

**\*\*\*Proposed Revisions to Existing Rule - June 2, 2016\*\*\***

**5123:2-9-18 Home and community-based services waivers - non-medical transportation under the individual options, level one, and self-empowered life funding waivers.**

(A) Purpose

~~The purpose of this rule is to define~~ This rule defines non-medical transportation and ~~sets forth~~ sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

(B) Definitions

- (1) "Adult day support" has the same meaning as in rule 5123:2-9-17 of the Administrative Code.
- (2) "Agency provider" means an entity that directly employs persons at least one person in addition to the chief executive officer for the purpose of providing services for which the entity must be certified ~~under rules adopted by the department in~~ accordance with rule 5123:2-2-01 of the Administrative Code.
- (3) "Attendant" means a person employed by a provider of non-medical transportation separate from the driver of the vehicle. Attendants are not required to be present during the provision of non-medical transportation but when present, are required to comply with this rule.
- (4) "Budget limitation" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (5) "Career planning" has the same meaning as in rule 5123:2-9-13 of the Administrative Code.
- ~~(6)~~ (6) "Commercial vehicles" means buses, light rail transit, livery vehicles, and taxicabs that are available for public use.
- ~~(7)~~ (7) "Community inclusion" has the same meaning as in rule 5123:2-9-42 of the Administrative Code.
- ~~(8)~~ (8) "Commute" means the number of miles driven when one or more individual is riding in a vehicle while non-medical transportation at the per-mile rate is being provided.
- ~~(9)~~ (9) "County board" means a county board of developmental disabilities.
- ~~(10)~~ (10) "Department" means the Ohio department of developmental disabilities.
- (11) "Group employment support" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.
- ~~(12)~~ (12) "Homemaker/personal care" has the same meaning as in rule 5123:2-9-30 of the Administrative Code.

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- (11) (13) "Independent provider" means a self-employed person who provides services for which he or she must be certified ~~under~~ 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.
- (12) (14) "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.
- (15) "Individual employment support" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.
- (13) "~~Integrated employment~~" has the same meaning as in rule 5123:2-9-44 of the Administrative Code.
- (14) (16) "Modified vehicle" means a motor vehicle that has been designed, constructed, or fabricated and equipped to be used upon public streets and/or highways for transportation of individuals who require use of a wheelchair.
- (15) (17) "Non-medical transportation" means transportation that is used by individuals enrolled in individual options, level one, and self-empowered life funding waivers to get to and/or from a place of employment or to access adult day support, ~~integrated employment, supported employment community, supported employment enclave,~~ career planning, group employment support, individual employment support, and/or vocational habilitation. Whenever possible, family, neighbors, friends, or community agencies that provide transportation without charge shall be utilized.
- (a) Billing for the provision of non-medical transportation is limited to those times when an individual is transported to, from, and/or between the individual's place of employment and/or sites where adult day support, ~~integrated employment, supported employment community, supported employment enclave,~~ career planning, group employment support, individual employment support, and/or vocational habilitation are provided to the individual.
- (b) Billing for the provision of non-medical transportation may occur when an individual is transported to a drop-off or transfer location from which the individual is then transported to and/or from his or her place of employment or the site where adult day support, ~~integrated employment, supported employment community, supported employment enclave,~~ career planning, group employment support, individual employment support, and/or vocational habilitation are provided to the individual.
- (c) There are three modes of non-medical transportation:

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- (i) Non-medical transportation at the per-trip rate;
- (ii) Non-medical transportation at the per-mile rate; and
- (iii) Non-medical transportation provided by operators of commercial vehicles at the usual and customary fare.

(d) Nothing in this rule shall be interpreted to prohibit a provider of homemaker/personal care from transporting an individual to and/or from the individual's place of employment or the site where adult day support, ~~supported employment community, supported employment enclave, career planning, group employment support, individual employment support,~~ and/or vocational habilitation are provided and billing for homemaker/personal care and transportation in accordance with rules 5123:2-9-30 and 5123:2-9-24 of the Administrative Code.

(18) "Passenger" means a traveler in a vehicle who does not participate in its operation.

~~(16)~~ (19) "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.

