

*****Proposed Amendments - August 13, 2024*****

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

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

- (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 department to perform necessary financial transactions on behalf of individuals who receive participant-directed services.
- (5) "Individual" means a person with a developmental disability or for the 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 shall not be employed by a county board or a provider, or a contractor of either.
- (6) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (7) "Participant-directed budget" means the total amount of annual waiver funding available for participant-directed services in the individual service plan of an individual who chooses to receive participant-directed services. An individual may reallocate funds among participant-directed services as long as reallocation is preceded by a corresponding revision to the individual service plan.
- (8) "Participant-directed goods and services" means services, equipment, or supplies not otherwise provided through the individual's waiver or through the medicaid state plan that are purchased through the participant-directed 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 [achieve at least one of the](#)

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following objectives:

- (i) Decrease the individual's need for other medicaid home and community-based services;
 - (ii) Advance the individual's participation in the community;
 - (iii) Increase the individual's safety in the home;
 - (iv) Increase the individual's independence;
 - (v) Improve or maintain the individual's cognitive, social, or behavioral functions; or
 - (vi) Assist the individual to 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 directly linked in the individual service plan as 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~~ 5123-5-02 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~~ includes 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

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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) 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~~ [will](#) be coordinated by a financial management services entity.

(D) Requirements for service delivery

- (1) Participant-directed goods and services ~~shall~~ [will](#) be provided pursuant to the assessed needs of ~~a~~ [an](#) individual and an individual service plan that conforms to the requirements of rule 5123-4-02 of the Administrative Code.
- (2) Participant-directed goods and services ~~shall~~ [will](#) 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 not subject to appeal.
- (3) Participant-directed goods and services ~~shall~~ [will](#) 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) New equipment or supplies or repair of previously approved equipment or supplies that have been damaged as a result of confirmed misuse, abuse, or 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

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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~~ will ensure that:
- (a) The services, equipment, or supplies meet the definition of participant-directed goods and services set forth in paragraph (B)(8) of this rule;
 - (b) A person-centered assessment of the individual has been conducted and supports the need for the services, equipment, or supplies for one or more of the reasons delineated in paragraph (B)(8)(a) of this rule;
 - (c) 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~~ will 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) Generators;
 - (b) Fences;
 - (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 individual's waiver (e.g., as community 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~~ will review requests submitted in accordance with paragraph

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(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~~ to deny a request, the department ~~shall~~ will notify the county board and the individual in writing. The notice ~~shall~~ will advise the individual of the individual's 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 (J) 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~~ will 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~~ will 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 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~~ will 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~~ will not exceed two thousand five hundred dollars during a waiver eligibility span.

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APPENDIX

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

Billing Unit:	Per item or service	
Service Codes:	Level One Waiver	FGS
	Self-Empowered Life Funding Waiver	SGS
Payment Rate:	Usual and customary charge	