

## **\*\*\*Proposed Amendments - June 30, 2021\*\*\***

### **5123-9-33 Home and community-based services waivers - shared living under the individual options waiver.**

#### **(A) Purpose**

This rule defines shared living and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

#### **(B) Definitions**

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

- (1) "Adult" means a person eighteen years of age or older.
- (2) "Agency provider" ~~means an entity that directly employs at least one person in addition to the chief executive officer for the purpose of providing services for which the entity must be certified in accordance with rule 5123:2-2-01~~ has the same meaning as in rule 5123-2-08 of the Administrative Code.
- (3) "Community respite" has the same meaning as in rule 5123-9-22 of the Administrative Code.
- (4) "County board" means a county board of developmental disabilities.
- (5) "Department" means the Ohio department of developmental disabilities.
- (6) "Group size" means the number of individuals who are sharing services, regardless of the funding source for those services.
- (7) "Homemaker/personal care" has the same meaning as in rule 5123-9-30 of the Administrative Code.
- (8) "Independent provider" ~~means a self-employed person who provides services for which he or she must be certified in accordance with rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services~~ has the same meaning as in rule 5123-2-09 of the Administrative Code.
- (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) "Ohio developmental disabilities profile" has the same meaning as in rule 5123-9-06 of the Administrative Code.
- (12) "Related to" means the caregiver is, by blood, marriage, or adoption, the individual's:

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- (a) Parent or stepparent;
  - (b) Sibling or stepsibling;
  - (c) Grandparent;
  - (d) Aunt, uncle, nephew, or niece;
  - (e) Cousin; or
  - (f) Child or stepchild.
- (13) "Residential respite" has the same meaning as in rule 5123-9-34 of the Administrative Code.
- (14) "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.
- (15) "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.
- (16) "Shared living" means individual-specific personal care and support necessary to meet the day-to-day needs of an adult enrolled in the individual options waiver, by an adult caregiver who resides in the same home as the individual receiving the services. Shared living is provided in conjunction with residing in the home and is part of the rhythm of life that naturally occurs when people live together in the same home. Due to the environment provided by living together in the same home, segregating these activities into discrete services is impractical.
- (a) Shared living:
- (i) Enables the individual to experience genuine community life;
  - (ii) Nurtures stability of long-term relationships within the home and the broader community;
  - (iii) Contributes to development of life routines chosen by the individual;
  - (iv) Assists the individual to routinely participate in and make positive contributions to his or her community;
  - (v) Supports shared decision-making between the individual and other members of the household; and

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(vi) Enhances, rather than replaces, existing family relationships and other community connections.

(b) Examples of supports that may be provided as shared living include:

(i) Basic personal care and grooming, including bathing, care of the hair, and assistance with clothing;

(ii) Assistance with bladder and/or bowel requirements or problems, including helping the individual to and from the bathroom or assisting the individual with bedpan routines;

(iii) Assisting the individual with self-medication or provision of medication administration and assisting the individual with, or performing, health care activities;

(iv) Performing household services essential to the individual's health and comfort in the home (e.g., necessary changing of bed linens or rearranging of furniture to enable the individual to move about more easily in his or her home);

(v) Assessing, monitoring, and supervising the individual to ensure the individual's safety, health, and welfare;

(vi) Light cleaning tasks in areas of the home used by the individual;

(vii) Preparation of a shopping list appropriate to the individual's dietary needs and financial circumstances, performance of grocery shopping activities as necessary, and preparation of meals;

(viii) Personal laundry;

(ix) Incidental neighborhood errands as necessary, including accompanying the individual to medical and other appropriate appointments and accompanying the individual for walks outside the home;

(x) Skill development to prevent the loss of skills and enhance skills that are already present that lead to greater independence and community integration;

(xi) Exploration of community resources and natural supports and development of methods to access additional resources and supports to ensure the individual is integrated in and has full access to the community to pursue interests and activities of his or her choosing; and

(xii) When provided in conjunction with other components of shared living, assistance with personal finances which may include training, planning, and decision-making regarding the individual's personal finances.

(17) "Significant change" means a change experienced by an individual including but not

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limited to:

- (a) A change in health status or caregiver status;
- (b) Referral to or active involvement on the part of a protective services agency; or
- (c) Institutionalization.

### **(C) Provider qualifications**

- (1) Shared living shall be provided by an agency provider or an independent provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of medicaid.
- (2) Shared living shall not be provided by a county board or a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards.
- (3) An individual's legal guardian may provide shared living to that individual only when the legal guardian is related to the individual.
- (4) An applicant seeking approval to provide shared living shall complete and submit an application through the department's website (<http://dodd.ohio.gov/>).
- (5) Failure of an agency provider or an independent provider to comply with this rule and ~~rule 5123:2-2-01~~ as applicable, rule 5123-2-08 or 5123-2-09 of the Administrative Code may result in denial, suspension, or revocation of the provider's certification.
- (6) Failure of a licensed residential facility to comply with this rule and ~~Chapter~~ Chapters 5123-3 and 5123:2-3 of the Administrative Code may result in denial, suspension, or revocation of the residential facility's license.

