

Guide to Public Participation in the Rulemaking Process

This guide is published to assist stakeholders (individuals and families who receive services, county boards of developmental disabilities, providers of services, and advocacy groups) and the general public in understanding how rules are adopted by the Ohio Department of Developmental Disabilities. The purpose of this guide is to provide a general overview of the rulemaking process and to assist those who participate, or who may wish to participate, in this process. The expertise of persons who receive and provide services in the developmental disabilities system is an essential component of the Department's rulemaking process; the Department actively seeks and considers input regarding rules being reviewed or proposed.

Mission

The Department is a state agency created by statute and charged with administering and enforcing Chapters 5123., 5124., and 5126. of the Ohio Revised Code. The Department's mission is continuous improvement of the quality of life for Ohio's citizens with developmental disabilities and their families. The Department's functional responsibilities are managed by the Director and deputy directors of eight divisions:

- Fiscal Administration,
- Human Resources,
- Information Technology Services,
- Legal and Oversight,
- Legislative Affairs and Communications,
- Medicaid Development and Administration,
- Policy and Strategic Direction, and
- Residential Resources.

Rulemaking Authority

The Department is authorized to adopt, amend, and rescind rules necessary to carry-out the provisions of Chapters 5123., 5124., and 5126. of the Ohio Revised Code. The Director is responsible for adopting rules for the proper execution of the powers and duties of the Department as prescribed by those chapters. Through administrative rules, the Department establishes standards:

- For advancing the quality of life for individuals with developmental disabilities;

- To be followed by county boards of developmental disabilities in administering, providing, arranging, and operating programs and services;
- For determining eligibility for services and supports;
- For distributing state funds;
- For the provision of Supported Living services;
- For administering Medicaid Home and Community-Based Services waivers;
- For licensing and regulating residential facilities;
- For Intermediate Care Facilities for Individuals with Intellectual Disabilities; and
- To ensure that services and supports are furnished in a manner that provides for the health, safety, and welfare of individuals with developmental disabilities.

The Department's rules can be found under agency designation 5123 of the Ohio Administrative Code and are published by the State of Ohio (<http://codes.ohio.gov/oac>) and at the Department's *Rules in Effect* webpage (<http://dodd.ohio.gov/RulesLaws/Pages/RulesInEffect.aspx>).

Rule Review Process

The Department is required to review each of its rules at least once every five years in accordance with Section 106.03 of the Ohio Revised Code. The purpose of this review is to determine whether the rule:

- Should be continued without change, be amended, or be rescinded, taking into consideration the rule's purpose and scope and the intent of the statute under which the rule was adopted;
- Needs amendment or rescission to give more flexibility at the local level;
- Needs amendment or rescission to eliminate unnecessary paperwork;
- Appropriately incorporates a text or other material by reference;
- Duplicates, overlaps with, or conflicts with other rules;
- Has an adverse impact on business (as defined in Section 107.52 of the Ohio Revised Code); or
- Contains words or phrases that in contemporary usage are understood as being derogatory or offensive.

In making this review, the Department considers the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that may have changed in the subject matter affected by the rule. Prior to the scheduled review date of a rule, the Department seeks input from system stakeholders (individuals and families who receive services, county boards of developmental disabilities, providers of services, and advocacy groups). Stakeholders are asked to review rules and identify issues and concerns and to make recommendations to the Department for possible revisions. Anyone may provide input to the Department during the process. Stakeholders and the public can learn about opportunities to provide input in the rule review process at the

Department's *Rules Under Development* webpage (<http://dodd.ohio.gov/RulesLaws/Pages/Rules-Under-Development.aspx>).

The Department takes into consideration the recommendations received from stakeholders and other input or comments and decides what course of action will be taken concerning each reviewed rule. A rule may be filed to continue without change or may be amended or rescinded. Aside from the five-year review required by law, the Department may consider rules at any time to determine what, if any, modifications may be needed as a result of new legislation or a change in policy and may propose new rules as well.

Rulemaking Process

The Department is required by law to file rules using the procedures set forth under either section 111.15 or 119.03 of the Ohio Revised Code. Proposed rules are filed with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission, the Secretary of State, and the Ohio Department of Aging. Once a rule is filed, stakeholders and the public have an opportunity to provide additional input during the Department's public hearing which is conducted 31 to 40 days after the rule is filed. Public notice of the hearing is given at least 30 days prior to the date set for the hearing by publishing the notice at the *Register of Ohio* website (<http://www.registerofohio.state.oh.us/>) maintained by the Legislative Service Commission and electronically disseminating the notice via an electronic listserv. Anyone can subscribe to the listserv by sending an email to join-rules-notice@list.dodd.ohio.gov. The hearing notice and full text of proposed rules are also available at the Department's *Rules Under Development* webpage (<http://dodd.ohio.gov/RulesLaws/Pages/Rules-Under-Development.aspx>).

The public hearing, which is held in Columbus, offers an opportunity for anyone affected by a proposed rule to present oral or written testimony to the Department. It is not necessary to attend the public hearing to provide testimony; written remarks may be submitted to the Department on or before the hearing date by email or United States mail to the Department's Administrative Rules Coordinator. The Department considers all testimony and decides whether to make changes to the proposed rule. If changes are warranted, the rule is refiled with JCARR, the Legislative Service Commission, the Secretary of State, and the Ohio Department of Aging.

Upon completion of the public hearing and when applicable, refiled rules are scheduled for a JCARR meeting agenda. JCARR is comprised of five members of the Ohio Senate and five members of the Ohio House of Representatives. The Committee's primary function is to review each proposed rule to ensure that:

- The rules does not exceed the scope of the Department's rulemaking authority;

- The rule does not conflict with the intent of the legislature in enacting the statute under which the rule is proposed;
- The rule does not conflict with any other rules;
- Incorporations by reference within the rule meet requirements set forth in statute;
- The Department has prepared a complete and accurate Rule Summary and Fiscal Analysis describing the rule and its estimated cost of compliance to all directly affected parties; and
- The Department, through a Business Impact Analysis and related documents, has demonstrated that the regulatory intent of the rule justifies its adverse impact on businesses in the state.

The JCARR meeting provides another opportunity to comment on proposed rules. If JCARR determines that a rulemaking agency has failed to comply with one or more of the six areas within JCARR jurisdiction, JCARR may recommend to the Ohio General Assembly the adoption of a concurrent resolution to invalidate the rule. If the General Assembly approves the resolution, the Department would not be able to make any more rules on the subject matter at issue until the next session of the General Assembly. So long as the proposed rule is not invalidated, the Department may take final action to make the rule effective. Rules become effective no sooner than 10 days after final filing.

Department Contact

The Department's Division of Legal and Oversight is responsible for overseeing the administrative rule functions of the Department. Anyone who wishes to provide feedback or comments on proposed rules may do so by contacting Becky Phillips, Administrative Rules Coordinator, via phone at 614-644-7393 or via email at becky.phillips@dodd.ohio.gov.