

Proposed Amendments - May 26, 2023

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) "Acute care hospital" means a hospital that provides inpatient medical care and other related services for surgery, acute medical conditions, or injuries (usually for a short term illness or condition).

~~(1)~~ (2) "Adult" means a person eighteen years of age or older.

~~(2)~~ (3) "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.

~~(3)~~ (4) "Community respite" has the same meaning as in rule 5123-9-22 of the Administrative Code.

~~(4)~~ (5) "County board" means a county board of developmental disabilities.

~~(5)~~ (6) "Department" means the Ohio department of developmental disabilities.

~~(6)~~ (7) "Group size" means the number of individuals who are sharing services, regardless of the funding source for those services.

~~(7)~~ (8) "Homemaker/personal care" has the same meaning as in rule 5123-9-30 of the Administrative Code.

~~(8)~~ (9) "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.

~~(9)~~ (10) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, ~~his or her~~ the person's guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.

~~(10)~~ (11) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.

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- (11) (12) "Ohio developmental disabilities profile" ~~has the same meaning as in rule 5123-9-06 of the Administrative Code~~ means the standardized instrument used by the department to assess the relative needs and circumstances of an individual compared to others. The individual's responses are scored and the individual is linked to a funding range, which enables similarly situated individuals to access comparable waiver services paid in accordance with rules adopted by the department.
- (13) "Primary legal residence" means the residence where a person has a permanent and principal establishment, where the person has a right to reside, and to where, whenever a person is absent, that person intends to return. A person has one, and only one, primary legal residence at a time.
- (12) (14) "Related to" means the caregiver is, by blood, marriage, or adoption, the individual's:
- (a) Parent or stepparent;
 - (b) Sibling or stepsibling;
 - (c) Grandparent;
 - (d) Aunt, uncle, nephew, or niece;
 - (e) Cousin; or
 - (f) Child or stepchild.
- (13) (15) "Residential respite" has the same meaning as in rule 5123-9-34 of the Administrative Code.
- (14) (16) "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.
- (15) (17) "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.
- (16) (18) "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~~ when twenty per cent or more of the personal care and support is provided by one or more adult caregivers who reside **[Phrase moved**

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here from paragraph (D)(1).] 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~~ the individual's community;
- (v) Supports shared decision-making between the individual and other members of the household; and
- (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~~ the 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;

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- (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~~ the individual's 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)~~ (19) "Significant change" means a change experienced by an individual including but not 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~~ will 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~~ will 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~~ will complete and submit an application through the ~~department's website (http://dodd.ohio.gov/)~~ Ohio department of medicaid provider network management system and adhere to the requirements of as applicable, rule 5123-2-08 or 5123-2-09 of the Administrative Code.
- (5) Failure of an agency provider or an independent provider to comply with this rule and

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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 ~~Chapters 5123-3- and 5123:2-3~~ Chapter 5123-3 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. [Moved to definition of "shared living" in (B)(18).]~~

- (1) 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 meeting the definition of shared living as set forth in this rule.

- (2) Shared living ~~shall~~ will 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~~ will not exceed four.

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

- ~~(5)~~ (4) An independent provider ~~shall~~ will reside in the home where shared living is provided and that home ~~shall~~ must be the independent provider's primary, legal residence.

- ~~(6)~~ (5) An agency provider ~~shall~~ will employ or contract with a person to be the caregiver who ~~shall~~ will reside in the home where shared living is provided and that home ~~shall~~ must be the person's primary, legal residence.

- ~~(7)~~ (6) Shared living ~~shall~~ will 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)~~ (7) An independent provider of shared living ~~shall~~ will 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~~ the independent provider provides shared living.

- ~~(9)~~ (8) An individual who ~~receives~~ resides in a shared living setting may ~~also choose to~~ receive community respite at the full day billing unit or residential respite at the

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daily billing unit during a short-term absence or need for relief of the shared living caregiver on a day the shared living caregiver does not bill for provision of shared living.

(9) An individual who resides in a shared living setting may receive residential respite at the fifteen-minute billing unit for the temporary relief of the caregiver on a day the shared living caregiver bills for provision of shared living as long as:

(a) Residential respite and shared living services are not delivered at the same time or by the same person or any other person who resides in the shared living setting;

(b) The shared living caregiver provides no more than twelve hours of personal care and support on that day; and

(c) No more than twelve hours of residential respite at the fifteen-minute billing unit are provided per calendar week.

