

*****Proposed Revisions - November 24, 2021*****
(Projected to be effective July 1, 2022.)

~~5123:2-2-05~~ 5123-2-05 Employment first.

(A) Purpose

This rule implements the employment first policy in accordance with section 5123.022 of the Revised Code.

(B) Scope

This rule applies to county boards of developmental disabilities and providers of employment services regardless of funding source, to individuals with developmental disabilities.

(C) Definitions

For the purposes of this rule, the following definitions apply:

(1) "Adult day support" has the same meaning as in rule 5123-9-17 of the Administrative Code.

(2) "Basic employment skills training" has the same meaning as in rule 5123-9-XX of the Administrative Code.

(3) "Benefits analysis" means information provided to individuals about the impact of earning wages on public assistance programs including but not limited to, social security disability insurance, supplemental security income, medicaid/medicare eligibility, medicaid buy-in for workers with disabilities, veteran's benefits, housing assistance, and food stamps.

(4) "Community employment" means competitive employment that takes place in an integrated setting.

(5) "Competitive employment" means full-time or part-time work in the competitive labor market in which payment is at or above the minimum wage and not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons who do not have disabilities.

(6) "County board" means a county board of developmental disabilities.

(7) "Department" means the Ohio department of developmental disabilities.

(8) "Employment first policy" means the state of Ohio policy, established in section 5123.022 of the Revised Code, that employment services for individuals with developmental disabilities be directed at community employment and that individuals with developmental disabilities are presumed capable of community employment.

(9) "Employment services" means:

*****Proposed Revisions - November 24, 2021*****
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- (a) The following medicaid-funded home and community-based services:
- (i) [Basic employment skills training in accordance with rule 5123-9-XX of the Administrative Code;](#)
 - (ii) Career planning in accordance with rule ~~5123:2-9-13~~ [5123-9-13](#) of the Administrative Code;
 - (iii) Group employment support in accordance with rule ~~5123:2-9-16~~ [5123-9-16](#) of the Administrative Code;
 - (iv) Individual employment support in accordance with rule ~~5123:2-9-15~~ [5123-9-15](#) of the Administrative Code; and
 - (v) Vocational habilitation in accordance with rule ~~5123:2-9-14~~ [5123-9-14](#) of the Administrative Code.
- (b) Any services, regardless of funding, that are comparable to the services described in paragraph ~~(C)(7)(a)~~ [\(C\)\(9\)\(a\)](#) of this rule.
- (10) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (11) "Individual" means a person with a developmental disability.
- (12) "Individual ~~plan~~ or ~~individual~~ service plan" means the written description of services, supports, and activities to be provided to an individual [and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.](#)
- (13) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner the individual or ~~his or her~~ [the individual's](#) guardian understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; the risks and benefits of the alternatives to the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual or ~~his or her~~ [the individual's](#) guardian, as applicable, may ~~revoke~~ [withdraw](#) informed consent at any time.
- (14) "Integrated setting" means a setting typically found in the community where individuals interact with persons who do not have disabilities to the same extent as persons who do not have disabilities in comparable positions. "Integrated setting" includes employment settings in which employees interact with the community through technology.
- (15) "Provider" means an agency provider or an independent provider that is certified by the department or a residential facility that is licensed by the department.

*****Proposed Revisions - November 24, 2021*****
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(16) "Working age" means at least eighteen years of age.

(D) Person-centered planning process

(1) Each individual of working age and each individual approaching completion of a program or service under Chapter 3323. of the Revised Code shall participate in a person-centered planning process in accordance with rule ~~5123:2-1-11~~ [5123-4-02](#) or ~~5123:2-3-03~~ [5123-3-03](#) of the Administrative Code, as applicable, to identify the individual's unique strengths, interests, abilities, preferences, resources, and desired outcomes as they relate to community employment. The person-centered planning process shall begin with a review of available information to determine what additional information is needed and what supplemental situational and/or other formal or informal evaluations are needed to discover this information and culminate in informed consent. For individuals who receive public assistance, the importance of obtaining a benefits analysis shall be emphasized to enable the individual to make informed decisions regarding employment. Resources available for obtaining a benefits analysis shall be identified for the individual prior to job development.

(2) The person-centered planning process shall include identification and documentation of [the individual's path to community employment, that is:](#)

~~(a) The individual's place on the path to community employment, that is:~~

~~(i)~~ [\(a\) Path I](#) - The individual is already engaged in community employment and needs support for job stabilization, job improvement, or career advancement;

~~(ii)~~ [\(b\) Path II](#) - The individual expresses a desire to obtain community employment but is not currently ~~employed~~ [engaged](#) and needs support to obtain employment or identify career options and employment opportunities;

~~(iii)~~ [\(c\) Path III](#) - The individual is unsure about community employment and needs support to identify career options and employment opportunities and the economic impact for the individual ~~of the decision to work~~; or

~~(iv)~~ [\(d\) Path IV](#) - The individual does not express a desire to work and needs support to learn more about careers and employment opportunities and the economic impact for the individual of the decision not to work.

