

TO BE RESCINDED

5123:2-9-18

HCBS waivers - non-medical transportation.

(A) Purpose

The purpose of this rule is to specify the service definition for non-medical transportation and to set forth the certification standards required under section 5123.16 of the Revised Code for providers of non-medical transportation services to individuals enrolled in HCBS waivers administered by the department.

(B) Definitions

- (1) "Agency provider" means a person, other than an individual provider or county board, who provides non-medical transportation to access adult day support, vocational habilitation, supported employment-enclave, or supported employment-community services, as these services are defined in rules 5123:2-9-16 and 5123:2-9-17 of the Administrative Code, under an HCBS waiver administered by the department.
- (2) "Applicant" means a person, agency, or county board seeking to become a certified provider of non-medical transportation services to enable an individual to access adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services, as these services are defined in rules 5123:2-9-16 and 5123:2-9-17 of the Administrative Code, under an HCBS waiver administered by the department.
- (3) "Attendant" means a person employed by the certified provider of non-medical transportation separate from the driver of the vehicle. Attendants are not required to be present to provide services defined within this rule, but, when present, are required to meet the qualifications described in paragraphs (C) and/or (D) of this rule.
- (4) "Commute" means the number of miles driven when one or more than one individual is riding in a vehicle while per-mile non-medical transportation services are being provided.
- (5) "County board" means a county board of mental retardation and developmental disabilities that performs HCBS waiver administration functions either independently, within a regional council of governments formed under Chapter 167. of the Revised Code, or through a private entity that contracts with a county board for administration of HCBS waivers and the entity does not provide any service other than administration to the individuals of that

county.

- (6) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (7) "Individual provider" means a self-employed person who provides non-medical transportation to access adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services, as these services are defined in rules 5123:2-9-16 and 5123:2-9-17 of the Administrative Code, under an HCBS waiver administered by the department. An individual provider does not employ, either directly or through a contract, anyone else to provide services.
- (8) "Modified vehicle" means a motor vehicle that has been designed, constructed, or fabricated and equipped to be used upon public streets and/or highways for transportation of individuals who require use of a wheelchair.
- (9) "Non-medical transportation" means transportation that is used by waiver enrollees solely to access adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community services, as specified by their individual service plans (ISP). Whenever possible, family, friends, neighbors, or community agencies that can provide this service without charge shall be used.
 - (a) Billing for the provision of non-medical transportation is limited to those times when an individual is transported to, from, and/or between sites where adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community waiver services are provided to the individual.
 - (b) Billing for the provision of non-medical transportation may occur when an individual is transported to a drop-off or transfer location from which the individual is then transported to and/or from the site(s) where adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community waiver services are provided to the individual.
 - (c) Nothing in this rule shall be interpreted to prohibit a provider of homemaker/personal care waiver services from transporting an individual to access adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community waiver services and billing for that service and

related mileage in conformance with the requirements in rule 5123:2-9-06 of the Administrative Code.

- (d) An individual's ISP shall indicate the type of certification required by persons who provide transportation services to enable the individual to access adult day support, vocational habilitation, supported employment-enclave, and/or supported employment-community waiver services. The ISP shall also indicate whether the non-medical transportation service is to be billed on a per-trip or per-mile basis and shall specify whether or not the service is to be provided in a modified vehicle and/or through public transportation.
- (10) "ODJFS" means the Ohio department of job and family services as established by section 121.02 of the Revised Code.
- (11) "Provider" means an agency, a county board, or an individual provider that:
 - (a) Is certified by the department to provide medicaid-funded home and community-based services; and
 - (b) Has a medicaid provider agreement from the ODJFS.
- (C) Standards and requirements for initial and continuing certification of providers who intend to bill the per-trip rate for the provision of non-medical transportation
 - (1) The applicant shall submit an application to the department in accordance with rule 5123:2-9-09 of the Administrative Code.
 - (2) The applicant shall provide to the department written assurance that the vehicle(s) in which non-medical transportation is to be provided is:
 - (a) A non-modified vehicle with a passenger capacity of nine or more; or
 - (b) A modified vehicle designed to transport one or more individuals sitting in wheelchairs and has permanent fasteners to secure the wheelchairs to the floor or side of the vehicle to prevent wheelchair movement, and that:
 - (i) Safety restraints are placed in the vehicle for the purpose of restraining the individual in the wheelchair;