~~(17)~~ (20) "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 the items delineated in paragraph (H) of this rule to validate payment for medicaid services.

~~(18) "Supported employment community" has the same meaning as in rule 5123:2-9-15 of the Administrative Code.~~

~~(19) "Supported employment enclave" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.~~

~~(20)~~ (21) "Transportation" has the same meaning as in rule 5123:2-9-24 of the Administrative Code.

~~(21)~~ (22) "Vocational habilitation" has the same meaning as in rule 5123:2-9-14 of the Administrative Code.

(C) Provider qualifications

(1) Non-medical transportation shall be provided by an independent provider, an agency provider, or an operator of commercial vehicles that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of medicaid.

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- (2) An applicant seeking approval to provide non-medical transportation shall complete and submit an application through the department's website and adhere to the requirements of rule 5123:2-2-01 of the Administrative Code except that paragraphs ~~(C)(3)(a), (C)(3)(b), (C)(3)(c), (D)(1), (D)(3), and (K) (D)(1), (D)(2), (D)(5), (D)(8), and (D)(17)~~ of that rule do not apply to operators of commercial vehicles.
- (3) An applicant seeking approval to provide non-medical transportation as an independent provider shall present his or her driving record prepared by the bureau of motor vehicles no earlier than fourteen days prior to the date of his or her application for initial or renewal provider certification. A person having six or more points on his or her driving record is prohibited from providing non-medical transportation.
- (4) An independent provider of non-medical transportation shall:
- (a) Hold a valid driver's license as specified by Ohio law.
  - (b) Have valid liability insurance as specified by Ohio law.
  - (c) Immediately notify the department, in writing, if he or she accumulates six or more points on his or her driving record or if his or her driver's license is suspended or revoked.
  - (d) Complete testing for controlled substances by a laboratory certified for such testing and be determined to be drug free prior to initially providing non-medical transportation.
  - (e) Complete testing for controlled substances by a laboratory certified for such testing within thirty-two hours and complete testing for blood alcohol level by an entity certified for such testing within eight hours of a motor vehicle accident involving the driver while he or she was providing non-medical transportation when:
    - (i) The accident involves the loss of human life; or
    - (ii) The driver receives a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved:
      - (a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
      - (b) One or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- (5) An agency provider of non-medical transportation shall:
- (a) Ensure that each driver holds a valid driver's license as specified by Ohio law.
  - (b) Have or ensure that each driver has valid liability insurance as specified by Ohio

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law.

- (c) Obtain, for each driver, a driving record prepared by the bureau of motor vehicles no earlier than fourteen days prior to the date of initial employment as a driver and at least once every three years thereafter. A person having six or more points on his or her driving record is prohibited from providing non-medical transportation.
  - (d) Require each driver to immediately notify the agency provider, in writing, if the driver accumulates six or more points on his or her driving record or if his or her driver's license is suspended or revoked.
  - (e) Ensure that each driver completes testing for controlled substances by a laboratory certified for such testing and be determined to be drug free prior to initially providing non-medical transportation.
  - (f) Ensure that each driver completes testing for controlled substances by a laboratory certified for such testing within thirty-two hours and completes testing for blood alcohol level by an entity certified for such testing within eight hours of a motor vehicle accident involving the driver while he or she was providing non-medical transportation when:
    - (i) The accident involves the loss of human life; or
    - (ii) The driver receives a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved:
      - (a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
      - (b) One or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
  - (g) Develop and ~~maintain~~ implement written policies and procedures regarding ~~the requirements of its drivers~~ vehicle accessibility, vehicle maintenance, and requirements for vehicle drivers.
- (6) Failure to comply with this rule and rule 5123:2-2-01 of the Administrative Code may result in denial, suspension, or revocation of the provider's certification.
- (D) General requirements for service delivery
- (1) Non-medical transportation shall be provided pursuant to an individual service plan that conforms to the requirements of rule 5123:2-1-11 of the Administrative Code. The individual service plan shall indicate whether non-medical transportation is to be provided in a modified vehicle or non-modified vehicle, at the per-trip or per-mile rate, and/or by operators of commercial vehicles.
  - (2) The service and support administrator shall ensure that a budget limitation for non-

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medical transportation is determined in accordance with rule 5123:2-9-19 of the Administrative Code when the need for non-medical transportation has been identified through development of the individual service plan.

