



## Ohio Administrative Code

### Rule 5123-7-29 Intermediate care facilities for individuals with intellectual disabilities - ventilator services.

Effective: August 13, 2023

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#### (A) Purpose

This rule sets forth requirements for an intermediate care facility for individuals with intellectual disabilities (ICFIID) to provide and be reimbursed for providing services to residents who are dependent on invasive mechanical ventilators.

#### (B) Definitions

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

- (1) "Adult" means a person twenty-two years of age or older.
- (2) "Business day" means a day of the week, excluding Saturday, Sunday, or a legal holiday as defined in section 1.14 of the Revised Code.
- (3) "Designated outlier coordinator" means a department staff member who coordinates the general operations of the ICFIID outlier services program. The designated outlier coordinator works with providers of outlier services, individuals requesting and receiving outlier services, other persons whom individuals have identified, other service agencies, and other department staff. The designated outlier coordinator's duties include, but are not limited to:
  - (a) Assisting with the initial approval and ongoing monitoring of an ICFIID providing outlier services;
  - (b) Coordinating the processing of pre-admission and continued stay prior authorization requests for individuals; and
  - (c) Reviewing assessments, individual service plans, day programming plans, staffing plans, and



other documents.

(4) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

(5) "Invasive mechanical ventilator" means a ventilator that is interfaced directly with the individual via an artificial airway (e.g., tracheostomy tube). Invasive mechanical ventilators (volume and/or pressure) are life support devices designed specifically for invasive mechanical ventilation applications and must accommodate direct current backup power supply and include disconnect, high pressure, low pressure, and power loss alarms.

(6) "Nurse" means a person authorized by Chapter 4723 of the Revised Code to engage in the practice of nursing as a registered nurse or a licensed practical nurse.

(7) "Outlier services" means those clusters of services that have been determined by the department to have reimbursement rates established pursuant to section 5124.152 of the Revised Code when delivered by qualified providers to individuals who have been prior-authorized to receive a category of service identified as an outlier service by the department in accordance with Chapter 5123-7 of the Administrative Code.

(8) "Pediatric ventilator services" means services provided by an ICFIID in accordance with rule 5123:2-7-29 of the Administrative Code as it existed on January 17, 2018.

(9) "Physician" means a person authorized by Chapter 4731 of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

(10) "Plan of correction" means a corrective action plan prepared by an ICFIID in response to deficiencies cited by the department or the Ohio department of health which conforms to regulations and guidelines and includes information that describes how the deficiency will be corrected, when it will be corrected, how other residents that may be affected by the deficiency will be identified, and how the ICFIID will ensure that compliance is maintained upon correction.



(11) "Prior authorization assessment for ventilator services" means an evaluation to determine if an individual meets the eligibility criteria to receive ventilator services set forth in paragraphs (C)(3) to (C)(6) of this rule that will take place only after the individual is determined to meet the financial eligibility and level of care requirements set forth in paragraphs (C)(1) and (C)(2) of this rule.

(12) "Prior authorization for ventilator services" means department approval obtained by an ICFIID to provide ventilator services to a specific individual for specific time-limited initial or continued stay periods. Prior authorization for ventilator services is required for the ICFIID to be authorized by the department to provide ventilator services and to receive reimbursement for services rendered to the individual. Reimbursement may be denied for any service not rendered in accordance with Chapters 5160-3 and 5123-7 of the Administrative Code.

(13) "Registered nurse" has the same meaning as in section 4723.01 of the Revised Code.

(14) "Respiratory care professional" means a person who is licensed under Chapter 4761 of the Revised Code to practice the full range of respiratory care services described in division (A) of section 4761.01 of the Revised Code.

(15) "Ventilator services" means services provided by an ICFIID that holds an effective provider agreement with the Ohio department of medicaid and that is approved by the department to deliver outlier services to individuals who are dependent on invasive mechanical ventilators.

(C) Individual eligibility criteria

To receive prior authorization for ventilator services, an individual must:

(1) Have been determined by the county department of job and family services to meet the medicaid financial eligibility standards for institutional care.

