

# \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

5123:2-9-14      **Home and community-based services waivers - vocational habilitation under the individual options and level one waivers.**  
[This rule will replace the provisions related to Vocational Habilitation in existing rules 5123:2-9-17 and 5123:2-9-19.]

## (A) Purpose

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

## (B) Definitions

- (1) "Acuity assessment instrument" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (2) "Adult day support" has the same meaning as in rule 5123:2-9-17 of the Administrative Code.
- (3) "Agency provider" means an entity that employs persons for the purpose of providing services for which the entity must be certified under rules adopted by the department.
- (4) "Budget limitation" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (5) "County board" means a county board of developmental disabilities.
- (6) "Daily billing unit" means a billing unit and corresponding payment rate that shall be used when between five and seven hours of adult day support, supported employment-enclave, vocational habilitation, or a combination of adult day support and vocational habilitation are provided by the same provider to the same individual during one calendar day.
- (7) "Department" means the Ohio department of developmental disabilities.
- (8) "Fifteen-minute billing unit" means a billing unit that is equivalent to fifteen minutes of actual service delivery time. Minutes of service provided to an eligible individual for adult day support, vocational habilitation, a combination of adult day support and vocational habilitation, supported employment-community, and/or supported employment-enclave may be accrued by one provider over one calendar day. The number of units is equivalent to the total number of minutes of each type of service, as distinguished by service codes, provided during the day to the individual, divided by fifteen minutes. One additional unit of service may be added to this quotient if the remainder equals

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

eight or more minutes of service. [\[This is paragraph \(B\)\(9\) of existing rule 5123:2-9-19.\]](#)

- (9) "Independent provider" means a self-employed person who provides services for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.
- (10) "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.
- (11) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (12) "Integrated community work setting" means the paid employment of an individual in competitive employment, supported employment (as one person or as a member of a group), or self-employment through the operation of a business that takes place outside of a segregated, sheltered, or facility-based program.
- (13) "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.
- (14) "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.
- (15) "Staff intensity" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (16) "Supported employment-community" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.
- (17) "Supported employment-enclave" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.
- (18) "Vocational habilitation" means services designed to teach and reinforce habilitation concepts related to work including responsibility, attendance task completion, problem solving, social interaction, motor skill development, and safety. Activities that constitute vocational habilitation include: [\[This is paragraph \(B\)\(18\) of existing rule 5123:2-9-17.\]](#)

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

- (a) Vocational assessment that is conducted through formal and informal means for the purpose of developing a vocational profile and employment goals. The profile may contain information about the individual's educational background, work history, and job preferences; will identify the individual's strengths, values, interests, abilities, available natural supports, and access to transportation; and will identify the earned and unearned income available to the individual.
- (b) Ongoing ~~job~~ support including direct supervision, telephone and/or in-person monitoring and/or counseling, and the provision of some or all of the following supports to promote the individual's ~~job~~ adjustment and retention.
  - (i) Developing a systematic plan of ~~on-the-job~~ instruction and support, including task analyses.
  - (ii) Assisting the individual to perform activities that result in his or her social integration with other individuals and persons employed at the worksite.
  - (iii) Supporting and training the individual in the use of generic and/or individualized transportation services.
  - (iv) Providing services and training that assist the individual with problem solving and meeting job-related expectations.
  - (v) Assisting the individual to use natural supports and generic community resources.
  - (vi) Providing training to the individual to maintain current skills, enhance personal hygiene, learn new work skills, attain self-determination goals, and improve social skills, and modify behaviors that ~~are interfering with the continuation of his or her~~ would interfere with employment.
  - (vii) Developing and implementing a plan to assist the individual to transition from his or her vocational habilitation setting to supported and/or competitive employment, emphasizing the use of natural supports.
  - (viii) Assisting the individual with self-medication or provision of medication administration for prescribed medication and assisting the individual with or performing health-related activities as identified in rule 5123:2-6-01 of the Administrative Code, which a licensed nurse agrees to delegate in accordance with the requirements in Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters. With nursing delegation, a provider may:

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

- (a) Perform health-related activities;
- (b) Administer oral and topical prescribed medications;
- (c) Administer prescribed medications through gastrostomy and jejunostomy tubes if the tubes are stable and labeled; and /or
- (d) Perform routine tube feedings if the gastrostomy and jejunostomy tubes are stable and labeled.

