



Ohio Administrative Code

Rule 5123:2-9-03 Home and community-based services waivers - overtime and limit on number of hours in a work week an independent provider may provide services.

Effective: November 2, 2017

(A) Purpose

This rule sets forth procedures related to overtime worked by independent providers, places a limit on the number of hours in a work week an independent provider may provide services under a home and community-based services medicaid waiver component administered by the Ohio department of developmental disabilities, and establishes a process and the circumstances under which the limit may be exceeded.

(B) Definitions

(1) "Agency provider" means an entity that directly employs at least one person in addition to the chief executive officer for the purpose of providing services for which the entity must be certified in accordance with rule 5123:2-2-01 of the Administrative Code.

(2) "County board" means a county board of developmental disabilities.

(3) "Department" means the Ohio department of developmental disabilities.

(4) "Emergency" means an unanticipated and sudden absence of an individual's provider or natural supports due to illness, incapacity, or other cause.

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

(6) "Home and community-based services medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.



(7) "Independent provider" means a self-employed person who provides services for which he or she must be certified in accordance with rule 5123:2-2-01 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, his or her 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) "Overtime" means hours worked in excess of forty in a work week.

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

(12) "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 of the Administrative Code.

(13) "Waiver eligibility span" means the twelve-month period beginning with the individual's initial waiver enrollment date or a subsequent eligibility re-determination date.

(14) "Work week" means the seven consecutive days beginning on Sunday at twelve a.m. and ending on Saturday at eleven fifty-nine p.m. of each week.

(C) Overtime

The department, county boards, individuals who receive services, and independent providers shall work collaboratively to efficiently use available resources and to the extent possible, reduce the need for overtime. To that end, an independent provider shall inform an individual's service and support administrator of the number of persons for whom the independent provider provides any medicaid-funded services as an independent provider anywhere in the state and the number of hours of services the independent provider provides in a work week for each such person:



- (1) When the independent provider is selected by the individual to provide services;
 - (2) When notifying the service and support administrator in accordance with paragraph (D)(4) of this rule; and
 - (3) At other times upon request of the service and support administrator.
- (D) Limit on providing services in a work week
- (1) Beginning February 1, 2018, after an independent provider has worked sixty hours in a work week providing any medicaid-funded services as an independent provider, that independent provider may provide additional units of services under a home and community-based services medicaid waiver component administered by the department as an independent provider in that work week only:
 - (a) When authorized by the service and support administrator for the individual for whom the additional services are provided in accordance with paragraph (D)(3) of this rule; or
 - (b) Due to an emergency.
 - (2) Individuals receiving services under a home and community-based services medicaid waiver component administered by the department and their independent providers and service and support administrators shall take all measures necessary to achieve compliance with the limit established in paragraph (D)(1) of this rule by February 1, 2018.
 - (3) As part of the assessment and person-centered planning process set forth in rule 5123:2-1-11 of the Administrative Code, an individual and his or her team shall identify known or anticipated events or circumstances that will necessitate an individual's independent provider to exceed the limit established in paragraph (D)(1) of this rule.
 - (a) When known or anticipated events or circumstances will necessitate an individual's independent provider to exceed the limit, the events and circumstances, including authorization for the



independent provider to exceed the limit for these specific events and circumstances, shall be addressed in the individual service plan. Examples of known or anticipated events or circumstances include but are not limited to:

(i) Scheduled travel or surgery of the individual, the individual's family member, or the individual's provider;

(ii) Holidays or scheduled breaks from school;

(iii) The individual has a compromised immune system and may be put at risk by having additional providers;

(iv) The independent provider is the only provider that has been trained by a nurse on delegated tasks or trained by a behavioral specialist to implement unique behavioral support strategies; and

(v) A shortage of other available providers.

(b) When an individual requests that an independent provider be authorized to routinely exceed the limit due to a shortage of other available providers, the individual and the service and support administrator shall work together to identify additional providers. When good faith efforts to identify additional providers have not been effective, the service and support administrator may authorize the independent provider to exceed the limit as specified in the individual service plan, for the duration of the individual's waiver eligibility span.

(c) When, pursuant to circumstances described in paragraph (D)(3)(a)(iv) or (D)(3)(a)(v) of this rule, the service and support administrator authorizes an independent provider to exceed the limit, the service and support administrator shall work with the individual and the individual's team to develop and implement a plan to eliminate the circumstances that necessitate the independent provider to exceed the limit.

(4) When an emergency necessitates an individual's independent provider to exceed the limit established in paragraph (D)(1) of this rule, the independent provider shall notify the individual's service and support administrator in accordance with the county board's written procedure described



in paragraph (D)(5) of this rule, within seventy-two hours of the events or circumstances creating the emergency and report the hours the independent provider worked that exceeded the limit.

(5) On or before January 1, 2018, a county board shall implement a written procedure for an individual's independent provider to notify the individual's service and support administrator when an emergency requires the independent provider to exceed the limit established in paragraph (D)(1) of this rule. The county board shall notify independent providers at least thirty calendar days in advance of revising the written procedure.

(E) Violations of this rule

(1) An individual's right to obtain home and community-based services from any qualified and willing provider in accordance with 42 C.F.R. 431.51 as in effect on the effective date of this rule and sections 5123.044 and 5126.046 of the Revised Code shall not be interpreted to permit an independent provider to violate this rule.

(2) An independent provider who violates the requirements of this rule may be subject to denial, suspension, or revocation of certification pursuant to rule 5123:2-2-01 of the Administrative Code.

(F) Informal complaint process

(1) If a county board receives a complaint from an individual regarding implementation of this rule, the county board shall respond to the individual within thirty calendar days and provide the department with a copy of the individual's complaint and the county board's response. The department shall review the complaint and the response and take actions it determines necessary.

(2) Initiation of a complaint in accordance with paragraph (F)(1) of this rule shall not limit an individual's ability to exercise his or her due process rights in accordance with paragraph (G) of this rule.

(G) Due process rights and responsibilities

(1) Applicants for and recipients of services under a home and community-based services medicaid



waiver component administered by the department may use the process set forth in section 5160.31 of the Revised Code and rules implementing that statute for any purpose authorized by that statute, including being denied the choice of a provider who is qualified and willing to provide home and community-based services. The process set forth in section 5160.31 of the Revised Code is available only to applicants, recipients, and their lawfully appointed authorized representatives. Providers shall have no standing in an appeal under that section.

(2) Applicants for and recipients of services under a home and community-based services medicaid waiver component administered by the department shall use the process set forth in section 5160.31 of the Revised Code and rules implementing that statute, for any challenge related to the type, amount, level, scope, or duration of services included in or excluded from an individual service plan. A county board's denial of authorization for an independent provider to exceed the limit established in paragraph (D)(1) of this rule does not necessarily result in a change in the level of services received by an individual.