- (3) A vehicle used for non-medical transportation shall be equipped with:
    - (a) Secure storage space for removable equipment and passenger property;
    - (b) A communication system, that may include cellular communication, capable of two-way communication; and
    - (c) A fire extinguisher and an emergency first-aid kit that are safely secured.
  - (4) On each day a vehicle is used to provide non-medical transportation, the first driver of the vehicle shall conduct and document inspection and testing of the lights, windshield washers/wipers, emergency equipment, mirrors, horn, tires, and brakes prior to transporting an individual.
  - (5) A vehicle used for non-medical transportation shall, at a frequency of at least once every twelve months, be inspected by the Ohio state highway patrol safety inspection unit or a certified mechanic and be determined to be in good working condition.
  - (6) Each driver and attendant in the vehicle shall comply with federal, state, and local laws and regulations.
  - (7) A provider shall not bill for adult day support, ~~integrated employment, supported employment community, supported employment enclave, career planning, group employment support, individual employment support,~~ or vocational habilitation during the same time non-medical transportation is provided.
  - (8) A provider shall not bill for community inclusion or homemaker/personal care provided by the driver during the same time non-medical transportation is provided.
- (E) Requirements for service delivery of non-medical transportation at the per-trip rate
- (1) Non-medical transportation at the per-trip rate shall be provided in:
    - (a) A non-modified vehicle with a passenger capacity of nine or more; or
    - (b) A modified vehicle that:
      - (i) Has permanent fasteners to secure wheelchairs to the floor or side of the vehicle to prevent wheelchair movement;
      - (ii) Has safety restraints in the vehicle for the purpose of restraining individuals in wheelchairs;
      - (iii) Is equipped with a stable access ramp specifically designed for wheelchair access or hydraulic lift; and

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- (iv) On each day the vehicle is used to provide non-medical transportation, the first driver of the vehicle shall conduct and document inspection and testing of the wheelchair fasteners, restraints, and access ramp or hydraulic lift prior to transporting an individual in a wheelchair.
  - (2) Individuals shall be in the vehicle during the times the provider bills the per-trip rate.
  - (3) Each driver shall provide a form, completed and signed by a person who is licensed, certified, and/or registered in accordance with Ohio law to perform physical examinations, establishing the driver's physical qualification to provide non-medical transportation. A person employed by an agency provider as a driver prior to January 1, 2007 is not required to meet the requirements of this paragraph when the agency provider maintains verification that a physical examination was completed at the time of the person's hire.
- (F) Requirements for service delivery of non-medical transportation at the per-mile rate
- (1) Non-medical transportation at the per-mile rate shall be provided in a non-modified vehicle with a passenger capacity of eight or fewer.
  - (2) Individuals shall be in the vehicle during the times the provider bills the per-mile rate except that billing may occur when non-medical transportation is being provided on behalf of an individual who is receiving job development and placement, job training/coaching, ongoing job support, or worksite accessibility in accordance with rules 5123:2-9-15, and 5123:2-9-16, ~~and 5123:2-9-44~~ of the Administrative Code.
  - (3) Calculation of the per-mile payment rate for a commute ensures that each passenger in the vehicle shares equally in the total cost of the commute.
    - (a) Passengers include individuals enrolled in waivers and individuals who are not enrolled in waivers for purposes of determining the number of individuals in the vehicle during the commute.
    - (b) The number of miles for each commute is calculated from the point where the first individual who is enrolled in an individual options, level one, or self-empowered life funding waiver riding in the vehicle is picked up and the point where the last individual who is enrolled in an individual options, level one, or self-empowered life funding waiver in the same vehicle is dropped off at his or her destination.
- (G) Requirements for service delivery of non-medical transportation by operators of commercial vehicles
- (1) Operators of commercial vehicles that provide non-medical transportation are not subject to the requirements set forth in paragraphs (D)(3), (D)(4), and (D)(5) of this rule.
  - (2) Operators of commercial vehicles shall comply with federal, state, and local laws and

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regulations pertaining to the maintenance and operation of the commercial vehicles.