~~(b) When the individual's place on the path to community employment is described in paragraph (D)(2)(a)(i) or (D)(2)(a)(ii) of this rule, the individual's desired community employment outcome.~~

*****Proposed Revisions - November 24, 2021*****
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- ~~(c) When the individual's place on the path to community employment is described in paragraph (D)(2)(a)(iii) or (D)(2)(a)(iv) of this rule, the activities that will occur to advance the individual on his or her path to community employment.~~
- ~~(d) Clearly defined activities, services, and supports necessary for the individual to achieve or maintain community employment, job improvement, or career advancement.~~
- (3) When the individual is on path I or path II, the individual service plan shall include the individual's desired community employment outcome and related action steps.
- (4) When the individual is on path III, the individual service plan shall include the activities that will occur to advance the individual on the path to community employment.
- (5) When the individual is on path IV, the individual service plan shall document the information given to the individual to make an informed decision about careers, employment opportunities, and the economic impact of the individual's decision not to work.
- ~~(3) The results of the person-centered planning process, including the individual's desired outcomes as they relate to community employment, shall be integrated into the individual plan or individual service plan, as applicable.~~
- ~~(4)~~ (6) The results of the person-centered planning process shall be reviewed at least once every twelve months and whenever a significant change in employment, training, continuing education, services, or supports occurs or is proposed.
- (E) Requirements for county boards
- (1) ~~The~~ Each county board shall adopt and implement a local policy to implement the employment first policy which clearly identifies community employment as the desired outcome for every individual of working age.
- (2) ~~In its strategic plan, the~~ Each county board shall outline and periodically update its strategy and benchmarks for increasing the number of individuals of working age engaged in community employment.
- (3) ~~The~~ Each county board shall collaborate with workforce development agencies, vocational rehabilitation agencies, and mental health agencies in the county to support individuals to obtain community employment.
- (4) ~~The~~ Each county board shall collaborate with school districts in the county to ensure a framework exists for individuals approaching completion of a program or service under Chapter 3323. of the Revised Code such that the county board and school districts in the county use similar methods to support students with developmental disabilities to obtain community employment. Through this collaboration, the

*****Proposed Revisions - November 24, 2021*****
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county board shall identify and attempt to resolve any duplication of efforts.

- (5) ~~The~~ Each county board shall disseminate information to individuals served, families, schools, community partners, employers, and providers of services about resources and opportunities, including medicaid buy-in for workers with disabilities and other work incentive programs, that facilitate community employment.

- (6) ~~The~~ Each county board shall collect and annually submit to the ~~department~~ department's individual-specific data tracking system, individual-specific data regarding:

(a) the cost of ~~non-medicaid~~ employment services,

(b) employment outcomes for individuals who receive ~~non-medicaid~~ employment services, ~~and employment outcomes for individuals who do not receive paid employment services but who are engaged in competitive employment or community employment~~

(c) Employment outcomes and hours of adult day support provided in a facility, through virtual support, and in an integrated community setting for individuals who receive adult day support, and

(d) The place on the path to community employment for individuals of working age.

(F) Requirements for providers

- (1) Providers of employment services shall submit to each individual's team at least once every twelve months, or more frequently as decided by the team, a written progress report that demonstrates that employment services provided are consistent with the individual's desired community employment outcome and that the individual receiving employment services has obtained community employment or is advancing on the path to community employment. The written progress report shall include the individual's annual wage earnings, identify the anticipated time-frame and tangible progress made toward achievement of each desired outcome of the employment services provided as set forth in the ~~individual plan or~~ individual service plan. The written progress for an individual receiving prevocational services shall include verification that the individual is compensated in accordance with 42 C.F.R. 440.180(c)(2)(i)(B) as in effect on the effective date of this rule. If no progress is reported, the ~~individual plan or~~ individual service plan shall be amended to identify the barriers toward achieving desired outcomes and the action steps to overcome the identified barriers.

- (2) Providers of employment services and/or adult day support shall collect and annually submit to the ~~department~~ department's individual-specific data tracking system,

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individual-specific data regarding ~~employment services and employment outcomes including but not limited to~~ individuals served by the provider including:

- (a) type of employment services provided,
- (b) how individuals obtained employment,
- (c) hours worked,
- (d) wages earned, and
- (e) occupations, and
- (f) Hours of adult day support provided in a facility, through virtual support, and in an integrated community setting.

~~The data shall be submitted through a web-based employment tracking system maintained by the department.~~

- (3) Providers of employment services and/or adult day support shall disseminate aggregate data to individuals seeking employment services and others upon request, regarding ~~employment services and employment outcomes~~ individuals served by the provider including but not limited to, type of employment services provided, how individuals obtained employment, hours worked, wages earned, ~~and~~ occupations, and hours of adult day support provided in a facility, through virtual support, and in an integrated community setting ~~to individuals seeking employment services and others upon request.~~ The data shall be disseminated in a manner that does not disclose confidential information regarding individuals receiving ~~employment~~ services.