### (C) Provider qualifications

- (1) Vocational habilitation shall be provided by an agency provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of job and family services.
- (2) Vocational habilitation shall not be provided by an independent provider.
- (3) An applicant seeking approval to provide vocational habilitation shall meet the requirements of this rule and complete and submit an application and adhere to the requirements of rule 5123:2-2-01 of the Administrative Code.
- (4) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of vocational habilitation successfully completes, prior to unsupervised contact with individuals, either:
  - (a) The "Professional Advancement Through Training and Education in Human Services Certificate of Initial Proficiency" ([PATHS](#)) program; or
  - (b) An orientation program that addresses, but is not limited to: [\[Topics are from the OPRA/OSCB proposal.\]](#)
    - (i) Health and safety;
    - (ii) Positive behavior support;
    - (iii) Services that comprise vocational habilitation as it is defined in paragraph (B)(18) of this rule; and
    - (iv) The expectation that vocational habilitation will eventually lead to an individual's employment in an integrated community work setting.
- (5) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of vocational habilitation,

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

during the first year of employment/contract with the agency provider: [\[This is from the OPRA/OSCB proposal.\]](#)

- (a) Is assigned and has access to a mentor employed by the agency provider or contractor;
- (b) Successfully completes on-the-job training specific to each individual he or she serves that includes, but is not limited to:
  - (i) Requirements set forth in the individual service plan including skill development goals, service/support activities, behavior support plan, planned interventions, and related documentation requirements;
  - (ii) The individual's preferences and strengths;
  - (iii) The individual's diagnoses and related needs;
  - (iv) The individual's care needs including nutrition, diet and mealtime support, restroom assistance, mobility needs, lifting, and general supervision/support requirements;
  - (v) Medication administration and delegated nursing, as applicable;
  - (vi) Teaching techniques and related documentation requirements; and
  - (vii) Management of the individual's funds and related documentation requirements.
- (c) Successfully completes [at least](#) eight hours of on-the-job training specific to the provision of vocational habilitation that includes, but is not limited to:
  - (i) Skill building in vocational assessment, ongoing job supports, task analysis, job-seeking skills, on-the-job instruction and support, developing natural supports, identifying community resources, personal adjustment, work adjustment, and vocational planning;
  - (ii) Benefits, work incentives, and employer tax credits; and
  - (iii) Self-determination which includes assisting the individual to develop self-advocacy skills, to exercise his or her civil rights, to exercise control and responsibility over the services he/she receives, and to acquire skills that enable him/her to become more independent, productive, and integrated within the community.
- (6) An agency provider shall ensure that a written plan identifying training priorities is developed for each employee, contractor, and employee of a contractor who is

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

engaged in direct provision of vocational habilitation. The training priorities shall be consistent with the needs of individuals served, best practice, and the provider's mission, vision, and strategic plan. The written plan of training priorities shall be updated at least once every twelve months and shall identify who is responsible for providing the training and projected timelines for completion of the training. [\[This is from the OPRA/OSCB proposal.\]](#)

- (7) An agency provider shall ensure that each employee, contractor, and employee of a contractor of an agency provider who is engaged in direct provision of vocational habilitation, commencing in the second year of employment/contract with the agency provider, annually completes at least eight hours of training, in accordance with his or her written plan of training priorities.
  - (a) The training shall enhance the skills and competencies of the employee/contractor relevant to his or her job responsibilities and shall include, but is not limited to:
    - (i) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; [\[Reaffirming requirement of existing rule 5123:2-2-01.\]](#)
    - (ii) The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety including a review of health and safety alerts issued by the department since the previous year's training; [\[Reaffirming requirements of existing rules 5123:2-2-01 and 5123:2-17-02.\]](#)
    - (iii) The requirements relative to the employee's/contractor's role in providing behavior support to the individuals he or she serves; and [\[This is from OPRA/OSCB proposal.\]](#)
    - (iv) Best practices related to the provision of vocational habilitation.
  - (b) The training may be structured or unstructured and may include, but is not limited to, lectures, seminars, formal coursework, workshops, conferences, demonstrations, visitations or observations of other facilities/services/programs, distance and other means of electronic learning, video and audio-visual training, and staff meetings. [\[This is structured in the same manner as Homemaker/Personal Care and licensed facility rules.\]](#)
- (8) An agency provider shall ensure that a written record of training completed by each employee, contractor, and employee of a contractor who is engaged in direct provision of vocational habilitation is maintained. The written record shall include a description of the training completed including a training syllabus and copies of training materials, the date of training, the duration of training, the instructor's name if applicable, and the mechanism used to establish