~~(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.~~

(10) Shared living may be provided to an individual in an acute care hospital to address the individual's intensive personal care, behavioral support/stabilization, or communication needs when the following conditions are met:

(a) Shared living is necessary to ensure smooth transition between the acute care hospital and the individual's home and to preserve the individual's functional abilities; and

(b) Shared living is not a substitute for services the acute care hospital provides or is obligated to provide (e.g., attendant care) through its conditions of participation, federal law, state law, or other applicable requirement.

(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~~ When the provider of shared living is an independent provider, a provider of homemaker/personal care is arranged to deliver substitute coverage and the ~~service~~ substitute coverage is billed as homemaker/personal care. ~~Independent providers shall~~ An independent provider will work with the individual's service and support administrator to arrange for substitute coverage when needed.

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

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(12) A provider of shared living ~~shall~~ will 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~~ will include contact information for and a requirement to notify:

(a) As applicable, the individual or legally responsible person in the event that substitute coverage is necessary; and

(b) 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~~ 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) 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 provided on or before December 31, 2023 are contained in appendix A to this rule. The billing unit, service codes, and payment rates for shared living provided on or after January 1, 2024 are contained in appendix B to this rule.

(2) Payment for shared living ~~shall~~ will be at a daily ~~rate~~ billing unit. Payment rates are adjusted based on the county cost-of-doing-business category. The cost-of-doing-business categories are contained in appendix ~~B~~ C to this rule.

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- (3) Payment rates for shared living are established separately for independent providers and agency providers.
- (4) The rate paid to a provider of shared living ~~shall be~~ is adjusted to reflect the group size:
 - (a) Payment for one individual ~~shall be at~~ is 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~~ is 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~~ is 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~~ is sixty-five per cent of the daily rate for the Ohio developmental disabilities profile range for each individual.
- (5) Shared living ~~shall~~ will not be billed on the same day as community respite at the full day billing unit or residential respite at the daily billing unit.
- (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~~ will 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 as applicable, appendix A or appendix B 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.~~

(G) Exemptions from shared living

- (1) 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 caregiver, unless the individual experiences a significant

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change.

(2) An individual enrolled in the individual options waiver who receives services meeting the definition of shared living as set forth in this rule may, as an alternative to shared living, receive homemaker/personal care from that caregiver when the individual:

(a) Has been assessed to need two-to-one staffing;

(b) Has been assessed to need awake staff present around the clock;

(c) Meets the criteria for the behavioral support rate modification described in paragraph (F)(4) of rule 5123-9-30 of the Administrative Code;

(d) Meets the criteria for the complex care rate modification described in paragraph (F)(5) of rule 5123-9-30 of the Administrative Code; or

(e) Meets the criteria for the medical assistance rate modification described in paragraph (F)(6) of rule 5123-9-30 of the Administrative Code.

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APPENDIX A

BILLING UNIT, SERVICE CODES, AND PAYMENT RATES FOR SHARED LIVING PROVIDED ON OR BEFORE DECEMBER 31, 2023

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~~ is adjusted to reflect the group size. Payment for one individual ~~shall be at~~ is 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~~ is 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~~ is 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~~ is 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	\$118.29	\$103.83
	2	\$118.29	\$103.83
	3	\$147.37	\$129.36
	4	\$147.37	\$129.36
	5	\$147.37	\$129.36
	6	\$195.84	\$171.92
	7	\$195.84	\$171.92
	8	\$195.84	\$171.92
	9	\$195.84	\$171.92

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CODB Category	ODDP Range	Agency Provider Daily Rate	Independent Provider Daily Rate
2	1	\$119.51	\$104.91
	2	\$119.51	\$104.91
	3	\$148.90	\$130.70
	4	\$148.90	\$130.70
	5	\$148.90	\$130.70
	6	\$197.87	\$173.70
	7	\$197.87	\$173.70
	8	\$197.87	\$173.70
	9	\$197.87	\$173.70
3	1	\$120.74	\$105.98
	2	\$120.74	\$105.98
	3	\$150.42	\$132.04
	4	\$150.42	\$132.04
	5	\$150.42	\$132.04
	6	\$199.90	\$175.48
	7	\$199.90	\$175.48
	8	\$199.90	\$175.48
	9	\$199.90	\$175.48
4	1	\$121.96	\$107.06
	2	\$121.96	\$107.06
	3	\$151.95	\$133.38
	4	\$151.95	\$133.38
	5	\$151.95	\$133.38
	6	\$201.93	\$177.26
	7	\$201.93	\$177.26
	8	\$201.93	\$177.26
	9	\$201.93	\$177.26