(2) Have obtained a developmental disabilities level of care determination from the department within the last thirty calendar days, or, at the time of prior authorization assessment for ventilator services, be determined by the department to meet the criteria for a developmental disabilities level of care in accordance with rule 5123-8-01 of the Administrative Code.



(3) Require the use of an invasive mechanical ventilator.

(4) Have been either:

(a) An adult resident of an ICFIID approved to provide pediatric ventilator services on January 17, 2018; or

(b) An inpatient, for at least ninety days within the past twelve months, in an acute care hospital for treatment of a life-threatening or complex medical condition. If the individual has been an inpatient in an acute care hospital for treatment of a life-threatening or complex medical condition within the past twelve months but for less than ninety days, an ICFIID may submit to the department, and the department may approve, a written request to waive the ninety-day requirement. The request will include a description of the clinical services the individual continues to require and an attestation by the ICFIID that it is able to meet the individual's needs.

(5) Have achieved a stabilized medical condition so that the immediate services of an acute care hospital, including daily physician visits, are not medically necessary.

(6) Require monitoring by a nurse twenty-four hours per day and professional assessment by a registered nurse on a daily basis.

(D) ICFIID eligibility criteria

(1) An ICFIID will complete and electronically submit to the department an application for approval to provide ventilator services. The application is available at the department's website (<https://dodd.ohio.gov>). The ICFIID will provide any additional information requested by the department and may be subject to documentation review and on-site visits by department personnel.

(2) To be approved to provide ventilator services and qualify for enhanced payment for provision of ventilator services to prior-authorized individuals, an ICFIID will:

(a) Be an Ohio medicaid-certified ICFIID and agree to cooperate with the department's oversight of



ventilator services.

(b) Meet the requirements set forth in rule 5123-7-02 of the Administrative Code in order to obtain and maintain a provider agreement.

(c) Fully meet all standards for residential facilities licensed in accordance with section 5123.19 of the Revised Code or have an approved and implemented plan of correction and have not demonstrated a pattern of repeat deficiencies.

(d) Fully meet all standards for Ohio medicaid ICFIID certification or meet the medicaid program requirements of a facility for which the Ohio department of health found deficiencies, have an approved and implemented plan of correction, and have not demonstrated a pattern of repeat deficiencies.

(e) Have:

(i) An emergency action plan in place in the event of a power failure;

(ii) An on-site backup generator service for all equipment including suction lines, oxygen lines, and emergency power to ventilators;

(iii) Sufficient backup ventilators on-site and available in the event of mechanical failure as well as any other equipment necessary to meet the needs of individuals in the event of an emergency; and

(iv) An emergency response plan in place in the event of natural or human-made disasters that provides for the safe transport of individuals to a safe area with appropriate resources available to ensure the health and safety of the individuals.

(f) Schedule direct care staff to ensure that adequately trained staff are present and on duty twenty-four hours per day, every day of the year. Staffing will be sufficient to ensure that urgent, emergent, and routine resident needs are identified appropriately and in a timely manner and are met through the implementation of intervention strategies reflected in each resident's individual service plan. Absences of staff for breaks and meals will not compromise this staffing arrangement.



(g) Ensure that staff who manage ventilator services have evidence of at least two years of work experience with individuals who have complex medical conditions.

(h) Address through staff training programs, the specific medical domains a staff member must master for a thorough understanding and demonstration of competency in order to meet the specialized needs of residents requiring ventilator services. Initial and continuing direct care staff training will include:

(i) Orientation to the ICFIID's status as a provider of ventilator services, including the individual eligibility criteria set forth in paragraph (C) of this rule and the ICFIID eligibility criteria set forth in paragraph (D) of this rule;

(ii) Information about the specific health care needs of the current residents of the ICFIID who receive ventilator services;

(iii) Accepted best practices and innovative approaches to meet residents' needs;

(iv) Training to ensure nursing care competence for residents, including specialized training on developmental needs that improve an individual's overall functional status; and

(v) Due to the increased risk of infection for residents of ICFIID who receive ventilator services, steps to be taken to minimize risk of transmission of contagious or infectious diseases.