### **(D) Requirements for service delivery**

- (1) Shared living shall be authorized for an individual when one or more adult caregivers who reside with the individual provide twenty per cent or more of the individual's personal care and support services.
- (2) Shared living shall be provided pursuant to an individual service plan that conforms to the requirements of rule 5123-4-02 of the Administrative Code.
- (3) The total number of persons with developmental disabilities living in a home in which an individual receives shared living shall not exceed four. When more than three persons with developmental disabilities receive shared living or other supported living services in the same home, the home must be licensed pursuant to section 5123.19 of the Revised Code.
- (4) Except as provided in paragraph (G) of this rule, only shared living may be authorized for an individual enrolled in the individual options waiver who receives services

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meeting the definition of shared living as set forth in this rule.

- (5) An independent provider shall reside in the home where shared living is provided and that home shall be the independent provider's primary, legal residence.
- (6) An agency provider shall employ or contract with a person to be the caregiver who shall reside in the home where shared living is provided and that home shall be the person's primary, legal residence.
- (7) Shared living shall not be provided to an individual who is receiving foster care services funded through Title IV-E of the Social Security Act as in effect on the effective date of this rule.
- (8) An independent provider of shared living shall not bill homemaker/personal care or deliver state plan home health aide services as an employee of an agency to an individual for whom he or she provides shared living.
- (9) An individual who receives shared living may also choose to receive community respite or residential respite during a short-term absence or need for relief of the shared living caregiver.
- ~~(10) An individual who receives shared living may receive homemaker/personal care when the individual chooses services that take place outside of the shared living home and the services are provided by an approved provider of homemaker/personal care who is not the shared living caregiver.~~
  - ~~(a) An agency provider may contract for these services. If the agency provider opts to contract, the daily rate for shared living may be billed by the shared living provider for that day.~~
  - ~~(b) In situations where an agency provider does not contract for these services or in situations where an individual served by an independent provider seeks homemaker/personal care services outside of the shared living home, the shared living provider shall not bill for shared living on a day when homemaker/personal care is rendered. This prohibition exists regardless of whether claims for homemaker/personal care are submitted to the department for the entire twenty-four hour period or for a lesser amount of time that day.~~
- (10) An individual who receives shared living may receive homemaker/personal care on the same day as long as the services are not delivered at the same time or by the same person.
- (11) In circumstances where a shared living caregiver is temporarily unavailable to provide services, substitute coverage may be provided in the individual's shared living home or in another community setting agreed to by the individual.
  - (a) For independent providers, a provider of homemaker/personal care is arranged to deliver substitute coverage and the service is billed as homemaker/personal care. Independent providers shall work with the individual's service and support

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administrator to arrange for substitute coverage when needed.

(b) For agency providers, a provider of shared living is arranged to deliver substitute coverage and the service is billed as shared living.

(12) A provider of shared living shall develop, maintain, and implement for each individual for whom shared living is provided, a detailed written protocol to be followed in the event that substitute coverage is necessary. The protocol shall include contact information for and a requirement to notify the individual or legally responsible person in the event that substitute coverage is necessary and the person identified in the individual service plan when substitute coverage is not available to allow such person to make other arrangements.

### **(E) Documentation of services**

Service documentation for shared living 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.
- (9) Group size in which the service was provided.
- (10) 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.

### **(F) Payment standards**

- (1) The billing unit, service codes, and payment rates for shared living are contained in appendix A to this rule.
- (2) Payment for shared living shall be at a daily rate. Payment rates are adjusted based on the county cost-of-doing-business category. The cost-of-doing-business categories are contained in appendix B to this rule.
- (3) Payment rates for shared living are established separately for independent providers

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and agency providers.

- (4) The rate paid to a provider of shared living shall be adjusted to reflect the group size:
  - (a) Payment for one individual shall be at one hundred per cent of the daily rate for the individual's Ohio developmental disabilities profile range.
  - (b) Payment for a group size of two shall be at eighty-five per cent of the daily rate for the Ohio developmental disabilities profile range for each individual.
  - (c) Payment for a group size of three shall be at seventy-five per cent of the daily rate for the Ohio developmental disabilities profile range for each individual.
  - (d) Payment for a group size of four shall be at sixty-five per cent of the daily rate for the Ohio developmental disabilities profile range for each individual.
- (5) Shared living shall not be billed on the same day as community respite at the full day billing unit, ~~homemaker/personal care~~, or residential respite.
- (6) Only one provider per day may bill for providing shared living to a specific individual.
- (7) An individual who receives shared living may request prior authorization in accordance with rule 5123-9-07 of the Administrative Code for services other than shared living. In no instance shall prior authorization result in a daily rate in excess of the highest rate within the applicable county cost-of-doing-business category as set forth in appendix A to this rule.
- (8) Payment for shared living does not include room and board, items of comfort or convenience, or costs for the maintenance, upkeep, and improvement of the home in which shared living is provided.