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

the employee's/contractor's competency in areas of training. The written record shall be made available upon request by the Ohio department of job and family services, the department, or the county board. [\[This is from OPRA/OSCB proposal.\]](#)

- (9) Failure to comply with this rule and 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) Vocational habilitation shall be provided pursuant to an individual service plan that conforms to the requirements of paragraph (H) of rule 5101:3-40-01 of the Administrative Code or paragraph (H) of rule 5101:3-42-01 of the Administrative Code, as applicable. The optimal outcome of vocational habilitation is competitive, integrated employment; accordingly, vocational habilitation is expected to occur over a defined period of time and employment-related goals shall be specified in the individual service plan.
- (2) The service and support administrator shall ensure that an acuity assessment instrument is completed, the individual is assigned to a staff intensity group, and a budget limitation is determined in accordance with rule 5123:2-9-19 of the Administrative Code when the need for vocational habilitation has been identified through development of the individual service plan.
- (3) ~~Vocational habilitation is available to individuals who are no longer eligible for educational services based on their graduation and/or receipt of a diploma/equivalency certificate and/or their permanent discontinuation of educational services within parameters established by the Ohio department of education.~~ The service and support administrator shall ensure that documentation is maintained to demonstrate that the service provided as vocational habilitation to an individual enrolled in an individual options or level one waiver is not otherwise available as vocational rehabilitation services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Education Act. [\[This is based on paragraph \(B\)\(18\)\(a\) of existing rule 5123:2-9-17 and CMS Informational Bulletin on development and implementation of 1915\(c\) waivers regarding employment and employment-related services dated September 16, 2011.\]](#)
- (4) Individuals receiving vocational habilitation shall be compensated in accordance with applicable federal laws and regulations. Individuals who participate in a work program that meets the criteria for employment of workers with disabilities under certificates at special minimum wage rates issued by the department of labor, as required by the Fair Labor Standards Act, and in accordance with the requirements of 29 C.F.R. Part 525 "Employment of Workers with Disabilities Under Special Certificates" are eligible for vocational

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

habilitation. [This is based on paragraph (B)(18)(b) of existing rule 5123:2-9-17.]

- (5) Vocational habilitation shall generally be made available four or more hours per day on a regularly scheduled basis for one or more days per week, unless provided as an adjunct to other day activities included in an individual service plan. [This is paragraph (B)(18)(d) of existing rule 5123:2-9-17.]
- (6) Vocational habilitation shall take place in a non-residential setting separate from any home or facility in which any individual resides.
- (7) A provider of vocational habilitation shall comply with applicable laws, rules, and regulations of the federal, state, and local governments pertaining to the physical environment (building and grounds) where vocational habilitation is provided. A provider of vocational habilitation shall be informed of and comply with standards (e.g., Americans with Disabilities Act of 1990) applicable to the service setting. [The first sentence is paragraph (C)(5) of existing rule 5123:2-9-17.]
- (8) A provider of vocational habilitation shall recognize changes in the individual's condition and behavior as well as safety and sanitation hazards, report to the service and support administrator, and record the changes in the individual's written record. [This is paragraph (C)(3) of existing rule 5123:2-9-17.]

### (E) Documentation of services

Service documentation for vocational habilitation shall include each of the following to validate payment for medicaid services:

- (1) Type of service.
- (2) Date of service.
- (3) Place of service.
- (4) Name of individual receiving service.
- (5) Medicaid identification number of individual receiving service.
- (6) Name of provider.
- (7) Provider identifier/contract number.
- (8) 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.