(i) Agree to furnish or arrange to have furnished all medically necessary services to individuals who are dependent on invasive mechanical ventilators, regardless of whether the services are reimbursable through the ICFIID cost report mechanism or directly to the provider of such services.

(i) Physician services will be available twenty-four hours per day.

(ii) A physician will complete an assessment of the individual at least once every thirty calendar days for the first ninety calendar days and at least once every ninety calendar days thereafter if the individual maintains a stable status with no acute complications related to ventilator support. If acute



care needs requiring hospitalization present upon return to the ICFIID, a physician will complete an assessment of the individual at least once every thirty calendar days for the first ninety calendar days and at least once every ninety calendar days thereafter.

(iii) Respiratory care services will be available twenty-four hours per day. Medically necessary respiratory care services will be provided by a respiratory care professional or by a nurse who the ICFIID has determined has the training, knowledge, skill, and ability to complete the services in coordination with the respiratory care professional, and as ordered by a physician.

(iv) The ICFIID, in consultation with a physician and a respiratory care professional, will develop a facility plan for providing care to individuals who are dependent on invasive mechanical ventilators which addresses:

(A) Maintenance of ventilators;

(B) Required modification and maintenance of facilities; and

(C) Special accommodations required to ensure that all needs, including but not limited to, hygiene, bathing, dietary, social, and transportation, of individuals who are dependent on invasive mechanical ventilators, are met.

(v) Services by registered nurses will be available twenty-four hours per day.

(vi) Nursing care and any personal care that may be required for the health, safety, and wellbeing of the individuals served will be available twenty-four hours per day. Nursing personnel will be sufficient to ensure prompt recognition of any adverse change in an individual's condition and to facilitate nursing, medical, or other appropriate interventions, up to and including transfers to an acute care hospital.

(vii) The need for physical, occupational, and/or speech therapy services will be assessed and services will be provided as needed by therapists licensed to practice in Ohio.

(viii) If an individual is receiving enteral feedings and there is a complication of medical status



secondary to the nutritional status, a dietary consultation by a person licensed to practice dietetics in Ohio will be made available to that individual.

(j) Prior to admission of an individual who requires ventilator services, arrange for a suitable school or day program for the individual and submit the plan for such program to the designated outlier coordinator or other department designee.

(k) Prior to admission of an individual who requires ventilator services, develop and submit to the designated outlier coordinator or other department designee accurate assessments or reassessments by an interdisciplinary team that address the individual's health, social, psychological, educational, vocational, and chemical dependency needs. Health information will include a copy of the medical assessment completed by a physician who has knowledge of and experience with the individual, a clinical summary, need for invasive mechanical ventilation (including viability and plan for weaning), detailed therapy assessment with recommended therapy plan, medication needs, and any other medical information relevant to the individual's care needs.

(l) Ensure that a registered nurse submits a written summary of clinical status to the primary care physician on a monthly basis. The physician will review and sign the summary and place it in the individual's medical record.

(m) Due to the complex and intensive needs of individuals who require ventilator services, develop a transitional plan prior to admission of an individual to ensure that the ICFIID is able to meet the individual's health, safety, and behavioral support needs from the day of admission. The transitional plan will address major concerns and be provided to the designated outlier coordinator or other department designee upon request.

(n) Within thirty calendar days after admission, develop accurate assessments or reassessments by an interdisciplinary team that address the individual's health, social, psychological, educational, vocational, and chemical dependency needs in order to supplement the preliminary evaluation described in paragraph (D)(2)(k) of this rule, which was conducted prior to admission. The ICFIID will provide the assessments or reassessments to the designated outlier coordinator or other department designee upon request.





