life funding waiver benefit package is comprised of the following services:

- (1) Adult day support in accordance with rule 5123:2-9-17 of the Administrative Code;
- (2) Clinical/therapeutic intervention in accordance with rule 5123:2-9-41 of the Administrative Code;
- (3) Community inclusion in accordance with rule 5123:2-9-42 of the Administrative Code;
- (4) Community respite in accordance with rule 5123:2-9-34 of the Administrative Code;
- (5) Functional behavioral assessment in accordance with rule 5123:2-9-43 of the Administrative Code;
- (6) Integrated employment in accordance with rule 5123:2-9-44 of the Administrative Code;
- (7) Non-medical transportation in accordance with rule 5123:2-9-18 of the Administrative Code;
- (8) Participant-directed goods and services in accordance with rule 5123:2-9-45 of the Administrative Code;
- (9) Participant/family stability assistance in accordance with rule 5123:2-9-46 of the Administrative Code;

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- (10) Remote monitoring in accordance with rule 5123:2-9-35 of the Administrative Code;
- (11) Remote monitoring equipment in accordance with rule 5123:2-9-35 of the Administrative Code;
- (12) Residential respite in accordance with rule 5123:2-9-34 of the Administrative Code;
- (13) Support brokerage in accordance with rule 5123:2-9-47 of the Administrative Code;
- (14) Supported employment-enclave in accordance with rule 5123:2-9-16 of the Administrative Code; and
- (15) Vocational habilitation in accordance with rule 5123:2-9-17 of the Administrative Code.

(I) Participant-direction

The self-empowered life funding waiver is designed to support individuals who want to direct their services through exercise of budget authority and/or employer authority.

- (1) Individuals enrolled in the self-empowered life funding waiver may exercise budget authority for:
 - (a) Clinical/therapeutic intervention;
 - (b) Community inclusion;
 - (c) Community respite;
 - (d) Functional behavioral assessment;
 - (e) Integrated employment;
 - (f) Participant-directed goods and services;
 - (g) Participant/family stability assistance;
 - (h) Remote monitoring;
 - (i) Remote monitoring equipment;
 - (j) Residential respite; and

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- (k) Support brokerage.
- (2) Individuals enrolled in the self-empowered life funding waiver may exercise employer authority for:
 - (a) Community inclusion;
 - (b) Integrated employment;
 - (c) Participant-directed goods and services;
 - (d) Participant/family stability assistance; and
 - (e) Support brokerage.
- (3) Individuals enrolled in the self-empowered life funding waiver may not exercise either budget authority or employer authority for:
 - (a) Adult day support;
 - (b) Non-medical transportation;
 - (c) Supported employment-enclave; and
 - (d) Vocational habilitation.

(J) Benefit limitations

- (1) The cost of services available under the self-empowered life funding waiver shall not exceed the following overall benefit limitations:
 - (a) Adult -- Forty thousand dollars per waiver eligibility span.
 - (b) Child -- Twenty-five thousand dollars per waiver eligibility span.
- (2) The following services are subject to specific benefit limitations:
 - (a) The cost of community inclusion, community respite, remote monitoring, and residential respite, either alone or in any combination, shall not exceed twenty-five thousand dollars per waiver eligibility span.
 - (b) The cost of support brokerage shall not exceed eight thousand dollars per waiver eligibility span.

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- (c) An individual may receive only one functional behavioral assessment per waiver eligibility span, the cost of which shall not exceed one thousand five hundred dollars.
- (3) The benefit limitations in rule 5123:2-9-19 of the Administrative Code apply to adult day support, supported employment-enclave, and vocational habilitation provided under the self-empowered life funding waiver.
- (K) Individual service plan requirements
 - (1) All services shall be provided to an individual enrolled in the self-empowered life funding waiver pursuant to a written individual service plan.
 - (2) The service and support administrator shall ensure that the individual service plan is developed with the active participation of the individual, the support broker, the individual's guardian or representative, as applicable, and other persons selected by the individual including, but not limited to, family members and providers.
 - (a) The individual service plan shall list the self-empowered life funding waiver services and the non-waiver services, regardless of funding source, that are necessary to ensure the individual's health and welfare.
 - (b) The individual service plan shall contain the following medicaid required elements:
 - (i) Type of service to be provided;
 - (ii) Amount of service to be provided;
 - (iii) Frequency and duration of each service to be provided; and
 - (iv) Type of provider to furnish each service.
 - (c) The individual service plan shall be developed on at least an annual basis consistent with the individual's re-determination as indicated in paragraph (G)(4) of this rule or as the individual's needs change and in accordance with division 5123:2 of the Administrative Code.
 - (d) The individual service plan shall be developed to include only waiver services which are consistent with efficiency, economy, and quality of care. When combined with other non-waiver services, waiver services must ensure the health and welfare for the individual for whom the individual service plan is developed.

