



Rule 5123-9-05

(Home and Community-Based Services Waivers - Retention Payments for Direct Support Professionals)

Clearance Period: July 13-27, 2022

Comment	By Whom	Department's Response
<p>(B)(5)(b) & (D): I am very concerned that frontline supervisors are being left out. Our supervisors, and I am assuming the same for other agencies, have been working a great deal of direct care to be sure individuals' needs are met. Paragraph (D)(2) of the rule specifically states that:</p> <p>Owners and management staff of agency providers and residential facilities (e.g., directors of operations, administrators, or operators) are not eligible to receive a retention payment unless they meet the definition of "direct support professional" in paragraph (B)(5) of this rule and the criteria set forth in paragraph (D)(1) of this rule.</p> <p>Paragraph (B)(5)(b) of the rule defines a Direct Support Professional as:</p> <p>A person who is employed by an agency provider or a residential facility in a "direct services position," as that term is defined in section 5123.081 of the Revised Code, and who is engaged in provision of direct support for at least fifty per cent of the hours the person worked for the employing agency provider or residential facility during the applicable quarter.</p> <p>This would seem to me that ONLY employees with the job title of Direct Support Professional would be eligible for the retention payment. If frontline supervisors are left out of this payment, they will be making less or at least not much more than Direct Support Professionals. There will be absolutely no motivation for them to stay in their position. I am genuinely concerned about how this will affect our operations. These supervisors have been working tremendously hard to keep people safe and deserve to be included.</p>	<p>Cathy Brooks, Chief Executive Officer, Clear Skies Ahead, LLC</p>	<p>Frontline supervisors are not being left out! Supervisors may certainly be included in the definition of "direct support professional." A person's job title does not matter. To make this clear, paragraph (B)(5)(b) was revised as indicated:</p> <p>A person who is employed by an agency provider or a residential facility in a "direct services position," as that term is defined in section 5123.081 of the Revised Code, <u>regardless of the person's job title</u>, and who is engaged in provision <u>or supervision</u> of direct support for at least fifty per cent of the hours the person worked for the employing agency provider or residential facility in the applicable quarter <u>during the quarter used by the department for determination of the amount of a retention payment</u>; or</p> <p>[The third revision to paragraph (B)(5)(b) is intended to clarify the timing of the retention payment calculation and is not related to this comment.]</p>

Comment	By Whom	Department's Response
<p>(B)(5)(b) & (D): It is the understanding of the Ohio Provider Resource Association (OPRA) that the retention payments are not limited to only staff who have the title of "direct support professional" and are meant for a broader range of employees like supervisors, house managers, site managers, etc., who also do a substantial amount of direct care. OPRA members are concerned that without careful analysis of the rule, a reader could construe the language in (B)(5)(b) and (D) as saying that the retention payments are only applicable to employees who have a title of direct support professional (or something similar). A possible solution to this issue could be adding a clarifying sentence after (B)(5)(b) such as:</p> <p>An employee may be considered a direct support professional for the purpose of this rule despite not having an official title of "direct support professional" so long as they meet the requirements set out in (B)(5)(b). Alternatively, this sentence could be added within subsection (D). A shorter possible solution is to add "regardless of the employee's official title" at the end of the (B)(5)(b). The revised provision would read:</p> <p>A person who is employed by an agency provider or a residential facility in a "direct services position," as that term is defined in section 5123.081 of the Revised Code, and who is engaged in provision of direct support for at least fifty per cent of the hours the person worked for the employing agency provider or residential facility in the applicable quarter <u>regardless of the employee's official title;</u></p>	<p>Christine Touvelle, Director of Advocacy, Ohio Provider Resource Association</p>	<p>Paragraph (B)(5)(b) was revised in accordance with your suggestion as indicated above.</p>
<p>(B)(9) & (B)(19): We ask the Department to add On-site/On-call as defined in rule 5123-9-30 to the list of services included in (B)(19), the definition of Retention Payment. While Homemaker/Personal Care is included, (B)(9) refers to the definition of Homemaker/Personal Care in rule 5123-9-30. Rule 5123-9-30 includes a separate definition for on-site/on-call. It was agreed that this service would be included in the calculation of the retention payment and we would like to see it specified in the rule so there is no confusion later.</p>	<p>Debbie Jenkins, Policy Director, Ohio Health Care Association</p>	<p>On-site/On-call is a mode of the Homemaker/Personal Care service and specified as such in the federally-approved waivers. To address your concern, however, paragraph (B)(9) was revised as indicated to make clear that providers of the On-site/On-call mode are eligible for retention payments:</p> <p>"Homemaker/personal care" has the same meaning as in rule 5123-9-30 of the Administrative Code <u>and includes on-site/on-call homemaker/personal care provided in accordance with that rule.</u></p>