(o) Develop a comprehensive individual service plan within thirty calendar days of an individual's admission, with input from the individual, the individual's parent, the individual's guardian, or other person whom the individual has identified, as applicable. The ICFIID will provide a copy of the individual service plan to the designated outlier coordinator or other department designee upon request.

(i) The individual service plan will be reviewed by the appropriate program staff at least quarterly and revised as necessary with input from the individual, the individual's parent, the individual's guardian, or other person whom the individual has identified, as applicable.

(ii) The ICFIID will notify the designated outlier coordinator or other department designee whenever an individual experiences a significant change in medical status, including hospitalization.

(iii) The ICFIID will prepare a quarterly report in a format approved by the department that summarizes the resident's individual service plan, progress, changes in treatment, current status relative to discharge goals, and any updates to the discharge plan, including referrals made and anticipated time frames. The ICFIID will provide a copy of the quarterly report to the designated outlier coordinator or other department designee upon request.

(iv) The designated outlier coordinator or other department designee may visit the ICFIID at any time. The ICFIID will provide any documents or information requested by the designated outlier coordinator or other department designee.

(p) Within thirty calendar days after admission, develop a written discharge plan with the interdisciplinary team in conjunction with the individual and others concerned with the individual's welfare which describes targeted medical/health status indicators that would signify the resident could be safely discharged. The ICFIID will provide a copy of the discharge plan to the designated outlier coordinator or other department designee upon request.

(q) Accept payment for the provision of services at the non-outlier ICFIID reimbursement rate if prior authorization for ventilator services requested for an individual already residing in the ICFIID is denied.



(E) Outlier per diem rate

(1) An ICFIID's per diem rate will be set in accordance with Chapter 5124 of the Revised Code and applicable rules in Chapter 5123-7 of the Administrative Code. An outlier per diem rate for ventilator services, determined and applied in accordance with paragraph (H) of this rule, will be added to the ICFIID's per diem rate.

(2) With the exception of any specific items that are direct-billed in accordance with rule 5123-7-11 of the Administrative Code, the ICFIID will agree to accept as payment in full the per diem rate established for ventilator services in accordance with this rule, and to make no additional charge to the individual, to any member of the individual's family, or to any other source for covered ventilator services.

(F) Prior authorization for services

(1) Payment for ventilator services covered by the medicaid program will be available only upon prior authorization by the department for each individual in accordance with the procedures set forth in this rule. The prior authorization procedures set forth in this rule are in addition to the developmental disabilities level of care review process set forth in rule 5123-8-01 of the Administrative Code.

(a) Unless the individual is seeking a change of payer, prior authorization for ventilator services will occur prior to admission to the ICFIID.

(b) In the case of requests for continued stay, prior authorization for ventilator services will occur no later than the final day of the previously authorized ventilator services stay.

(2) A request for prior authorization for ventilator services will be electronically submitted to the department.

(3) It is the responsibility of the ICFIID to ensure that all required information is provided to the department as requested. An initial request for prior authorization for ventilator services is considered complete when:



- (a) A request has been accurately completed and electronically submitted;
- (b) A developmental disabilities level of care has been issued in accordance with rule 5123-8-01 of the Administrative Code and a determination regarding the feasibility of community-based care has been made; and
- (c) The designated outlier coordinator has received supporting documentation exhibiting evidence that the applicant meets the eligibility criteria set forth in paragraphs (C)(3) to (C)(6) of this rule. Supporting documentation may include, but is not limited to, the preliminary evaluation, assessments, and transitional plan required prior to admission as set forth in paragraph (D) of this rule.
- (4) The department's determination will be based on the completed initial stay request and any additional information or documentation necessary to make the determination of eligibility for ventilator services, which may include a face-to-face visit by at least one department representative with the individual and, if applicable, the individual's parent, the individual's guardian, or other person whom the individual has identified and, to the extent possible, the individual's formal and informal care givers, to review and discuss the individual's care needs and preferences.
- (5) Based upon a comparison of the individual's condition, service needs, and the requested placement site with the eligibility criteria set forth in paragraph (C) of this rule, the department will conduct a review of the application, assessment report, and supporting documentation about the individual's condition and service needs to determine whether the individual is eligible for ventilator services.
- (6) The department will issue a notice of determination within thirty calendar days of receipt of a complete request for prior authorization indicating approval or denial of the request to the individual, the individual's parent, the individual's guardian, or other person whom the individual has identified, as applicable, and the ICFIID.
- (a) When a request for prior authorization for ventilator services is denied, the notice will specify the reason for denial and explain the individual's right to a state hearing in accordance with section



5101.35 of the Revised Code.

