



Ohio Administrative Code

Rule 5123-9-02 Home and community-based services waivers - ensuring the suitability of services and service settings.

Effective: January 26, 2024

(A) Purpose

This rule establishes standards to ensure that individuals receiving services through home and community-based services waivers administered by the Ohio department of developmental disabilities receive the services in settings that meet requirements for home and community-based services established by the centers for medicare and medicaid services.

(B) Definitions

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

(1) "Agency provider" 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) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.

(5) "Immediate family member" means a spouse, parent or stepparent, child or stepchild, sibling or stepsibling, grandparent, or grandchild.

(6) "Independent provider" 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.
- (8) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (9) "Individual-specific expenses" means standard monthly costs other than rent (e.g., household goods and supplies, food, minor equipment, and medical equipment) that are not reimbursable through medicaid, that are paid by the individual to a residential facility or provider of shared living, and that have been identified as needed and requested by the individual to be provided by the residential facility or provider of shared living.
- (10) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (11) "Landlord" means the owner, lessor, or agent of the owner contracted by the owner to manage the premises or to receive rent or room costs in accordance with a lease or a residency agreement meeting the requirements set forth in paragraph (F) of this rule.
- (12) "Lease" means a written rental agreement meeting the requirements for rental agreements set forth in Chapter 5321. of the Revised Code.
- (13) "Natural supports" means the personal associations and relationships typically developed in the community that enhance the quality of life for individuals. Natural supports may include family members, friends, neighbors, and others in the community or organizations that serve the general public who provide voluntary support to help an individual achieve agreed upon outcomes through the individual service plan development process.
- (14) "Provider-controlled residential setting" means a residence where the landlord is:
- (a) An entity that is owned in whole or in part by the individual's independent provider;



- (b) An immediate family member of the individual's independent provider;
 - (c) An immediate family member of an owner or a management employee of the individual's agency provider;
 - (d) Affiliated with the individual's agency provider, meaning the landlord:
 - (i) Employs a person who is also an owner or a management employee of the agency provider; or
 - (ii) Has, serving as a member of its board, a person who is also serving as a member of the board of the agency provider;
 - (e) An entity that is owned in whole or in part by an owner, a management employee, or an immediate family member of the individual's agency provider; or
 - (f) An owner or a management employee of the individual's agency provider.
- (15) "Provider-owned residential setting" means a residence where the provider is both the landlord and the residential home and community-based services provider. There are only three acceptable types of provider-owned residential settings under Ohio law:
- (a) A setting where shared living is provided;
 - (b) A setting owned by an independent provider who is living in the setting and providing services to an individual who is living in the setting; or
 - (c) A residential facility licensed pursuant to section 5123.19 of the Revised Code.
- (16) "Related to" means the caregiver is the individual's:
- (a) Parent or stepparent;



(b) Sibling or stepsibling;

(c) Grandparent;

(d) Grandchild;

(e) Aunt, uncle, nephew, or niece;

(f) Cousin; or

(g) Child or stepchild.

(17) "Rent" means the standard charge to the individual to cover the individual's use of the property, living space, and structure, and where applicable, the appliances, utilities, and furniture.

(18) "Residency agreement" means a written agreement between an individual and a residential facility or provider of shared living which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of a residence.

(19) "Residential facility" means a residential facility licensed by the department in accordance with section 5123.19 of the Revised Code other than an intermediate care facility for individuals with intellectual disabilities.

(20) "Roommate" means a person with whom one shares a bedroom.

(21) "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 5123-5-02 of the Administrative Code.

(22) "Shared living" has the same meaning as in rule 5123-9-33 of the Administrative Code.

(C) Home and community-based services



(1) An individual's private residence is presumed to be a suitable setting for home and community-based services when it meets the requirements set forth in paragraphs (C)(1)(a) to (C)(1)(e) of this rule. For the purposes of this rule, provider-controlled residential settings and provider-owned residential settings are not private residences.

(a) The private residence is integrated in and supports the individual's full access to the greater community.

(b) The private residence is selected by the individual from among setting options.