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CODB Category	ODDP Range	Agency Provider Daily Rate	Independent Provider Daily Rate
5	1	\$123.18	\$108.12
	2	\$123.18	\$108.12
	3	\$153.47	\$134.72
	4	\$153.47	\$134.72
	5	\$153.47	\$134.72
	6	\$203.95	\$179.04
	7	\$203.95	\$179.04
	8	\$203.95	\$179.04
	9	\$203.95	\$179.04
6	1	\$124.40	\$109.20
	2	\$124.40	\$109.20
	3	\$155.00	\$136.06
	4	\$155.00	\$136.06
	5	\$155.00	\$136.06
	6	\$205.98	\$180.82
	7	\$205.98	\$180.82
	8	\$205.98	\$180.82
	9	\$205.98	\$180.82
7	1	\$125.63	\$110.27
	2	\$125.63	\$110.27
	3	\$156.52	\$137.40
	4	\$156.52	\$137.40
	5	\$156.52	\$137.40
	6	\$208.01	\$182.60
	7	\$208.01	\$182.60
	8	\$208.01	\$182.60
	9	\$208.01	\$182.60

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CODB Category	ODDP Range	Agency Provider Daily Rate	Independent Provider Daily Rate
8	1	\$126.85	\$111.35
	2	\$126.85	\$111.35
	3	\$158.05	\$138.74
	4	\$158.05	\$138.74
	5	\$158.05	\$138.74
	6	\$210.04	\$184.38
	7	\$210.04	\$184.38
	8	\$210.04	\$184.38
	9	\$210.04	\$184.38

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APPENDIX B

BILLING UNIT, SERVICE CODES, AND PAYMENT RATES FOR SHARED LIVING PROVIDED ON OR AFTER JANUARY 1, 2024

2024 payment rates are not yet available and will be provided as soon as possible.

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 is adjusted to reflect the group size. Payment for one individual is 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 is eighty-five per cent of the daily rate for the ODDP range for each individual. Payment for a group size of three is seventy-five per cent of the daily rate for the ODDP range for each individual. Payment for a group size of four is sixty-five per cent of the daily rate for the ODDP range for each individual.

<u>CODB Category</u>	<u>ODDP Range</u>	<u>Agency Provider Daily Rate</u>	<u>Independent Provider Daily Rate</u>
<u>1</u>	<u>1</u>		
	<u>2</u>		
	<u>3</u>		
	<u>4</u>		
	<u>5</u>		
	<u>6</u>		
	<u>7</u>		
	<u>8</u>		
	<u>9</u>		
<u>2</u>	<u>1</u>		
	<u>2</u>		
	<u>3</u>		
	<u>4</u>		
	<u>5</u>		
	<u>6</u>		
	<u>7</u>		
	<u>8</u>		
	<u>9</u>		

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<u>CODB Category</u>	<u>ODDP Range</u>	<u>Agency Provider Daily Rate</u>	<u>Independent Provider Daily Rate</u>
<u>3</u>	<u>1</u>		
	<u>2</u>		
	<u>3</u>		
	<u>4</u>		
	<u>5</u>		
	<u>6</u>		
	<u>7</u>		
	<u>8</u>		
	<u>9</u>		
<u>4</u>	<u>1</u>		
	<u>2</u>		
	<u>3</u>		
	<u>4</u>		
	<u>5</u>		
	<u>6</u>		
	<u>7</u>		
	<u>8</u>		
	<u>9</u>		
<u>CODB Category</u>	<u>ODDP Range</u>	<u>Agency Provider Daily Rate</u>	<u>Independent Provider Daily Rate</u>
<u>5</u>	<u>1</u>		
	<u>2</u>		
	<u>3</u>		
	<u>4</u>		
	<u>5</u>		
	<u>6</u>		
	<u>7</u>		
	<u>8</u>		
	<u>9</u>		
<u>6</u>	<u>1</u>		
	<u>2</u>		
	<u>3</u>		
	<u>4</u>		
	<u>5</u>		
	<u>6</u>		
	<u>7</u>		
	<u>8</u>		
	<u>9</u>		
<u>7</u>	<u>1</u>		
	<u>2</u>		
	<u>3</u>		

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<u>CODB Category</u>	<u>ODDP Range</u>	<u>Agency Provider Daily Rate</u>	<u>Independent Provider Daily Rate</u>
	<u>4</u>		
	<u>5</u>		
	<u>6</u>		
	<u>7</u>		
	<u>8</u>		
	<u>9</u>		
<u>8</u>	<u>1</u>		
	<u>2</u>		
	<u>3</u>		
	<u>4</u>		
	<u>5</u>		
	<u>6</u>		
	<u>7</u>		
	<u>8</u>		
	<u>9</u>		

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APPENDIX **B** C

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