- (ii) The vehicle is equipped with a stable access ramp or hydraulic lift; and
 - (iii) On each day the vehicle is used to provide non-medical transportation services, the driver of the vehicle shall conduct and document inspection and testing of the lift or access ramp and wheelchair restraints prior to transporting a wheelchair-bound individual.
- (3) The applicant shall provide to the department written assurance that:
 - (a) Individuals will be in the vehicle during the times the provider bills for the per-trip rate;
 - (b) The vehicle has secure storage space for removable equipment and passenger property;
 - (c) The vehicle is equipped with a communication system, that may include cellular communication, capable of two-way communication;
 - (d) The vehicle is equipped with a fire extinguisher and an emergency first-aid kit that are safely secured;
 - (e) The applicant shall agree that on each day the vehicle is used to provide non-medical transportation services, the first driver of the vehicle shall conduct and document a pre-trip inspection of lights, windshield washers/wipers, emergency equipment, mirrors, horn, tires, and brakes; and
 - (f) The applicant shall agree to provide evidence of completion of at least an annual vehicle inspection of each vehicle by the Ohio state highway patrol safety inspection unit or a certified mechanic and proof that the vehicle is in good working condition.
- (4) The applicant shall assure and, upon request by the department and/or ODJFS, the applicant shall disclose evidence of liability insurance coverage, in an amount of not less than five hundred thousand dollars per occurrence and not less than five hundred thousand dollars in the aggregate, for any cause for which the provider would be liable.
- (5) The applicant shall assure and, upon request by the department and/or ODJFS,

the applicant shall disclose evidence of bodily injury and property damage insurance coverage with solvent insurers licensed to do business in the state for any loss or damage resulting from any occurrence arising out of or caused by the operation of the vehicle. The insurance plan shall insure each vehicle for the sum of not less than one hundred thousand dollars for bodily injury to or death of more than one person in any one accident and for the sum of fifty thousand dollars for damage to property arising from one accident.

(6) The applicant shall provide to the department written assurance that each driver and attendant in the vehicle shall:

- (a) Comply with local, state, and federal laws and regulations;
- (b) Have proof of current successful completion of department-approved first aid and cardiopulmonary resuscitation (CPR) training or emergency medical technician certificate prior to providing non-medical transportation services and thereafter;
- (c) Provide evidence prior to employment that he/she is not listed on the abuser registry established pursuant to sections 5123.50 to 5123.54 of the Revised Code;
- (d) Provide evidence prior to employment that he/she is not listed on the nurse aide registry established under section 3721.32 of the Revised Code indicating that the director of the Ohio department of health has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the person;
- (e) Comply with the requirements for background investigations established under section 5126.281 of the Revised Code and rules 5123:2-1-05 and 5123:2-1-05.1 of the Administrative Code;
- (f) Complete training at the time of employment and annually thereafter in the provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and
- (g) Complete training at the time of employment and annually thereafter in the requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety.

(7) The applicant shall provide to the department written assurance that each driver,

in accordance with Chapter 4507. of the Revised Code, shall:

- (a) Possess a valid driver's license and be eighteen years of age or older.
- (b) Provide a signed statement from a licensed physician declaring that he/she does not have a medical condition, a physical condition including an uncorrected vision and/or hearing impairment, or a mental condition which could interfere with safe driving, safe passenger assistance, the provision of emergency treatment activity, or could jeopardize the health or welfare of individuals being transported. A person employed as a driver prior to the effective date of this rule may be deemed to meet the requirements of this paragraph when the provider maintains verification that a physical examination was completed at the time of the person's hire.
- (c) Complete testing for controlled substances by a laboratory certified for such testing and be determined to be drug free prior to providing and billing for non-medical transportation waiver services. Controlled substance and alcohol testing shall occur within ten hours following an incident when the certified provider, a contractor and/or employee of the certified provider, and/or an employee of the contractor was providing non-medical transportation waiver services and was involved in a motor vehicle accident and was the driver of the vehicle when:
 - (i) The accident involves the loss of human life; or
 - (ii) The driver receives a citation that was written within eight hours of the accident under state or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (b) One or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- (d) Present a driver's abstract prepared by the bureau of motor vehicles no earlier than fourteen days prior to the date of initial employment as a driver and at least once each calendar year thereafter. Persons having

six or more points on their driving records are prohibited from providing non-medical transportation waiver services.

