



Ohio Administrative Code

Rule 5123-9-37 Home and community-based services waivers - waiver nursing delegation under the individual options, level one, and self-empowered life funding waivers.

Effective: January 1, 2024

(A) Purpose

This rule defines waiver nursing delegation 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) "Adult day services" means adult day support, career planning, group employment support, individual employment support, and vocational habilitation as those services are defined in Chapter 5123-9 of the Administrative Code.
- (2) "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.
- (3) "County board" means a county board of developmental disabilities.
- (4) "Delegating nurse" means the nurse who delegates a nursing task or assumes responsibility for individuals who are receiving delegated nursing care in accordance with Chapter 4723-13 or 5123-6 of the Administrative Code.
- (5) "Department" means the Ohio department of developmental disabilities.
- (6) "Fifteen-minute billing unit" means a billing unit that equals fifteen minutes of service delivery time or is greater or equal to eight minutes and less than or equal to twenty-two minutes of service



delivery time. Minutes of service delivery time accrued throughout a day will be added together for the purpose of calculating the number of fifteen-minute billing units for that day.

(7) "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.

(8) "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.

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

(10) "Licensed nurse" means a registered nurse or a licensed practical nurse.

(11) "Licensed practical nurse" has the same meaning as in section 4723.01 of the Revised Code and for purposes of this rule, may practice waiver nursing delegation only at the direction of a registered nurse.

(12) "Provider" means an agency provider or an independent provider.

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

(14) "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 includes the items delineated in paragraph (E) of this rule to validate payment for medicaid services.

(15) "Significant change" means a decline or improvement in an individual's medical condition or a change in location of service delivery.



(16) "Team" means the group of persons chosen by an individual with the core responsibility to support the individual in directing development of the individual service plan. The team includes the individual's guardian or adult whom the individual has identified, as applicable, the service and support administrator, direct support professionals, providers, licensed or certified professionals, and any other persons chosen by the individual to help the individual consider possibilities and make decisions.

(17) "Unlicensed personnel" means a person not currently licensed by the board of nursing as a registered nurse or licensed practical nurse, or a person who does not hold a current valid certificate to practice as a dialysis technician or administer medications as a medication aide.

(18) "Waiver nursing delegation" means activities related to the transfer of responsibility for performance of a specific nursing task from a licensed nurse authorized to perform the task to unlicensed personnel. Waiver nursing delegation has two distinct components:

(a) Waiver nursing delegation/assessment, when the delegating nurse who is a registered nurse, conducts a comprehensive assessment of an individual's health for the purpose of determining the appropriateness of delegating nursing tasks to be performed for the individual.

(b) Waiver nursing delegation/consultation, when the delegating nurse who is either a registered nurse or a licensed practical nurse at the direction of a registered nurse in accordance with rule 4723-13-05 of the Administrative Code, consults with an individual, a physician who ordered a delegated nursing task, or unlicensed personnel to whom the delegating nurse has delegated responsibility for a nursing task. Waiver nursing delegation/consultation includes:

(i) Evaluation of the ability of unlicensed personnel to perform the delegated task such as:

(A) Verifying that unlicensed personnel have successfully completed prerequisite training; or

(B) Observing a return demonstration of a delegated task performed by unlicensed personnel.

(ii) Development and implementation of a delegation plan such as:



- (A) Verifying medications and treatments ordered by physicians;
 - (B) Creating or modifying individual-specific instructions for performing delegated nursing tasks;
 - (C) Identifying expected outcomes of delegated nursing tasks;
 - (D) Identifying possible side effects of prescribed medication being administered under nursing delegation;
 - (E) Providing instructions for documenting when a delegated task is completed or omitted;
 - (F) Confirming medications/supplies necessary for the delegated tasks are available in the service setting; or
 - (G) Completing delegation-related documentation such as medication administration records.
- (iii) Evaluation of progress of nursing delegation such as:
- (A) Consulting with the individual receiving services, physicians, or unlicensed personnel performing delegated nursing tasks via in-person contact, telephone calls, teleconferencing, videoconferencing, or other means; or
 - (B) Reviewing delegation-related documentation such as medication administration records, progress notes, physician's orders, or hospital discharge records.
 - (C) Provider qualifications
 - (1) Waiver nursing delegation 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) The person providing waiver nursing delegation will:



