

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

5123:2-9-15 **Home and community-based services waivers - supported employment-community under the individual options and level one waivers.** [This rule will replace the provisions related to Supported Employment-Community in existing rules 5123:2-9-16 and 5123:2-9-19.]

(A) Purpose

The purpose of this rule is to define supported employment-community 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) "Department" means the Ohio department of developmental disabilities.
- (7) "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 eight or more minutes of service. [This is paragraph (B)(9) of existing rule 5123:2-9-19.]
- (8) "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

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Code and does not employ, either directly or through contract, anyone else to provide the services.

- (9) "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.
- (10) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (11) "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.
- (12) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.
- (13) "Service documentation" means all records and information on one or more documents, including documents that may be created or maintained in electronic software programs, created and maintained contemporaneously with the delivery of services, and kept in a manner as to fully disclose the nature and extent of services delivered that shall include the items delineated in paragraph (E) of this rule to validate payment for medicaid services.
- (14) "Supported employment services" means intensive, ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who because of their disabilities need supports, to perform in a regular work setting. Supported employment services does not include sheltered work or other similar types of vocational services furnished in specialized facilities. [\[This is paragraph \(B\)\(17\) of existing rule 5123:2-9-16.\]](#)
- (15) "Supported employment-community" means supported employment services provided in an integrated community work setting where individuals enrolled in the waiver and persons without disabilities are employed to perform the same or similar work tasks. [\[This is paragraph \(B\)\(17\)\(d\)\(ii\) of existing rule 5123:2-9-16.\]](#)
 - (a) Activities that constitute supported employment-community include:
 - (i) 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

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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. [\[This is paragraph \(B\)\(17\)\(e\)\(i\) of existing rule 5123:2-9-16.\]](#)

(ii) Job development and placement which includes some or all of the following activities provided directly to or on behalf of the individual: [\[This is paragraph \(B\)\(17\)\(e\)\(ii\) of existing rule 5123:2-9-16.\]](#)

(a) Developing a resume that identifies the individual's job related and/or relevant vocational experiences;

(b) Training and assisting the individual to develop job-seeking skills;

(c) Targeting jobs on behalf of the individual that are available in the individual's work location of choice;

(d) Assisting the individual to find jobs that are well matched to his or her employment goals;

(e) Developing job opportunities on behalf of the individual through direct and indirect promotional strategies and relationship-building with employers;

(f) Conducting work-site analyses, including customizing jobs; and

(g) Increasing potential employers' awareness of available incentives that could result from employment of the individual.

(iii) Job training/coaching which includes some or all of the following activities: [\[This is paragraph \(B\)\(17\)\(e\)\(iii\) of existing rule 5123:2-9-16.\]](#)

(a) Developing a systematic plan of on-the-job instruction and support, including task analyses;

(b) Assisting the individual to perform activities that result in his or her social integration with disabled and non-disabled employees on the work-site;

(c) Supporting and training the individual in the use of generic and/or individualized transportation services;

(d) Providing off-site services and training that assist the individual with problem solving and meeting job-related expectations; and

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- (e) Developing and implementing a plan to assist the individual to transition from his or her prior vocational or educational setting to employment, emphasizing the use of natural supports.
- (iv) Ongoing job support which includes 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: [\[This is paragraph \(B\)\(17\)\(e\)\(iv\) of existing rule 5123:2-9-16.\]](#)
 - (a) Following-up with the employer and/or the individual at the frequency required to assist the individual to retain employment;
 - (b) Assisting the individual to use natural supports and generic community resources;
 - (c) Providing training to the individual to maintain work skills, enhance personal hygiene, learn new work skills, improve social skills, and/or modify behaviors that are interfering with the continuation of his or her employment; and
 - (d) 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 requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.
- (v) Worksite accessibility which includes some or all of the following activities: [\[This is paragraph \(B\)\(17\)\(e\)\(v\) of existing rule 5123:2-9-16.\]](#)
 - (a) Time spent identifying the need for and assuring the provision of reasonable job site accommodations that allow the individual to gain and retain employment;
 - (b) Time spent assuring the provision of these accommodations through partnership efforts with the employer; and
 - (c) Purchasing or modifying equipment that will be retained by the individual on the current employment site and/or in other settings. Service codes and rates that shall be used to obtain payment for the purchase and/or modification of equipment obtained in accordance with this paragraph are contained in appendix ~~B~~ [A](#) to this rule.

