

**Department of
Developmental Disabilities**

Mike DeWine, Governor
Jeff Davis, Director

NOTICE OF PUBLIC HEARING

DATE: November 19, 2019

TIME: 10:00 a.m.

PLACE: Lobby Hearing Room
Rhodes State Office Tower
30 East Broad Street
Columbus, Ohio 43215

Pursuant to Chapter 119. of the Revised Code, the Ohio Department of Developmental Disabilities hereby gives notice of its intent to rescind, adopt, and amend the following rules of the Administrative Code on a permanent basis on or about January 1, 2020, and to conduct a public hearing thereon. At this public hearing, the Department will accept verbal and/or written testimony regarding the proposed rule actions. Persons unable to attend the public hearing may submit written comments regarding the proposed rule actions. Any written comments received on or before the public hearing date will be treated as testimony and made available for public review. Submittal of written comments may be made to Becky Phillips, Administrative Rules Coordinator, by email to becky.phillips@dodd.ohio.gov or by U.S. mail to 30 East Broad Street, 12th Floor, Columbus, Ohio 43215-3414.

House Bill 166 of Ohio's 133rd General Assembly, made a historic investment in Direct Support Professionals, the people who provide critical homemaking and personal care services to Ohioans with developmental disabilities. As a result, the Department is increasing payment rates for providers of two services—Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care—which requires amendment of four rules:

Rule 5123-9-06 (Home and Community-Based Services Waivers - Documentation and Payment for Services Under the Individual Options and Level One Waivers) establishes standards governing documentation and payment for services. Paragraph (D)(1) sets forth that an annual limitation of \$5,325 applies to several services (including Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care) used alone or in combination by an individual enrolled in a Level One Waiver. The rule is being amended to increase the limitation to \$6,750 to accommodate the increased payment rates for Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care. The funding ranges for individuals enrolled in the Individual Options Waiver, contained in Appendix A to the rule, are also being increased.

Rule 5123-9-30 (Home and Community-Based Services Waivers - Homemaker/Personal Care Under the Individual Options and Level One Waivers) defines Homemaker/Personal Care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the services. The rule is being amended to increase the rates paid to providers of the service. Additional amendments are being made to:

- Clarify the definition of On-Site/On-Call (i.e., when a provider of Homemaker/Personal Care must be present and readily available to provide care should it become necessary but is not required to remain awake);
- Update a citation to an administrative rule;
- Align the definition of "fifteen-minute billing unit" with the manner in which it is actually operationalized;
- Eliminate the definition of "service and support administrator" because the term is not used in the rule;

- Add a statement that a provider of Homemaker/Personal Care delivered in fifteen-minute billing units (other than On-Site/On-Call) shall utilize electronic visit verification in accordance with Ohio Department of Medicaid rule 5160-1-40 (Electronic Visit Verification); and
- Add a provision that the Department may pay Independent Providers a rate that exceeds the rates specified in the rule if necessary to comply with an increase to minimum wage pursuant to the Ohio Constitution.

Rule 5123-9-32 (Home and Community-Based Services Waivers - Participant-Directed Homemaker/Personal Care Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers) defines Participant-Directed Homemaker/Personal Care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the services. The rule is being amended to increase the rates paid to providers of the service. Additional amendments are being made to:

- Clarify the definition of On-Site/On-Call (i.e., when a provider of Participant-Directed Homemaker/Personal Care must be present and readily available to provide care should it become necessary but is not required to remain awake);
- Update a citation to an administrative rule;
- Align the definition of "fifteen-minute billing unit" with the manner in which it is actually operationalized; and
- Eliminate the definition of "service and support administrator" because the term is not used in the rule.

Rule 5123-9-40 (Home and Community-Based Services Waivers - Administration of the Self-Empowered Life Funding Waiver) implements the Waiver, a component of the Medicaid HCBS program administered by the Department pursuant to Section 5166.21 of the Revised Code. The rule is being amended to increase the benefit limitations to accommodate the increased payment rates for Participant-Directed Homemaker/Personal Care. Paragraph (I)(1) sets forth that the annual cost of services for individuals enrolled in the Waiver shall not exceed \$40,000 for an adult or \$25,000 for a child. The limitations are being increased to \$45,000 and \$30,000,

respectively. Additional amendments are being made to:

- Update the list of services available to individuals enrolled in the Waiver; and
- Update citations to administrative rules.

The Department is proposing actions regarding a rule governing services to individuals with developmental disabilities in nursing facilities.

Rule 5123:2-14-01 (Preadmission Screening and Resident Review for Nursing Facility Applicants and Nursing Facility Residents with Developmental Disabilities) is being rescinded and replaced by a new rule of the same title numbered 5123-14-01. The rule sets forth a process for the Department and county boards of developmental disabilities to determine whether an individual is eligible for admission to a nursing facility or eligible to continue to receive services in a nursing facility. New rule 5123-14-01 reflects changes to the process to improve efficiency as well as to ensure the Department has comprehensive data regarding individuals with developmental disabilities receiving services in nursing facilities.

The rules are available for review at the Register of Ohio website (<http://registerofohio.state.oh.us>) and at the Department's website (<https://dodd.ohio.gov/wps/portal/gov/dodd/forms-and-rules/rules-under-development/3-%2Bpublic-hearings-scheduled-for-proposed-rules>). The rules are also available for review at each county board of developmental disabilities.