### **(G) Exemption**

An individual who, on July 15, 2011, was receiving homemaker/personal care under the individual options waiver provided by a caregiver related to the individual and residing in the same home as the individual may continue to receive homemaker/personal care from that same caregiver, unless the individual experiences a significant change.

### ~~(H) Authority of director to suspend or modify provisions of this rule~~

~~During the COVID-19 state of emergency declared by the governor, the director of the department may suspend or modify paragraphs (D)(10), (D)(11), and/or (F)(5) of this rule to allow shared living and homemaker/personal care to be billed on the same day as long as the services are not delivered at the same time or by the same person.~~

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## APPENDIX A BILLING UNIT, SERVICE CODES, AND PAYMENT RATES FOR SHARED LIVING

Billing Unit: Daily

Service Codes: Agency Provider ASA  
Independent Provider ASP

Payment Rates: Listed below by cost-of-doing-business (CODB) category. The rate paid to a provider of shared living shall be adjusted to reflect the group size. Payment for one individual shall be at one hundred per cent of the daily rate for the individual's Ohio developmental disabilities profile (ODDP) range. Payment for a group size of two shall be at eighty-five per cent of the daily rate for the ODDP range for each individual. Payment for a group size of three shall be at seventy-five per cent of the daily rate for the ODDP range for each individual. Payment for a group size of four shall be at sixty-five per cent of the daily rate for the ODDP range for each individual.

CODB Category	ODDP Range	Agency Provider Daily Rate	Independent Provider Daily Rate
1	1	\$113.70	\$99.80
	2	\$113.70	\$99.80
	3	\$141.66	\$124.34
	4	\$141.66	\$124.34
	5	\$141.66	\$124.34
	6	\$188.26	\$165.24
	7	\$188.26	\$165.24
	8	\$188.26	\$165.24
	9	\$188.26	\$165.24



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CODB Category	ODDP Range	Agency Provider Daily Rate	Independent Provider Daily Rate
2	1	\$114.92	\$100.77
	2	\$114.92	\$100.77
	3	\$143.18	\$125.55
	4	\$143.18	\$125.55
	5	\$143.18	\$125.55
	6	\$190.28	\$166.85
	7	\$190.28	\$166.85
	8	\$190.28	\$166.85
	9	\$190.28	\$166.85
3	1	\$116.14	\$101.99
	2	\$116.14	\$101.99
	3	\$144.70	\$127.07
	4	\$144.70	\$127.07
	5	\$144.70	\$127.07
	6	\$192.30	\$168.87
	7	\$192.30	\$168.87
	8	\$192.30	\$168.87
	9	\$192.30	\$168.87
4	1	\$117.36	\$102.97
	2	\$117.36	\$102.97
	3	\$146.22	\$128.29
	4	\$146.22	\$128.29
	5	\$146.22	\$128.29
	6	\$194.32	\$170.49
	7	\$194.32	\$170.49
	8	\$194.32	\$170.49
	9	\$194.32	\$170.49

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CODB Category	ODDP Range	Agency Provider Daily Rate	Independent Provider Daily Rate
5	1	\$118.34	\$103.94
	2	\$118.34	\$103.94
	3	\$147.44	\$129.50
	4	\$147.44	\$129.50
	5	\$147.44	\$129.50
	6	\$195.94	\$172.10
	7	\$195.94	\$172.10
	8	\$195.94	\$172.10
	9	\$195.94	\$172.10
6	1	\$119.56	\$104.92
	2	\$119.56	\$104.92
	3	\$148.96	\$130.72
	4	\$148.96	\$130.72
	5	\$148.96	\$130.72
	6	\$197.96	\$173.72
	7	\$197.96	\$173.72
	8	\$197.96	\$173.72
	9	\$197.96	\$173.72
7	1	\$120.78	\$106.14
	2	\$120.78	\$106.14
	3	\$150.48	\$132.24
	4	\$150.48	\$132.24
	5	\$150.48	\$132.24
	6	\$199.98	\$175.74
	7	\$199.98	\$175.74
	8	\$199.98	\$175.74
	9	\$199.98	\$175.74

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CODB Category	ODDP Range	Agency Provider Daily Rate	Independent Provider Daily Rate
8	1	\$122.00	\$107.12
	2	\$122.00	\$107.12
	3	\$152.00	\$133.46
	4	\$152.00	\$133.46
	5	\$152.00	\$133.46
	6	\$202.00	\$177.36
	7	\$202.00	\$177.36
	8	\$202.00	\$177.36
	9	\$202.00	\$177.36

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## APPENDIX B

### 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