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(vi) Training in 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. [\[This is paragraph \(B\)\(17\)\(e\)\(vi\) of existing rule 5123:2-9-16.\]](#)

(b) Supported employment-community may also include services and supports that assist an individual to achieve self-employment through the operation of a business. Such assistance may be provided in the individual's home or the residence of another person and may include aiding the individual to identify potential business opportunities, participating in development of a business plan, identifying potential sources of business financing, gaining assistance to launch a business, identifying supports necessary for the individual to operate the business, and providing ongoing counseling and guidance once the business has been launched. Supported employment-community shall not be used to start-up or operate a business. [\[This is paragraph \(B\)\(17\)\(d\)\(ii\)\(a\) of existing rule 5123:2-9-16.\]](#)

(16) "Supported employment-enclave" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.

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

(C) Provider qualifications

(1) Supported employment-community shall be provided by an independent provider or an agency provider that:

(a) Meets the requirements of this rule;

(b) Has a medicaid provider agreement with the Ohio department of job and family services;

(c) Has completed and submitted an application and adheres to the requirements of rule 5123:2-2-01 of the Administrative Code.

(2) Supported employment-community shall be provided by a person who is: [\[This aligns with the requirements for Integrated Employment under the SELF Waiver.\]](#)

(a) An independent provider who is the individual's co-worker or otherwise employed at the job site as long as the services that are furnished are not

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part of that person's normal duties for which he or she is compensated by the employer;

- (b) An independent provider who has experience or training related to supporting individuals to acquire and maintain jobs in the general workforce; or
- (c) An employee or contractor of an agency provider.

(3) An independent provider who is the individual's co-worker or otherwise employed at the job site, shall annually complete training in: [This paragraph was added because training in rights and MUIs is required by rule 5123:2-2-01 and it seems like the phrasing used in paragraph (C)(4) below would cause the reader to believe a co-worker did not have to complete any training.]

(a) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code.

(b) 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.

(4) An independent provider, other than an independent provider who is the individual's co-worker or otherwise employed at the job site, shall annually complete at least eight hours of training that enhances his or skills and competencies relevant to the services he or she provides which shall include, but is not limited to:

(a) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;

(b) 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; and

(c) Services that comprise supported employment-community as it is defined in paragraph (B)(15) of this rule.

(5) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of supported employment-community successfully completes, prior to unsupervised contact with individuals, either: [This is from the OPRA/OSCB proposal.]

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- (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:
 - (i) Health and safety;
 - (ii) Positive behavior support; and
 - (iii) Services that comprise supported employment-community as it is defined in paragraph (B)(15) of this rule.
- (6) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of supported employment-community, 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 supported employment-community that includes, but is not limited to:

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- (i) Skill building in vocational assessment, job development and placement, job training/coaching, ongoing job supports, worksite accessibility, developing natural supports, 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.
- (7) 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 engaged in direct provision of supported employment-community. 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. [\[This is from the OPRA/OSCB proposal.\]](#)
- (8) 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 supported employment-community, 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;
 - (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;
 - (iii) The requirements relative to the employee's or 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 supported employment-community.

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- (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 manner of Homemaker/Personal Care and licensed facility rules.]
 - (9) 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 supported employment-community 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 the employee's or 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.]
 - (10) 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) Supported employment-community 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.
 - (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 supported employment-community has been identified through development of the individual service plan.
 - ~~(3) Supported employment community 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.~~
 - (3) The service and support administrator shall ensure that documentation is maintained to demonstrate that the service provided as supported employment-community to an individual enrolled in an individual options or level one waiver is not otherwise available as vocational rehabilitation services funded under

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section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Education Act. [This is based on paragraphs (B)(17)(a) and (B)(17)(c) of existing rule 5123:2-9-16 and CMS Informational Bulletin on development and implementation of 1915(c) waivers regarding employment and employment-related services dated September 16, 2011.]

- (4) Supported employment-community, other than services and supports that assist an individual to achieve self-employment through the operation of a business as described in paragraph (B)(15)(b) of this rule, shall take place in a ~~non-residential~~ setting separate from any home or facility in which the individual receiving the services resides. [This is based on paragraph (B)(17)(b) of existing rule 5123:2-9-16 with clarification added.]
- ~~(5) Supported employment-community furnished under a waiver is not available under a program funded by the Rehabilitation Act of 1973, 29 U.S.C. 701. The form contained in appendix A to this rule shall be completed, signed, and retained in an individual's record as verification that this requirement has been met.~~
- (5) A provider of supported employment-community shall recognize changes in the individual's condition and behavior, report to the service and support administrator, and record the changes in the individual's written record. [This is paragraph (C)(1)(c) of existing rule 5123:2-9-16.]
- (6) A provider of supported employment-community shall report identified safety and sanitation hazards that occur at the worksite to employers having the responsibility to remedy the condition. [This is paragraph (C)(1)(e) of existing rule 5123:2-9-16.]