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- (e) When adult day support and/or vocational habilitation are identified in the individual service plan as the service or services to be provided, the individual service plan shall include a justification as to why these services are more appropriate than supported employment-enclave and/or integrated employment.
- (f) The individual service plan is subject to approval by the department and the Ohio department of job and family services pursuant to section 5111.871 of the Revised Code. Notwithstanding the procedures set forth in this rule, the Ohio department of job and family services may in its sole discretion, and in accordance with section 5111.852 of the Revised Code direct the department or the county board to amend individual service plans for individuals if the Ohio department of job and family services determines that such services are medically necessary and the procedures set forth in division 5101:3 of the Administrative Code would not accommodate a request for such medically necessary services.

(L) Free choice of provider

Individuals enrolled in the self-empowered life funding waiver shall be given free choice of qualified self-empowered life funding waiver providers in accordance with Chapters 5101:3-41 and 5123:2-9 of the Administrative Code. Providers are qualified if they meet the standards established in paragraph (M) of this rule.

(M) Provision of self-empowered life funding waiver services

- (1) Self-empowered life funding waiver services shall be provided by persons or agencies who have certification or licensure in accordance with section 5123.045 of the Revised Code and division 5123:2 of the Administrative Code; and
- (2) Self-empowered life funding waiver services shall be provided by persons or agencies who have a valid medicaid provider agreement in accordance with rule 5101:3-1-17.2 of the Administrative Code; and
- (3) Self-empowered life funding waiver services shall be provided only to individuals who have met the eligibility requirements in paragraph (E) of this rule and are enrolled in the self-empowered life funding waiver at the time of service delivery; and
- (4) Self-empowered life funding waiver services shall be provided in accordance with each individual service plan as specified in paragraph (K) of this rule; and
- (5) No provider of self-empowered life funding waiver services shall enter into or maintain any contract for the provision of waiver services except as noted in paragraph (M)(2) of this rule.

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(N) Service documentation

- (1) Services under the self-empowered life funding waiver shall not be considered as delivered unless the provider maintains service documentation.
- (2) A provider shall maintain all service documentation in an accessible location. The service documentation shall be available, upon request, for review by the centers for medicare and medicaid services, the Ohio department of job and family services, the department, a county board or regional council of governments that submits to the department payment authorization for the service, and those designated or assigned authority by the Ohio department of job and family services or the department to review service documentation.
- (3) A provider shall maintain all service documentation for a period of six years from the date of receipt of payment for the service or until an initiated audit is resolved, whichever is longer.
- (4) If a provider discontinues operations, the provider shall, within seven days of discontinuance, notify the county boards for the counties in which individuals to whom the provider has provided services reside, of the location where the service documentation will be stored, and provide each such county board with the name and telephone number of the person responsible for maintaining the records.
- (5) Claims for payment a provider submits for services delivered shall not be considered service documentation. Any information contained on the submitted claim shall not be substituted for any required service documentation information that the provider is required to maintain to validate payment for medicaid services.

(O) Payment standards

- (1) Services provided under the self-empowered life funding waiver shall be subject to the payment standards set forth in rules promulgated by the department.
- (2) Rule 5123:2-9-06 of the Administrative Code does not apply to services provided under the self-empowered life funding waiver.
- (3) Payment for services constitutes payment in full. Payment shall be made when:
 - (a) The service is identified in an approved individual service plan;
 - (b) The service is recommended for payment through the payment authorization process; and

