

Proposed Amendments - August 13, 2024

5123-9-43 Home and community-based services waivers - functional behavioral assessment under the level one and self-empowered life funding waivers.

(A) Purpose

This rule defines functional behavioral assessment 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) "Agency provider" ~~has the same meaning as in~~ means an entity that directly employs at least one person in addition to a director of operations for the purpose of providing services for which the entity is certified in accordance with rule 5123-2-08 of the Administrative Code.
- (2) "County board" means a county board of developmental disabilities.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Family member" means a person who is related to the individual by blood, marriage, or adoption.
- (5) "Functional behavioral assessment" means an assessment, not otherwise available under the medicaid state plan, to determine why an individual engages in intensive behaviors and how the individual's behaviors relate to the environment. A functional behavioral assessment describes the relationship between a skill or performance problem and the variables that contribute to its occurrence. A functional behavioral assessment may provide information to develop a hypothesis as to why an individual engages in a behavior, when the individual is most likely to demonstrate the behavior, and situations in which the behavior is least likely to occur.
- (6) "Independent provider" ~~has the same meaning as in~~ means a self-employed person who provides services for which the person is certified in accordance with rule 5123-2-09 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.
- (7) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, the person's guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent. An individual may designate another person to assist with development of the individual service plan and budget, selection of residence and providers, and negotiation of payment rates for services; the individual's designee

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shall not be employed by a county board or a provider, or a contractor of either.

- (8) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (9) "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~~ includes the items delineated in paragraph (E) of this rule to validate payment for medicaid services.
- (10) "Usual and customary charge" means the amount charged to other persons for the same service.
- (11) "Waiver eligibility span" means the twelve-month period following either an individual's initial waiver enrollment date or a subsequent eligibility redetermination date.

(C) Provider qualifications

- (1) Functional behavioral assessment ~~shall~~ will 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 medicaid; and
 - (c) Has completed and submitted an application ~~through the department's website- (<http://dodd.ohio.gov>)~~ and adheres to the requirements of as applicable, rule [5123-2-08](#) or [5123-2-09](#) of the Administrative Code.
- (2) Functional behavioral assessment ~~shall~~ will be provided by a person who has the experience necessary to perform psychometric tests that assess an individual's functional behavioral level and who is a:
 - (a) Psychologist licensed ~~by the state~~ pursuant to Chapter 4732. of the Revised Code;
 - (b) Professional clinical counselor licensed ~~by the state~~ pursuant to section 4757.22 of the Revised Code;
 - (c) Professional counselor licensed ~~by the state~~ pursuant to section 4757.23 of the Revised Code;
 - (d) Independent social worker licensed ~~by the state~~ pursuant to section 4757.27 of the Revised Code;
 - (e) Social worker licensed ~~by the state~~ pursuant to section 4757.28 of the Revised

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Code working under the supervision of a licensed independent social worker; or

(f) Certified Ohio behavior analyst certified ~~by the state~~ pursuant to section 4783.04 of the Revised Code.

~~(3) A county board or a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards may provide functional behavioral assessment only when no other certified provider is willing and able.~~

~~(4)~~ (3) Functional behavioral assessment shall not be provided to an individual by the individual's family member.

~~(5)~~ (4) Failure to comply with this rule and 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.

(D) Requirements for service delivery

Functional behavioral assessment ~~shall~~ will be provided pursuant to an individual service plan that conforms to the requirements of rule 5123-4-02 of the Administrative Code.

(E) Documentation of services

Service documentation for functional behavioral assessment ~~shall~~ will 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) 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

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- (1) The billing unit, service code, and payment rate for functional behavioral assessment are contained in the appendix to this rule.
- (2) Providers of functional behavioral assessment ~~shall~~ will be paid no more than their usual and customary charge for the service.
- (3) An individual may receive only one functional behavioral assessment in a waiver eligibility span, the cost of which ~~shall~~ will not exceed one thousand five hundred dollars.
- (4) Providers of functional behavioral assessment are prohibited from submitting claims under both a home and community-based services waiver and the medicaid state plan for the same functional behavioral assessment.

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APPENDIX

BILLING UNIT, SERVICE CODES, AND PAYMENT RATE FOR FUNCTIONAL BEHAVIORAL ASSESSMENT

Billing Unit:	Per assessment	
Service Codes:	Level One Waiver	FFB
	Self-Empowered Life Funding Waiver	SFB
Payment Rate:	Usual and customary charge	