(E) Documentation of services

Service documentation for supported employment-community 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.

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- (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.
- (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) Times the delivered service started and stopped.
- (12) 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

- (1) The billing units, service codes, and payment rates for supported employment-community are contained in appendix ~~B~~ 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 ~~C~~ B to this rule.
- (2) Supported employment-community services extend to those times when the individual is not physically present and the provider is performing supported employment-community on behalf of the individual. [\[This is addressed in paragraph \(D\)\(3\) of existing rule 5123:2-9-19, but has been reworded to align with wording in the proposed Homemaker/Personal Care rule.\]](#)
- (3) The base rate paid to a provider of supported employment-community shall be adjusted to reflect the number of individuals sharing services.
- (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 5123:2-9-16, Part of 5123:2-9-19

Effective: XX/XX/XXXX

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R.C. 119.032 review dates:	XX/XX/XXXX
Promulgated Under:	119.03
Statutory Authority:	5111.871, 5111.873, 5123.04, 5123.045, 5123.049, 5123.16
Rule Amplifies:	5111.871, 5111.873, 5123.04, 5123.045, 5123.049, 5123.16
Prior Effective Dates:	01/01/2007, 10/01/2007

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APPENDIX A

NON AVAILABILITY OF FUNDING
FROM OHIO REHABILITATION SERVICES COMMISSION (ORSC)
FOR SUPPORTED EMPLOYMENT SERVICES

Name of individual requesting services from ORSC (BVR/BSVI): _____

Identifying #: _____ Date of birth: _____

Address: _____

Person assisting with referral: _____

Phone: _____ Agency: _____

E mail: _____

Referred to (specify ORSC office): _____

Signature of individual requesting services: _____ Date: _____

**Documentation of Non-Availability of Funding
From Ohio Rehabilitation Services Commission (ORSC)**

In order to access Supported Employment services available through the Medicaid Home and Community-Based Services waivers administered by the Ohio Department of Developmental Disabilities, ORSC must verify that funding for these services is not available from the State Vocational Rehabilitation Program.

Please check the following reason(s) why funds will no longer be available or are not currently available for this individual. If, however, this is an acceptable referral, please accept the attached referral form.

- ☐ The individual has been successfully employed and his or her case will be closed by the ORSC because all time-limited services have been provided and it is necessary to transition to ongoing support provided by other service providers.
- ☐ The individual is working at his or her maximum or desired level and does not require ORSC services at this time.
- ☐ ORSC cannot begin the application process within six weeks and delaying services will be detrimental to the individual's desired employment outcome.

ORSC Counselor (signature required) _____ Date

Please complete this form and return a copy to the following address:
[Address to be completed by originating county board of developmental disabilities.]

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APPENDIX B A

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

BILLING UNITS, SERVICE CODES, AND PAYMENT RATES FOR SUPPORTED EMPLOYMENT-COMMUNITY

Supported Employment-Community

Billing Unit: Fifteen minutes

Service Codes: Individual Options Waiver ACO
Level One Waiver FCO

Payment Rates: Listed below by cost-of-doing-business (CODB) category. To obtain the per-person rate when two or more individuals receive service simultaneously, divide the base rate in the appropriate group category by the number of persons in the group.

Base Rates/1 Staff				
CODB Category	Serving 1 Individual	Serving 2 Individuals	Serving 3 Individuals	Serving 4 or More Individuals
1	\$5.79	\$6.20	\$6.77	\$7.53
2	\$5.85	\$6.26	\$6.84	\$7.61
3	\$5.91	\$6.32	\$6.92	\$7.68
4	\$5.97	\$6.39	\$6.99	\$7.76
5	\$6.03	\$6.45	\$7.06	\$7.84
6	\$6.09	\$6.52	\$7.13	\$7.92
7	\$6.15	\$6.58	\$7.20	\$8.00
8	\$6.21	\$6.65	\$7.27	\$8.07

Supported Employment-Community (Equipment Purchase and/or Modification)

Billing Unit: Per Item

Service Codes: Individual Options Waiver: AEQ
Level One Waiver: FEQ

Payment Rate: Actual cost, per item. Claims for payment shall be submitted to the department with verification that the item purchased and/or modified meets the requirements specified in the individual service plan, that the item has been found to be satisfactory by the individual for whom it was purchased and/or modified, and that the item meets applicable manufacturing standards. The verification submitted shall be in a format prescribed by the department.

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APPENDIX B

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

COST-OF-DOING-BUSINESS CATEGORIES

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

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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

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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