(b) When a request for prior authorization for ventilator services is approved, the notice will include an assigned prior authorization number, the number of days for which ventilator services are authorized, and the date on which payment is authorized to begin. The notice will also include the name and email address of the department staff member who is assigned to monitor the individual's progress at the ICFIID.

(i) Individuals who are determined to have met the eligibility criteria set forth in paragraph (C) of this rule may be approved for an initial stay of a maximum of one hundred eighty-four days. The number of days prior-authorized for each eligible individual will be based upon the submitted application materials, consultation with the individual's attending physician, and/or any additional consultations or materials required by the assessor to make a reasonable estimation regarding the individual's probable need for ventilator services.

(ii) Continued stay determinations will be based on reports from the ICFIID submitted to the designated outlier coordinator regarding critical events and the status of the individual's condition and discharge planning options, face-to-face assessments conducted by the department, and/or other information determined by the department. When the department determines that the individual continues to meet the eligibility criteria set forth in paragraph (C) of this rule, and the ICFIID submits a request for continued stay in accordance with paragraph (F)(8) of this rule, continued stays may be approved for maximum increments of one hundred eighty-four days.

(c) Reimbursement for ventilator services is limited to services approved as indicated in the approval letter.

(7) An individual is expected to be discharged to the setting specified in the individual's discharge plan at the end of the prior-authorized initial or continued stay, and progress toward that end will be monitored by the department or its designee throughout the individual's stay in the ICFIID.

(8) Ventilator services may be extended beyond the previously approved length of stay if the ICFIID electronically submits a request to the department proving that it is not possible to implement the individual's discharge plan. Such requests will be submitted at least thirty calendar days prior to the



last day of the previously authorized stay, unless there is a significant change of circumstances within the week preceding the expected discharge date that prevents implementation of the discharge plan.

(G) Payment authorization

The payment authorization date will be one of the following, but will not be earlier than the effective date of the individual's developmental disabilities level of care determination:

(1) The date of admission to the ICFIID; or

(2) The date of prior authorization for ventilator services approval, if the individual was already a resident of an ICFIID that provides ventilator services but was using another payer source.

(H) Initial and subsequent contracted rates

(1) The department will establish the initial and subsequent contracted rates in accordance with Chapter 5124 of the Revised Code. All rate adjustments determined in accordance with this rule will be effective on the payment authorization date determined in accordance with paragraph (G) of this rule through the date of discharge from the ICFIID or until the date the individual no longer meets the eligibility criteria set forth in paragraph (C) of this rule.

(2) An ICFIID may bill the ventilator services revenue code for each individual whose initial or continued stay prior authorization has been approved in accordance with paragraph (F) of this rule.

(3) An ICFIID will not bill the ventilator services revenue code for individuals who are using bed-hold days in accordance with rule 5123-7-08 of the Administrative Code.

(4) The ICFIID will notify the designated outlier coordinator or other department designee no later than by the close of the next business day following the discharge of an individual or point at which the individual no longer meets the eligibility criteria established in paragraph (C) of this rule to ensure processing time for recalculation and application of the ventilator services outlier per diem rate to the ICFIID per diem rate.



(5) The ventilator services outlier per diem rate is specific to the individual approved to receive ventilator services.

(a) The ventilator services outlier per diem rate is three hundred dollars for services rendered on or before June 30, 2023.

(b) The ventilator services outlier per diem rate is nine hundred dollars for services rendered on or after July 1, 2023.