

*****Proposed Amendments - June 28, 2021*****
(to be effective July 1, 2022)

5123-9-45 Home and community-based services waivers - participant-directed goods and services under the level one and self-empowered life funding ~~waiver~~ waivers.

(A) Purpose

This rule defines participant-directed goods and services and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

(B) Definitions

- (1) "Community respite" has the same meaning as in rule 5123-9-22 of the Administrative Code.
- (2) "County board" means a county board of developmental disabilities.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Financial management services entity" means a governmental entity and/or another third-party entity designated by the ~~Ohio~~ department ~~of medicaid~~ to perform necessary financial transactions on behalf of individuals enrolled in the self-empowered life funding waiver who self-direct services.
- (5) "Individual" means a person with a developmental disability or for the 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 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 shall not be employed by a county board or a provider, or a contractor of either.
- (6) "Individual budget" means the total amount of annual waiver funding available for self-directed services in the individual service plan of an individual who chooses to self-direct some or all of his or her services. An individual may reallocate funds among self-directed services as long as reallocation is preceded by a corresponding revision to the individual service plan.
- (7) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (8) "Participant-directed goods and services" means services, equipment, or supplies not otherwise provided through the self-empowered life funding individual's waiver or through the medicaid state plan that are purchased through the individual budget, address a need clearly identified through assessment of the individual, are specified in the individual service plan, and meet all of the following requirements:
 - (a) The services, equipment, or supplies are required to assist the individual with

*****Proposed Amendments - June 28, 2021*****
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achieving one ~~of~~ or more of the following outcomes as specified in the individual service plan:

- (i) Decrease the need for other medicaid home and community-based services;
 - (ii) Promote inclusion in the community;
 - (iii) Increase the individual's safety in his or her home;
 - (iv) Increase the individual's independence;
 - (v) Improve cognitive, social, or behavioral functions; or
 - (vi) Develop or maintain personal, social, or physical skills.
- (b) The individual does not have funds to purchase the services, equipment, or supplies, and they are not available through another source.
- (c) The services, equipment, or supplies are required to ensure the health and welfare of the individual.
- (d) The services, equipment, or supplies are ~~the least costly alternative that reasonably meets the individual's assessed need as evidenced through the county board's established cost comparison process~~ directly linked in the individual service plan as a cost-effective means of addressing a need clearly identified through assessment of the individual.
- (e) The services, equipment, or supplies are for the direct medical or remedial benefit of the individual.
- (9) "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.
- (10) "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)(2) of this rule to validate payment for medicaid services.
- (11) "Specialized services" means any program or service designed and operated to serve primarily a person with a developmental disability, including a program or service provided by an entity licensed or certified by the department. Programs or services available to the general public are not specialized services.
- (12) "Usual and customary charge" means the amount charged to other persons for the

*****Proposed Amendments - June 28, 2021*****
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same service.

- (13) "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) ~~Rule 5123:2-2-01 of the Administrative Code does~~ Rules 5123-2-08 and 5123-2-09 of the Administrative Code do not apply to providers of participant-directed goods and services.
- (2) Provision of participant-directed goods and services shall be coordinated by a financial management services entity.

(D) Requirements for service delivery

- (1) Participant-directed goods and services shall be provided pursuant to the assessed needs of an individual and an individual service plan that conforms to the requirements of rule ~~5123:2-1-11~~ 5123-4-02 of the Administrative Code.
- (2) Participant-directed goods and services shall not be specialized services. If there is a question as to whether participant-directed goods and services are specialized services, the director of the department may make a determination. The director's determination is final.
- (3) Participant-directed goods and services shall not include:
- (a) Experimental treatments including items considered by the federal food and drug administration as experimental or investigational or not approved to treat a specific condition;
 - (b) Items used solely for entertainment or recreational purposes;
 - (c) Pools, spas, or saunas;
 - (d) Tobacco products or alcohol;
 - (e) Food;
 - (f) Internet service;
 - (g) Items of general utility;
 - ~~(h) Items considered by the federal food and drug administration as experimental or investigational or not approved to treat a specific condition;~~
 - (h) New equipment or supplies or repair of previously approved equipment or supplies that have been damaged as a result of confirmed misuse, abuse, or