(H) Documentation of services

- (1) Service documentation for non-medical transportation at the per-trip rate and non-medical transportation at the per-mile rate shall include each of the following to validate payment for medicaid services:
  - (a) Type of non-medical transportation service (i.e., per-trip or per-mile) provided.
  - (b) Date of service.
  - (c) License plate number of vehicle used to provide 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) Signature of driver of the vehicle or initials of the driver of the vehicle if the signature and corresponding initials are on file with the provider.
  - (i) Number of miles in each distinct trip and/or commute, as indicated by recording beginning and ending odometer readings.
  - (j) Names of all other passengers/riders, including paid staff and volunteers, who were in the vehicle during any portion of the trip and/or commute.
  - (k) Begin and end times of the trip and/or commute.
- (2) Service documentation for non-medical transportation by operators of commercial vehicles shall include each of the following to validate payment for medicaid services:
  - (a) Type of non-medical transportation service (i.e., by bus, light rail transit, livery vehicle, or taxicab) provided.
  - (b) Date of service or, in the case of a purchase of bus fares, taxicab tokens, or similar types of travel vouchers to be used on more than one date, date of purchase.
  - (c) Name of individual receiving service.
  - (d) Medicaid identification number of individual receiving service.
  - (e) Name of provider.
  - (f) Provider identifier/contract number.
  - (g) Receipt issued by operator of commercial vehicles indicating the amount paid.

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(I) Payment standards

- (1) The billing units, service codes, and payment rates for non-medical transportation are contained in appendix A to this rule. Payment rates for non-medical transportation at the per-trip rate and non-medical transportation at the per-mile rate ~~include an adjustment~~ are based on the county cost-of-doing-business category for the county in which the preponderance of service was provided. The cost-of-doing-business categories are contained in appendix B to this rule.
- (2) Operators of commercial vehicles shall be paid their usual and customary fares.
- (3) Payment for non-medical transportation shall not exceed the budget limitations contained in appendix ~~C~~ B to rule 5123:2-9-19 of the Administrative Code.

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APPENDIX A

BILLING UNITS, SERVICE CODES, AND PAYMENT RATES  
FOR NON-MEDICAL TRANSPORTATION

Non-Medical Transportation at the Per-Trip Rate

Billing Unit: Per one-way trip

Service Codes: Individual Options Waiver ATB  
Level One Waiver FTB  
Self-Empowered Life Funding Waiver STB

Payment Rates: Listed below by cost-of-doing-business (CODB) category. Rates are presented on a per-person basis and shall not be further altered, irrespective of the number of persons being transported simultaneously. Rate calculations include the cost of the vehicle driver.

CODB Category	One-Way Trip In Vehicle
1	\$18.73
2	\$18.93
3	\$19.12
4	\$19.31
5	\$19.51
6	\$19.70
7	\$19.90
8	\$20.09

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Non-Medical Transportation at the Per-Mile Rate

Billing Unit: Per mile based on commute

Service Codes: Individual Options Waiver ATW  
Level One Waiver FTW  
Self-Empowered Life Funding Waiver STW

Payment Rates: Listed below by cost-of-doing-business (CODB) category. Rates are paid to commute one mile. To calculate the total cost of the commute, divide the rate per mile by the total number of passengers in the vehicle at any one time during the commute. Multiply the resulting per-person, per-mile rate by the number of miles in the commute to determine the per-person amount to be billed to the waiver for the commute. Rate calculations include the cost of the vehicle driver.

CODB Category	Rate Per Mile
1	\$1.25
2	\$1.25
3	\$1.27
4	\$1.27
5	\$1.27
6	\$1.29
7	\$1.29
8	\$1.29

Non-Medical Transportation by Operators of Commercial Vehicles

Billing Unit: Per trip, token, or voucher

Service Codes: Individual Options Waiver ATT  
Level One Waiver FTT  
Self-Empowered Life Funding Waiver STT

Payment Rate: Usual and customary fare

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APPENDIX B

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