Comment	By Whom	Department's Response
<p>(C)(2)(b): I am assuming this section means that funds for a January-March quarter must be issued no later than the 15th of June. It also says "a portion" of the funds. Does that mean we can cross quarters for paying out to Direct Support Professionals? To try to be clear, if we receive funds for January-March on/around February 15th, then could we use those funds to make payments in March, April, and May and then receive new funds around May 15th to go forward? Also, since it was said we won't receive the first payment for April-June until December, we can't exactly follow this rule for that payment.</p>	Tom Rickels, X-Excel	<p>The wording in paragraphs (B)(5)(b), (C)(1), (C)(2), (D)(1)(a), (F)(1), and (F)(2) was adjusted to make the timelines clearer and an illustrative timeline is provided on page 6 of this document. Paragraph (C)(2)(b) was reworded to remove the timeline and simply say the payment will be made in accordance with paragraph (F):</p> <p style="padding-left: 40px;">Disburses to each of its eligible direct support professionals, on or before the fifteenth day of the third month of the quarter, a portion the direct support professional's share of the retention payment issued by the department, as calculated by one of the methods described in paragraph (F)(3) <u>in accordance with paragraph (F)</u> of this rule; and</p> <p>The wording, "a portion of the retention payment," was intended to mean each employee's share of the total retention payment issued to the agency provider or residential facility. We believe the new wording—"the direct support professional's share of the retention payment"—makes this clearer.</p> <p>Paragraph (H) of the rule authorizes the Director of the Department to waive the timelines in the rule if necessary for the initial two payments.</p>
<p>(C)(2)(c): In this section, using the same quarter above (January-March). This date would be July 15th, correct?</p>	Tom Rickels, X-Excel	<p>Yes. Paragraph (C)(2)(c) was revised as indicated to make the timeline clearer:</p> <p style="padding-left: 40px;">Submits, via the department's web-based portal for the retention payment program, on or before the <u>fifteenth day of the first month of the quarter following the quarter in which the department issued the retention payment:</u></p>

Comment	By Whom	Department's Response
<p>(E)(3)(b): We appreciate the flexibility provided in (E)(3)(b), as many providers have programs or incentives in place that are currently being funded by one-time funds (CARES Act, ARPA, PRF, etc.). Some of these programs are already or will be shortly running out of funds. Allowing the 18% of funds to be used to increase total funding available for these programs will enable some providers to continue programs or incentives that would have otherwise ended when the one-time funds were fully utilized.</p> <p>(E)(3)(b): I think anyone that does not give their Direct Support Professionals (DSPs) as much money as they can is crazy. However, we have bonused DSPs out of Bureau of Workers' Compensation (BWC) refunds in the past. Since BWC already lost 3 billion this year, I assume we won't get any money back and my staff will not get that bonus unless BWC gives up some of the 25 billion they have left. We have given Christmas bonuses every year and will continue to do that and everything else we can do.</p> <p>(E)(3)(b): Please further clarify the definition of an "existing program," as referenced in paragraph (E)(3)(b). Many agencies have been providing employee incentives throughout the Public Health Emergency to retain staff. Overwhelmingly, these incentives have been funded by one-time payments, loans, or other funding provided to mitigate the financial impact of the pandemic. Therefore, many retention programs can only continue to exist with the funding provided by these retention payments. The rule is clear and prescriptive on what type of benefit it is intended for however the current language may be interpreted as penalizing providers who have limited ability to maintain these benefits without this funding. Please clarify.</p>	<p>Debbie Jenkins, Policy Director, Ohio Health Care Association</p> <p>Tom Rickels, X-Excel</p> <p>Janet Stephan, Ohio Waiver Network</p>	<p>We appreciate providers' commitment to recruiting and retaining staff!</p> <p>Paragraph (E)(3) was revised as indicated:</p> <p>An agency provider or residential facility will not use a retention payment to fund programs or incentives the agency provider or residential facility had in place prior to the effective date of this rule unless:</p> <p>(a) The programs or incentives meet the criteria described in paragraph (E)(2) of this rule; and</p> <p>(b) The retention payment program funds are used to increase, not replace, the funding available for the programs or incentives prior to the effective date of this rule ceases to be available.</p>
<p>(F)(2): This reads as though we are paying out prior to receiving payment. Can we clarify the 15th day of the third month in the following quarter?</p>	<p>Scott DeLong, President/CEO, CRSI</p>	<p>Paragraph (F)(2) was revised in accordance with your suggestion:</p> <p>An agency provider or residential facility will disburse a portion of the retention payment to each eligible direct support professional, on or before the fifteenth day of the third month of the quarter <u>following the quarter used by the department for determination of the amount of the retention payment, the direct support professional's share of the retention payment.</u></p>

Comment	By Whom	Department's Response
<p>I just want to thank you all for your hard work to accomplish these incentive payments! You are appreciated beyond measure!</p> <p>We would like to thank the Department, the Ohio Association of County Boards, and all of the local county boards of developmental disabilities for their work and commitment to implementing this new program to retain staff doing the important work of providing direct care to Ohioans with intellectual and developmental disabilities. We are also appreciative of the local county boards of developmental disabilities who are funding this initiative. In today's tight labor market, these retention payments are a welcomed and necessary new tool to retain a high quality direct support workforce!</p>	<p>Kim Musgrave, Mom to a special needs young adult</p> <p>Christine Touvelle, Director of Advocacy, Ohio Provider Resource Association</p>	<p>County boards of developmental disabilities are responsible for this initiative as they stepped up to provide the funding that made it possible! We appreciate the spirit of collaboration demonstrated throughout the system to launch this initiative as soon as possible.</p>

Illustrative Timeline for Retention Payments Issued to Agency Providers and Residential Facilities

DODD Determines Amount of Retention Payment Based on Claims Reimbursed During This Quarter	To Receive Retention Payment, Provider Must Opt-In On or Before	DODD Issues Retention Payment to Provider On or Before	Provider Disburses Retention Payment to DSPs On or Before	Provider Submits Data to DODD On or Before
January-March 2023	April 15, 2023	May 15, 2023	June 15, 2023	July 15, 2023
April-June 2023	July 15, 2023	August 15, 2023	September 15, 2023	October 15, 2023
July-September 2023	October 15, 2023	November 15, 2023	December 15, 2023	January 15, 2024
October-December 2023	January 15, 2024	February 15, 2024	March 15, 2024	April 15, 2024

Note: The timeline for calendar year 2022 retention payments will be determined upon finalization of rule 5123-9-05.