*****Proposed Amendments - June 28, 2021*****
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negligence;

- (i) Equipment, supplies, and devices of the same type for the same individual, unless there is a documented change in the individual's condition that warrants the replacement;
 - (j) Home modifications that are of general utility or that add to the total square footage of the home; or
 - (k) Items that are illegal or otherwise prohibited through federal or state regulations.
- (4) Prior to authorizing services, equipment, or supplies as participant-directed goods and services in the individual service plan or submitting a request for processing to the financial management services entity, an individual's service and support administrator shall ensure that:
- (a) The services, equipment, or supplies meet the definition of participant-directed goods and services set forth in paragraph ~~(B)(7)~~ (B)(8) of this rule;
 - (b) A person-centered assessment of the individual has been conducted and supports the ~~medical necessity of~~ need for the services, equipment, or supplies for the individual to achieve one or more specific outcomes delineated in paragraph (B)(8)(a) of this rule; ~~and~~
 - (c) ~~Documentation on hand demonstrates that no other source is available to pay for~~ The individual does not have funds to purchase the services, equipment, or supplies; ~~and~~
 - (d) Documentation on hand demonstrates that the requirements of paragraphs (D)(4)(a) to (D)(4)(c) of this rule are met.
- (5) A county board shall submit requests for the following services, equipment, or supplies to the department for review prior to authorizing them as participant-directed goods and services in the individual service plan:
- (a) ~~Appliances~~ Generators;
 - (b) Fences;
 - ~~(c) Pools, spas, saunas, trampolines, and play sets;~~
 - (c) Play sets or other generic equipment typically for the purpose of recreation or entertainment requested for the therapeutic or habilitative benefit of the individual;
 - (d) Home modifications exceeding ten thousand dollars;
 - (e) Services, equipment, or supplies that may otherwise be available to the individual through the ~~self-empowered life funding~~ individual's waiver (e.g., as community

*****Proposed Amendments - June 28, 2021*****
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respite) or the medicaid state plan; and

(f) Services, equipment, or supplies that may otherwise be available to the individual through Ohio's early and periodic screening, diagnostic, and treatment (i.e., "Healthchek") program or pursuant to the Individuals with Disabilities Education Act.

(6) The department shall review requests submitted in accordance with paragraph (D)(5) of this rule and issue a determination within thirty calendar days of receiving all requested information. When the department determines that the request shall be denied, the department shall notify the county board and the individual in writing. The notice shall advise the individual of his or her right to due process.

(7) Requests submitted to the department in accordance with paragraph (D)(5) of this rule less than forty-five days in advance of the last day of an individual's waiver eligibility span may not be resolved with sufficient time to purchase the services, equipment, or supplies within that waiver eligibility span.

(E) Documentation of services

(1) Paragraph (K) of rule 5123-9-40 of the Administrative Code does not apply to participant-directed goods and services.

(2) Service documentation for participant-directed goods and services shall consist of a written invoice that contains the individual's name and medicaid identification number, a description of the item or service provided, the provider's name, the date the item or service was provided, and the provider's charge for the item or service.

(3) The financial management services entity shall maintain all service documentation for a period of six years from the date of receipt of payment for the service or until an initiated audit is resolved, whichever is longer.

(F) Payment standards

(1) The billing unit, service ~~code~~ codes, and payment rate for participant-directed goods and services are contained in the appendix to this rule.

(2) Providers of participant-directed goods and services shall be paid no more than their usual and customary charge for the services, equipment, or supplies provided.

(3) Under the level one waiver, participant-directed goods and services shall not exceed two thousand five hundred dollars during a waiver eligibility span.

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APPENDIX

BILLING UNIT, SERVICE ~~CODE~~ CODES, AND PAYMENT RATE
FOR PARTICIPANT-DIRECTED GOODS AND SERVICES

Billing Unit: Per item or service

~~Service Code: SGS~~

<u>Service Codes:</u>	<u>Level One Waiver</u>	<u>XXX</u>
	<u>Self-Empowered Life Funding Waiver</u>	<u>SGS</u>

Payment Rate: Usual and customary charge