- (e) Report, in writing, to the certified provider, if a contractor, an employee of the contractor, and/or an employee of the certified provider, who is the driver of a vehicle in which non-medical transportation is provided is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code. Individual providers shall report, in writing, to the department. The report shall be made no later than fourteen calendar days after the date of such charge, conviction, or guilty plea.
- (D) Standards and requirements for initial and continuing certification of providers who intend to bill the per-mile rate for the provision of non-medical transportation
- (1) Per-mile payment rates have been constructed to include the cost of the vehicle driver and shall be used for non-modified vehicles with a passenger capacity of eight or fewer individuals. In addition, other applicants to provide non-medical transportation who do not meet the qualifications necessary to bill on a per-trip basis are afforded the opportunity to become certified and bill on a per-mile basis when the vehicles, the providers, and the drivers/attendants of these vehicles meet the certification standards related to per-mile payment rates.
 - (2) Calculation of the per-mile payment amount for a commute assures that each passenger in the vehicle shares equally in the total cost of the commute.
 - (a) Passengers include waiver enrollees and non-waiver enrollees for purposes of determining the number of individuals in the vehicle during the commute.
 - (b) The number of miles for each commute is calculated from the point where the first waiver enrollee riding in the vehicle is picked up and the point where the last waiver enrollee in the same vehicle is dropped off at his/her destination.
 - (c) When per-mile non-medical transportation services are provided and billed through the waiver, the provider shall not bill for homemaker/personal care, adult day support, vocational habilitation, supported employment-enclave, or supported employment-community waiver services provided by the driver of the vehicle during the time in which the commute occurs.

- (3) The applicant shall submit an application to the department in accordance with rule 5123:2-9-09 of the Administrative Code.
- (4) The applicant shall provide to the department written assurance that:
 - (a) The vehicle has secure storage space for removable equipment and passenger property;
 - (b) The vehicle is equipped with a communication system, that may include cellular communication, capable of two-way communication;
 - (c) The vehicle is equipped with a fire extinguisher and an emergency first-aid kit that are safely secured;
 - (d) The applicant shall agree that on each day the vehicle is used to provide non-medical transportation services, the first driver of the vehicle shall conduct and document a pre-trip inspection of lights, windshield washers/wipers, emergency equipment, mirrors, horn, tires, and brakes;
 - (e) The applicant shall agree to provide evidence of completion of at least an annual vehicle inspection of each vehicle by the Ohio state highway patrol safety inspection unit or a certified mechanic and proof that the vehicle is in good working condition;
 - (f) The applicant shall assure and, upon request by the department and/or ODJFS, the applicant shall disclose evidence of liability insurance coverage, in an amount of not less than five hundred thousand dollars per occurrence and not less than five hundred thousand dollars in the aggregate, for any cause for which the provider would be liable; and
 - (g) The applicant shall assure and, upon request by the department and/or ODJFS, the applicant shall disclose evidence of bodily injury and property damage insurance coverage with solvent insurers licensed to do business in the state for any loss or damage resulting from any occurrence arising out of or caused by the operation of the vehicle. The insurance plan shall insure each vehicle for the sum of not less than one hundred thousand dollars for bodily injury to or death of more than one person in any one accident and for the sum of fifty thousand dollars for damage to property arising from one accident.
- (5) The applicant shall provide to the department written assurance that each driver

and attendant on the vehicle shall:

- (a) Comply with local, state, and federal laws and regulations;
 - (b) Have proof of current successful completion of department-approved first aid and cardiopulmonary resuscitation (CPR) training or emergency medical technician certificate prior to providing non-medical transportation services and thereafter;
 - (c) Provide evidence prior to employment that he/she is not listed on the abuser registry established pursuant to sections 5123.50 to 5123.54 of the Revised Code;
 - (d) Provide evidence prior to employment that he/she is not listed on the nurse aide registry established pursuant to section 3721.32 of the Revised Code indicating that the director of the Ohio department of health has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the person;
 - (e) Comply with the requirements for background investigations established under section 5126.281 of the Revised Code and rules 5123:2-1-05 and 5123:2-1-05.1 of the Administrative Code;
 - (f) Complete training at the time of employment and annually thereafter in the provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and
 - (g) Complete training at the time of employment and annually thereafter in the requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety.
- (6) The applicant shall provide to the department written assurance that each driver, in accordance with Chapter 4507. of the Revised Code, shall:
- (a) Possess a valid driver's license and be eighteen years of age or older.
 - (b) Complete testing for controlled substances by a laboratory certified for such testing and be determined to be drug free prior to providing and billing for non-medical transportation waiver services. Controlled substance and alcohol testing shall occur within ten hours following an incident when the certified provider, a contractor and/or employee of

the certified provider, and/or an employee of the contractor was providing non-medical transportation waiver services and was involved in a motor vehicle accident and was the driver of the vehicle when:

- (i) The accident involves the loss of human life; or
- (ii) The driver receives a citation that was written within eight hours of the accident under state or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (b) One or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- (c) Report, in writing, to the certified provider, if a contractor, an employee of the contractor, and/or an employee of the certified provider, who is the driver of a vehicle in which non-medical transportation is provided is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code. Individual providers shall report, in writing, to the department. The report shall be made no later than fourteen calendar days after the date of such charge, conviction, or guilty plea.
- (d) Present a driver's abstract prepared by the bureau of motor vehicles no earlier than fourteen days prior to the date of initial employment as a driver and at least once each calendar year thereafter. Persons having six or more points on their driving records are prohibited from providing non-medical transportation waiver services.