- (a) Be a registered nurse or a licensed practical nurse with current valid licensure in good standing to practice nursing in Ohio pursuant to Chapter 4723. of the Revised Code; and
 - (b) Be working within the scope of practice as set forth in Chapter 4723. of the Revised Code and administrative rules adopted thereunder.
 - (3) A county board or a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards may provide waiver nursing delegation only when no other certified provider is willing and able.
 - (4) A family member who lives with an individual is not eligible to be paid for waiver nursing delegation provided to that individual.
 - (5) An applicant seeking approval to provide waiver nursing delegation will complete and submit an application and adhere to the requirements of as applicable, rule 5123-2-08 or 5123-2-09 of the Administrative Code.
 - (6) Failure of a provider to comply with this rule and 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.
- (D) Requirements for service delivery
- (1) Waiver nursing delegation will be provided pursuant to a person-centered individual service plan that conforms to the requirements of rule 5123-4-02 of the Administrative Code. The individual service plan will identify the providers that may provide waiver nursing delegation. When an individual receives waiver nursing delegation in multiple settings and/or from multiple providers, the team will determine and specify in the individual service plan, the allocation of waiver nursing delegation/assessment and/or waiver nursing delegation/consultation services to each provider.
 - (2) An individual may receive up to:
 - (a) One waiver nursing delegation/assessment every sixty days in the individual's residential setting;



and

(b) One waiver nursing delegation/assessment every sixty days in the individual's adult day services setting.

(3) An individual may receive up to ten hours of waiver nursing delegation/consultation each month, regardless of the number of providers delivering the service.

(4) Waiver nursing delegation/assessment may be billed sequentially to, but not concurrently with, waiver nursing delegation/consultation.

(5) Waiver nursing delegation does not include time spent by a licensed nurse:

(a) Participating in individual service plan development meetings;

(b) Consulting with an individual's team on matters not specifically related to waiver nursing delegation for that individual;

(c) Directly providing nursing services;

(d) Coordinating an individual's health care;

(e) Conducting general health-related training for unlicensed personnel; or

(f) Conducting training described in Chapter 5123-6 of the Administrative Code.

(6) A provider of waiver nursing delegation will utilize electronic visit verification in accordance with rule 5160-1-40 of the Administrative Code.

(E) Documentation of services

(1) Service documentation for waiver nursing delegation/assessment and waiver nursing delegation/consultation will include each of the following to validate payment for medicaid services:



- (a) Type of service (i.e., waiver nursing delegation/assessment or waiver nursing delegation/consultation).
 - (b) Date of service.
 - (c) Place of service.
 - (d) Name of individual receiving service.
 - (e) Medicaid identification number of individual receiving service.
 - (f) Name of provider.
 - (g) Provider identifier/contract number.
 - (h) 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.
 - (i) Description and details of the service delivered that directly relate to the services specified in the approved individual service plan as the services to be provided, including the name of the unlicensed person for whom a supervisory visit was performed.
 - (j) Number of units of the delivered service or continuous amount of uninterrupted time during which the service was provided.
 - (k) Beginning and ending times of the delivered service.
- (2) In addition to service documentation specified in paragraph (E)(1) of this rule, service documentation for waiver nursing delegation/assessment will include the precipitating factor indicating why an assessment was needed, that is:
- (a) The individual was discharged from hospital;



(b) The individual has experienced a significant change; or

(c) Initiation of waiver nursing delegation for an individual who has not previously received waiver nursing delegation.

(3) In addition to service documentation specified in paragraph (E)(1) of this rule, service documentation for waiver nursing delegation/consultation will include a description and details of the consultation purpose and outcomes, including the name of the person with whom the delegating nurse was consulting.

(F) Payment standards

The billing units, procedure codes, and payment rates for waiver nursing delegation are contained in the appendix to this rule.