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

- (9) 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.
- (10) Number of units of the delivered service or continuous amount of uninterrupted time during which the service was provided.
- (11) Staff intensity ratio. The portion of direct services staff needed as expressed in decimals in appendix A to rule 5123:2-9-19 of the Administrative Code. [\[This is from appendix E of existing rule 5123:2-9-19.\]](#)
- (12) Service codes that correlate to the service codes listed in appendix A to this rule and the billing documents submitted by the provider for payment of waiver services delivered. [\[This is from appendix E of existing rule 5123:2-9-19.\]](#)
- (13) In/out times for services delivered. One sign-in and one sign-out entry may be used when the same staff member expends continuous blocks of time to deliver the same serve in one day to an individual.
- (14) Minutes of service delivered each day, by service code. When adult day support and vocational habilitation are provided to the same individual on one day by one provider, the minutes of service may be documented for the day and billed using the adult day support and vocational habilitation service code identified in appendix A to this rule.
- (15) Verification of staff intensity ratios per calendar day. Indicate for each individual enrolled in a waiver:
  - (a) The names of other individuals present when waiver services are provided.
  - (b) The names of the direct services staff who delivered services.
  - (c) The initials of the direct services staff indicating all time periods/spans during which they provided waiver services to the individual. (Legends indicating signatures and initials of direct services staff may be retained separately from documentation sheets.)
  - (d) The average staff intensity ratio for the combined time periods when one or more waiver services are provided during the calendar day by direct services staff employed by the same provider.
- (16) As applicable, the name of the individual's employer, the number of hours worked by the individual, and the hourly wage earned by the individual.

### (F) Payment standards

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

- (1) The billing units, service codes, and payment rates for vocational habilitation are contained in appendix A to this rule. Payment rates include an adjustment based on the county cost-of-doing-business category. The cost-of-doing business category for an individual is the category assigned to the county in which the service is actually provided for the preponderance of time. The cost-of-doing-business categories are contained in appendix B to this rule.
- (2) The base rate paid to a provider of vocational habilitation shall be adjusted to reflect the number of individuals sharing services.
- (3) The minimum number of direct services staff required to support the billing for adult day support, supported employment-enclave, and/or vocational habilitation may be determined by aggregating the staff intensity needs for all individuals (including individuals who are enrolled in the individual options or level one waivers and those who are not) receiving services from one provider in one service delivery location during a calendar day. Calculation of the minimum number of direct services staff required to meet the staff intensity needs at a waiver service delivery location will depend on the number of individuals receiving services in one day, the times during the day in which they receive services, and their staff intensity needs. A provider shall bill only for those times during the day in which waiver services were delivered to individuals whose staff intensity needs were met. [\[This is from appendix E of existing rule 5123:2-9-19.\]](#)
- (4) Payment for adult day support, supported employment-community, supported employment-enclave, and vocational habilitation, alone or in combination, shall not exceed the budget limitations contained in appendix C to rule 5123:2-9-19 of the Administrative Code.

Replaces:	Part of 5123:2-9-17, Part of 5123:2-9-19
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R.C. 119.032 review dates:	XX/XX/XXXX
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# \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

## APPENDIX A

### BILLING UNITS, SERVICE CODES, AND PAYMENT RATES FOR VOCATIONAL HABILITATION

[This is from Appendix C of existing rule 5123:2-9-19.]

#### Vocational Habilitation

Billing Unit: Fifteen minutes and daily

Service Codes: Individual Options Waiver 15-Minute Unit AVF  
 Individual Options Waiver Daily Unit AVH  
 Level One Waiver 15-Minute Unit FVF  
 Level One Waiver Daily Unit FVH

Payment Rate: Listed below by cost-of-doing-business (CODB) category. Rates are presented on a per-person basis, segregated by group assignment and related staff intensity requirements. Rates shall not be further altered to reflect actual group size.

CODB Category	Group A		Group A-1		Group B		Group C	
	15-Min Rate	Daily Rate	15-Min Rate	Daily Rate	15-Min Rate	Daily Rate	15-Min Rate	Daily Rate
1	\$1.58	\$39.50	\$1.19	\$29.56	\$2.84	\$71.00	\$4.73	\$118.25
2	\$1.59	\$39.75	\$1.20	\$29.86	\$2.87	\$71.75	\$4.78	\$119.50
3	\$1.61	\$40.25	\$1.21	\$30.17	\$2.90	\$72.50	\$4.83	\$120.75
4	\$1.63	\$40.75	\$1.22	\$30.47	\$2.93	\$73.25	\$4.88	\$122.00
5	\$1.64	\$41.00	\$1.23	\$30.78	\$2.96	\$74.00	\$4.93	\$123.25
6	\$1.66	\$41.50	\$1.25	\$31.09	\$2.99	\$74.75	\$4.98	\$124.50
7	\$1.68	\$42.00	\$1.26	\$31.39	\$3.02	\$75.50	\$5.02	\$125.50
8	\$1.69	\$42.25	\$1.27	\$31.70	\$3.04	\$76.00	\$5.07	\$126.75