(E) Commercial vehicles

Owners and operators of commercial vehicles, including buses, livery vehicles, and taxicabs, that are available for public use and also are used to provide non-medical transportation services to waiver enrollees are not subject to the requirements of this rule. Owners and operators of these types of vehicles are required to meet all federal, state, and local requirements pertaining to the maintenance and operation of these vehicles as well as the fares charged for their use.

(F) Subcontractors of certified agency and/or county board providers

Agencies and/or county boards intending to provide non-medical transportation services through the use of subcontractors shall assure that the subcontractors and employees of the subcontractors meet all requirements of this rule, unless the subcontract involves the use of one or more vehicle types described in paragraph (E) of this rule, and shall maintain verification of these assurances. Assurances shall be obtained in each instance when a contract for the provision of non-medical transportation is issued or renewed with a subcontractor.

(G) Training documentation

The certified provider shall maintain a written record, which may include an electronic record, to verify that they, their employees, subcontractors, and employees of subcontractors meet all certification requirements contained in this rule. This information shall be maintained for each person who has received required training and/or has met other related certification standards. This information shall be presented upon request by the department or ODJFS.

(H) Service documentation

(1) The certified provider or sub-contractor of a certified provider of per-trip and per-mile non-medical transportation services shall maintain records that meet the documentation requirements contained in paragraph (B) of rule 5123:2-9-05 of the Administrative Code by recording for each trip or each commute the following information:

- (a) Date of service;
- (b) Place of service (i.e., vehicle license plate number);
- (c) Name of waiver enrollee for whom the service is being billed;
- (d) Medicaid identification number of waiver enrollee for whom the service is being billed;
- (e) Name of provider;
- (f) Provider identifier/contract numbers;
- (g) Signature of the driver of the vehicle or initials of the driver of the vehicle

if the signature and corresponding initials are on file with the provider;

- (h) Type of non-medical transportation services (i.e., per-trip or per-mile) provided;
 - (i) Number of miles in each distinct trip and/or commute, as indicated by recording beginning and ending odometer readings;
 - (j) Names of all other passengers/riders, including paid staff or volunteers, who were in the vehicle during any portion of the trip and/or commute; and
 - (k) Beginning and ending times of the trip and/or commute.
- (2) When commercial vehicles are used to provide non-medical transportation services, the waiver provider billing the service shall maintain the following documentation to meet the requirements contained in paragraph (B) of rule 5123:2-9-05 of the Administrative Code:
- (a) Date of service or, in the case of a purchase of bus fares, taxi tokens, or similar types of travel vouchers to be used on more than one date, date of purchase;
 - (b) Place of service (i.e., name of commercial vehicle company used);
 - (c) Name of waiver enrollee for whom the service is being billed;
 - (d) Medicaid identification number of waiver enrollee for whom the service is being billed;
 - (e) Name of the certified provider billing for the service;
 - (f) Provider identifier/contract number; and
 - (g) Receipt issued by the commercial vehicle company for the service provider indicating the amount paid.

(I) Certification and denial, suspension, or revocation of certification

- (1) The department may deny the certification application of an applicant for failure

to comply with the standards set forth in this rule pursuant to rule 5123:2-9-09 of the Administrative Code.

- (2) After being certified in accordance with this rule, providers shall comply with the continuing certification standards set forth in this rule. Certified providers shall be subject to monitoring and compliance reviews conducted as set forth in rule 5123:2-9-08 of the Administrative Code. Failure to comply with the standards set forth in this rule for continuing certification and/or training of certified providers, employees of certified providers, subcontractors, or employees of subcontractors may result in corrective action by the department up to and including suspension or revocation of provider certification as set forth in rule 5123:2-9-08 of the Administrative Code.
- (3) When denying, suspending, or revoking certification under this rule, the department shall comply with the notice and hearing requirements of Chapter 119. of the Revised Code.

Effective:

R.C. 119.032 review dates: 12/30/2011

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5111.871, 5123.04, 5123.045, 5123.082, 5123.16,
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