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- (c) The service is provided by a provider selected by an individual enrolled in the self-empowered life funding waiver.
- (4) Payment for services shall not exceed amounts authorized through the payment authorization process for the individual's corresponding waiver eligibility span.
- (5) When a service is also available on the state plan, state plan services shall be billed first. Only services in excess of what is covered under the state plan shall be authorized.
- (6) Claims for payment shall be submitted to the financial management services entity in the format prescribed by the department. The financial management services entity shall inform county boards of the billing information submitted by providers in a manner and at the frequency necessary to assist the county boards to manage the waiver expenditures being authorized.
- (7) Claims for payment shall be submitted within three hundred thirty days after the service is provided. Payment shall be made in accordance with the requirements of rule 5101:3-1-19.7 of the Administrative Code, except that claims submitted beyond the three-hundred-thirty-day deadline shall be rejected. Claims for payment shall include the number of units of service.
- (8) Providers shall take reasonable measures to identify any third-party health care coverage available to the individual and file a claim with that third party in accordance with the requirements of rule 5101:3-1-08 of the Administrative Code.
- (9) For individuals with a monthly patient liability for the cost of self-empowered life funding waiver services, as defined in rule 5101:1-39-95 of the Administrative Code, and determined by the county department of job and family services for the county in which the individual resides, payment is available only for the waiver services delivered to the individual that exceed the amount of the individual's monthly patient liability. Verification that patient liability has been satisfied shall be accomplished as follows:
 - (a) The department shall provide notification to the appropriate county board identifying each individual who has a patient liability for waiver services and the monthly amount of the patient liability.
 - (b) The county board shall assign the waiver services to which each individual's patient liability shall be applied and assign the corresponding monthly patient liability amount to the provider that provides the preponderance of waiver services. The county board shall notify each individual and waiver service provider, in writing, of this assignment.

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- (c) Upon submission of a claim for payment, the designated waiver service provider shall report the waiver service to which the patient liability was assigned and the applicable patient liability amount on the claim for payment using the format prescribed by the department.
 - (10) The department, the Ohio department of job and family services, the centers for medicare and medicaid services, and/or the auditor of state may audit any funds a provider receives pursuant to this rule, including any source documentation supporting the claiming and/or receipt of such funds.
 - (11) Overpayments, duplicate payments, payments for services not rendered, payments for which there is no documentation of services delivered or the documentation does not include all the required items as set forth in rules promulgated by the department, or payments for services not in accordance with an approved individual service plan are recoverable by the department, the Ohio department of job and family services, the auditor of state, or the office of the attorney general. All recoverable amounts are subject to the application of interest in accordance with rule 5101:3-1-25 of the Administrative Code.
- (P) Due process rights and responsibilities
- (1) Any applicant for or recipient of self-empowered life funding waiver services may utilize the process set forth in section 5101.35 of the Revised Code, in accordance with division 5101:6 of the Administrative Code, for any purpose authorized by that statute and the rules implementing the statute. The process set forth in section 5101.35 of the Revised Code is available only to applicants, recipients, and their lawfully appointed authorized representatives. Providers shall have no standing in an appeal under this section.
 - (2) Applicants for and recipients of self-empowered life funding waiver services shall use the process set forth in section 5101.35 of the Revised Code for any challenge related to the type, amount/level, scope, or duration of services included in or excluded from an individual service plan.
- (Q) Ohio department of job and family services authority
- The Ohio department of job and family services retains final authority to establish payment rates for self-empowered life funding waiver services; to review and approve each service identified in an individual service plan that is funded through the self-empowered life funding waiver and the payment rate for the service; and to authorize the provision of and payment for waiver services through the payment authorization process.
- (R) Monitoring, compliance, and sanctions

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The Ohio department of job and family services shall conduct periodic monitoring and compliance reviews related to the self-empowered life funding waiver in accordance with Chapter 5111. of the Revised Code. Reviews may consist of, but are not limited to, physical inspections of records and sites where services are provided and interviews of providers, recipients, and administrators of waiver services. A financial management services entity under contract with the state, self-empowered life funding waiver providers, the department, and county board shall furnish to the Ohio department of job and family services, the centers for medicare and medicaid services, and the medicaid fraud control unit or their designees any records related to the administration and/or provision of self-empowered life funding waiver services. Individuals enrolled in the self-empowered life funding waiver shall cooperate with all monitoring, compliance, and quality assurance reviews conducted by the Ohio department of job and family services, the department, the county board, the centers for medicare and medicaid services, and the medicaid fraud control unit or their designees.

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