#### Adult Day Support and Vocational Habilitation

Billing Unit: Fifteen minutes and daily

Service Codes: Individual Options Waiver 15-minute unit AXF  
 Individual Options Waiver daily unit AXD  
 Level One Waiver 15-minute unit FXF  
 Level One Waiver daily unit FXD

## \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

**Payment Rate:** The billing codes listed below by cost-of-doing-business (CODB) category shall be used when one provider provides a combination of adult day support and vocational habilitation services to one individual in one calendar day. While service units may be combined to result in either a daily rate or accumulated fifteen-minute units, the provider shall not bill for a daily unit of this service on the same day that fifteen-minute units of this combined service are billed for the same individual. Rates are presented on a per-person basis, segregated by group assignment and related staff intensity requirements. Rates shall not be further altered to reflect actual group size.

CODB Category	Group A		Group A-1		Group B		Group C	
	15-Min Rate	Daily Rate	15-Min Rate	Daily Rate	15-Min Rate	Daily Rate	15-Min Rate	Daily Rate
1	\$1.58	\$39.50	\$1.19	\$29.56	\$2.84	\$71.00	\$4.73	\$118.25
2	\$1.59	\$39.75	\$1.20	\$29.86	\$2.87	\$71.75	\$4.78	\$119.50
3	\$1.61	\$40.25	\$1.21	\$30.17	\$2.90	\$72.50	\$4.83	\$120.75
4	\$1.63	\$40.75	\$1.22	\$30.47	\$2.93	\$73.25	\$4.88	\$122.00
5	\$1.64	\$41.00	\$1.23	\$30.78	\$2.96	\$74.00	\$4.93	\$123.25
6	\$1.66	\$41.50	\$1.25	\$31.09	\$2.99	\$74.75	\$4.98	\$124.50
7	\$1.68	\$42.00	\$1.26	\$31.39	\$3.02	\$75.50	\$5.02	\$125.50
8	\$1.69	\$42.25	\$1.27	\$31.70	\$3.04	\$76.00	\$5.07	\$126.75

# \*\*\* Proposed New Rule - December 9, 2011 \*\*\*

## APPENDIX B

### COST-OF-DOING-BUSINESS CATEGORIES

[This is from Appendix A of existing rule 5123:2-9-19.]

Category 1: Adams  
Athens  
Belmont  
Gallia  
Guernsey  
Harrison  
Jefferson  
Meigs  
Monroe  
Pike  
Ross  
Scioto  
Tuscarawas  
Vinton  
Washington

Category 2: Carroll  
Crawford  
Defiance  
Highland  
Hocking  
Jackson  
Lawrence  
Mercer  
Morgan  
Muskingum  
Noble  
Paulding  
Perry  
Van Wert  
Wyandot

\*\*\* Proposed New Rule - December 9, 2011 \*\*\*

Category 3: Allen  
Auglaize  
Brown  
Clinton  
Columbiana  
Coshocton  
Fayette  
Hancock  
Holmes  
Knox  
Marion  
Morrow  
Putnam  
Richland  
Seneca  
Shelby  
Williams

Category 4: Ashland  
Darke  
Erie  
Fairfield  
Fulton  
Hardin  
Henry  
Huron  
Licking  
Logan  
Mahoning  
Pickaway  
Sandusky  
Stark  
Trumbull  
Wood

\*\*\* Proposed New Rule - December 9, 2011 \*\*\*

Category 5: Ashtabula  
Champaign  
Clark  
Delaware  
Greene  
Lucas  
Madison  
Miami  
Montgomery  
Ottawa  
Preble  
Union  
Wayne

Category 6: Clermont  
Franklin  
Geauga  
Lake  
Lorain  
Medina  
Portage  
Summit

Category 7: Butler  
Cuyahoga  
Warren

Category 8: Hamilton