(c) The private residence ensures an individual's right to privacy, dignity, and respect as well as freedom from coercion and restraint.

(d) The private residence optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices.

(e) The private residence facilitates individual choice regarding services and supports, and who provides them.

(2) The purpose of home and community-based services is to support full community participation and achievement of individual-specific outcomes. An individual receiving home and community-based services will have opportunities to access age-appropriate activities, engage in meaningful employment and non-work activities, and pursue activities with persons of the individual's choosing and in settings not created exclusively for individuals with disabilities.

(3) An individual's service and support administrator will provide the individual with a description of all services and service setting options available through the waiver in which the individual is enrolled. Each individual will be afforded the opportunity to choose among services or a combination of services and settings that promote the individual's autonomy and minimize the individual's dependency on paid support staff. Services and service setting options (such as technology-based supports, intermittent or drop-in staffing, shared living, and integrated employment services) will be considered to enable the individual to live and work in settings which promote access to and participation in the broader community.



- (4) Each individual will receive home and community-based services that:
- (a) Are appropriate to meet the individual's assessed needs and desired outcomes identified in the individual service plan;
 - (b) Supplement and not supplant existing natural supports;
 - (c) Support the individual in a cost-effective manner and in the least restrictive manner available; and
 - (d) Are not otherwise available through other resources, including:
 - (i) Unpaid supports;
 - (ii) Private insurance;
 - (iii) Community resources;
 - (iv) Special education or related services as defined in section 602 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1401, as in effect on the effective date of this rule;
 - (v) Vocational rehabilitation services funded under section 110 of the Rehabilitation Act of 1973, 29 U.S.C. 730, as in effect on the effective date of this rule;
 - (vi) Medicare; or
 - (vii) The medicaid state plan.
- (5) Home and community-based services funds will not be used to provide modifications to the physical structure of a residential facility unless the modifications are necessary to meet the needs of an established resident of the residential facility or the modifications are portable and clearly identified as the property of the individual.



(D) Settings presumed unsuitable for home and community-based services

(1) Home and community-based services will not be provided in provider-owned residential settings that do not meet an exception set forth in paragraph (B)(15) of this rule.

(2) Except for the provision of short-term respite services as approved by the centers for medicare and medicaid services, home and community-based services will not be provided in:

(a) Hospitals except when:

(i) Homemaker/personal care is provided to an individual in an acute care hospital in accordance with rule 5123-9-30 of the Administrative Code;

(ii) Participant-directed homemaker/personal care is provided to an individual in an acute care hospital in accordance with rule 5123-9-32 of the Administrative Code; or

(iii) Shared living is provided to an individual in an acute care hospital in accordance with rule 5123-9-33 of the Administrative Code;

(b) Institutions for mental diseases;

(c) Intermediate care facilities for individuals with intellectual disabilities;

(d) Nursing facilities; or

(e) Other locations that have been determined by the secretary of the United States department of health and human services or the department as having the qualities of an institution and the effect of isolating individuals from the broader community.

(3) Absent a determination by the centers for medicare and medicaid services that the settings are suitable, home and community-based services will not be provided in:



(a) Settings located in a building that is a publicly-operated or privately-operated facility that also provides inpatient institutional treatment; or

(b) Settings located in a building on the grounds of or immediately adjacent to a publicly-operated facility that provides inpatient institutional treatment.

(E) Requirements for providers of home and community-based services

A provider of home and community-based services will:

(1) Meet the requirements set forth in Chapter 5123-9 of the Administrative Code for the services delivered; and

(2) Deliver services in accordance with each individual's choices, preferences, and needs and in a manner that supports each individual's full participation in the community as identified in the individual service plan.

(F) Requirements for individuals enrolled in home and community-based services waivers

An individual enrolled in a home and community-based services waiver will:

(1) Communicate, as applicable, to the independent provider and/or assigned staff of the agency provider and the agency provider management staff, personal preferences about the duties, tasks, and procedures to be performed;

(2) Communicate to the service and support administrator any significant change that may affect the provision of services or result in a need for more or fewer hours of service or different types of service;

(3) Use services in accordance with the individual service plan; and

(4) Cooperate with the county board in the county board's performance of medicaid local administrative authority in accordance with section 5126.055 of the Revised Code.



(G) Requirement for a lease or residency agreement

(1) A lease consented to by both the individual and the landlord is required when an individual lives in a provider-controlled residential setting. The lease will include:

(a) A statement that the residence is a provider-controlled residential setting and an explanation of the relationship between the landlord and the provider of home and community-based services.

(b) A statement that the individual may choose any provider to deliver home and community-based services.

(2) A residency agreement consented to by both the individual and the landlord is required when an individual lives in a residential facility or when an individual lives in a provider-owned residential setting as described in paragraph (B)(15)(a) or (B)(15)(b) of this rule and the provider is not related to the individual. The residency agreement will include:

(a) Name and contact information of the landlord.

(b) A statement that the residence is, as applicable, a residential facility or a shared living setting.

(c) An explanation of the relationship between the landlord and the provider of home and community-based services and a statement regarding whether or not the individual may choose a provider other than the residential facility or shared living provider to deliver home and community-based services.

(d) A statement that the landlord:

(i) Is responsible for maintaining in good working order all electrical, plumbing, sanitary, heating, ventilating, and air conditioning systems;

(ii) Will ensure barrier-free ingress and egress to and from the residence by individuals residing in the residence;



- (iii) Is responsible for keeping the residence in a safe condition that meets local health and safety codes; and
- (iv) Has a right to reasonable access to the residence in order to complete the terms of the residency agreement.
- (e) Unless otherwise specified in the individual service plan and implemented in accordance with rule 5123-2-06 of the Administrative Code, a statement that the individual:
 - (i) Has a right to select the individual's roommates;
 - (ii) Has a right to privacy and security including locks and keys to the individual's bedroom;
 - (iii) Has a right to decorate the individual's bedroom;
 - (iv) Has a right to have visitors of the individual's choosing at any time;
 - (v) Has the freedom and support to control the individual's schedule and activities; and
 - (vi) Has a right to access food at any time.
- (f) A statement that the individual is responsible for timely monthly payment of the rent or the individual's share of the rent, as applicable, to the landlord. When determined to be appropriate by the individual with the support of the team, the residency agreement may designate a person or responsible party to ensure timely payment to the landlord.
- (g) The rent amount which:
 - (i) Will be reasonable and comparable to community standards;
 - (ii) Will be determined based upon the accommodations provided and not upon an individual's assets, resources, or ability to pay;



(iii) In a residential facility, will include the cost of providing furnishings, equipment, and supplies required by Chapter 5123-3 of the Administrative Code; and

(iv) Will not include items that are reimbursable under the medicaid program.

(h) Individual-specific expenses:

(i) Which reflect only items that are available exclusively from the landlord and determined to be needed by the individual with the support of the individual's team;

(ii) Which reflect only items that the individual has been unable to access or utilize through other available resources; and

(iii) The cost of which may be shared equally when two or more residents agree to share use of the item.

(i) A statement that the individual has a right to terminate the residency agreement:

(i) Without cause upon thirty-day advance written notice to the landlord unless the individual and the landlord mutually agree in writing to an alternative plan; or

(ii) With cause upon five-day advance written notice to the landlord if the landlord has breached an obligation or failed to satisfy required conditions under the residency agreement.

(j) In a provider-owned residential setting as described in paragraph (B)(15)(a) or (B)(15)(b) of this rule when the provider is not related to the individual, a statement that the landlord has a right to terminate the residency agreement:

(i) Without cause upon thirty-day advance written notice to the individual unless the individual and the landlord mutually agree in writing to an alternative plan; or

(ii) With cause upon five-day advance written notice to the individual if the individual has breached



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an obligation or failed to satisfy required conditions under the residency agreement or chooses to leave or otherwise vacates the residence (e.g., upon incarceration).

(k) In a residential facility, a statement that the residential facility will terminate services in accordance with rule 5123-3-05 of the Administrative Code.