

PUBLIC HEARING NOTICE
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

DATE: September 15, 2010
TIME: 10:00 a.m.
LOCATION: Room 2921, Rhodes State Office Tower
30 East Broad St., Columbus, Ohio 43215

Pursuant to sections 5103.02, 5103.03, 5103.0316, 5103.0324, 5153.16 and Chapter 119. of the Ohio Revised Code, the director of the Ohio Department of Job and Family Services gives notice of the department's intent to consider the amendment of the rules as identified below and of a public hearing thereon. The rules are proposed for amendment as a result of the five year review process.

OAC rule 5101:2-5-09, entitled "Personnel and prohibited convictions for employment" provides guidance for personnel and prohibited convictions for employees of agencies. Paragraph B was amended to require the written references to be provided prior to hire. There were two additional requirements for the employee's file listed in paragraph (O).

OAC rule 5101:2-9-02, entitled "Staffing requirements" describes staffing requirements for residential facilities. Language was added to paragraph (C) to require child care staff to provide supervision within sight or sound of a child pursuant to the level of supervision specified in the child's service plan. Language was added to paragraph (F) to prohibit the presence of daytime guests of staff members in the living unit where children reside. In paragraph (J), two additional requirements must be met prior to allowing newly hired child care staff to be left unsupervised with residents: The agency must have received and reviewed the results of the criminal records check of the employee and ensured that the employee has met the requirements in paragraph (H) of rule 5101:2-5-09 of the Administrative Code; and the employee must possess current certification in first aid and cardiopulmonary resuscitation (CPR).

OAC rule 5101:2-9-03, entitled "Staff development and evaluation" outlines training requirements and ongoing professional development and evaluation for staff in a residential facility. Paragraph (E) was inserted to allow for child care staff who separated from employment with an agency but returned within one year to be exempt from the new orientation training requirements. Paragraph (F) allows for employees who have not met training requirements due to specified reasons to continue to work in the facility. Paragraph (G) lists restrictions on the employee who has not met training requirements and agency requirements for documenting the situation and ensuring the employee's ultimate compliance with the training requirements. Requirements for the initial orientation of new child care staff were clarified in paragraph (H). Language was inserted into paragraph (I) to clarify that the type of cardiopulmonary resuscitation (CPR) training required is dependent upon the age and size of the children being served in the facility. Additionally, language was added to specify that child care staff of a residential parenting facility and a children's crisis care facility are required to be certified in infant, adult, and child CPR. Paragraph (I) also allows for exceptions to the

requirement that first aid and CPR certifications be maintained current. Paragraph (J) was inserted to specify that a child care staff person who does not have current certifications in first aid and CPR is not permitted to work with children without another staff who does have current certifications in first aid and CPR. It also prohibits the child care staff person whose certifications have been expired for more than ninety days from working in the facility until the certifications have been updated. Paragraph (N) was added to require the facility to train child care staff on any revisions in policy pertaining to children or child care staff within thirty days of the revision. Language in paragraph (Q) clarifies that physical restraint may be used by child care staff to protect a child from imminent harm.

OAC rule 5101:2-9-05, entitled "Requirements for residential parenting facility furniture, materials and equipment; diaper changing" describes the requirements for a residential parenting and crisis care facility's furniture, materials and equipment, and diaper changing procedures. The term "crisis care facility" was added to the title of the rule and to paragraphs (A) and (M) to include this type of facility. Language was added to paragraph (C) to require that cleaning equipment, cleaning agents, aerosol cans, or other chemical substances be locked in a cabinet, drawer or room when not in use. Paragraph (J) was amended to require that potty chairs be washed after being emptied and prior to being rinsed and disinfected after each use. Paragraph (L) was amended to require that all washable equipment and furniture be cleaned with soap and water at least once per month. Paragraph (M) requires that a person caring for a child who wears diapers wash his/her hands with soap and water before and after each diaper change. Also in paragraph (M) language was amended to clarify that when a central diaper changing station is used, a disposable separation material is required to be placed between the child and the changing surface, and this material must be discarded after each use. The remaining language in paragraph (M) was reworded to mirror language regarding diaper changing procedures that is located in child care regulations.

OAC rule 5101:2-9-06, entitled "General safety" provides guidance regarding general safety in a residential facility. Paragraph (D) was amended to clarify that all workshop or outdoor power-driven equipment used be operated in accordance with manufacturer's instructions. Paragraph (E) prohibits smoking in the presence of a child. Paragraph (F) clarifies that all stairways containing more than four steps within or on the grounds of a residential facility that are accessible to children be equipped with a railing. The term "crisis care facility" was also added in the second sentence of this paragraph to include that type of facility which requires safety gates on all stairways accessible to children. Paragraph (I) requires that pet vaccinations for any pets or animals on the premises of a residential facility be maintained current at all times. Paragraph (N) was added to require that stationary or portable outdoor recreational equipment designated for climbing, and swings and slides be anchored or stable and all recreational equipment is required to be appropriate to the age and functioning level of the residents. Paragraph (O) was added to require that all outdoor recreational equipment designated for climbing, and swings and slides be surrounded by a protective, resilient surface. This paragraph lists appropriate materials to be used for such a fall zone.

OAC rule 5101:2-9-08, entitled "Fire safety" provides requirements for fire safety. Language was added to paragraph (E) to require a residential facility that has a combined smoke detector and fire alarm system to have a fire alarm inspection conducted by a company approved to test such equipment at least twice annually, unless approved by a local or state fire inspector. The facility is also required to obtain annual alarm system testing and maintain documentation of the testing. Paragraph (F) requires a residential facility to have fire extinguishers in locations required by the fire inspector and that the fire extinguishers be inspected as required by the fire inspector. The facility is required to maintain documentation of the inspections. Paragraph (I) allows the use of portable heaters only if the heater has been approved by the underwriter's laboratory and if the heater has not been prohibited by any local or state ordinances or fire inspector.

OAC rule 5101:2-9-10, entitled "Storage of hazardous materials" describes storage requirements for hazardous materials. Language was added to paragraph (B) to allow for laundry supplies, except bleach, to be stored in an unlocked storage space separate and apart from food.

OAC rule 5101:2-9-11, entitled "Admissions and admissions log" provides requirements for facility admissions and the admissions log. Paragraph (A) was amended to clarify that a residential facility is required to develop a written admissions policy specifying the type of child who will be accepted and the conditions under which a child would not be accepted. This paragraph also prohibits the facility from accepting a child if acceptance of the child would put the facility over capacity, or if the child does not meet the age or gender criteria. Paragraph (B) allows for the acceptance of a child who does not meet the facility's age or gender criteria if ordered by a court. Paragraph (C) allows for a resident who is eighteen years old, but still in the custody of a court or public children services agency (PCSA), and who is expected to graduate by their nineteenth birthday to remain a resident until graduation. Paragraph (H) was added to require a residential facility to maintain a copy of each child's individual child care agreement between the custodial agency and the facility in the child's record. Language was added in paragraph (K) to require the custodial agency's phone number and address be included on the pre-admission documentation.

OAC rule 5101:2-9-12, entitled "Service plans" provides requirements for the development of service plans. Paragraph (A) was amended to allow for a service plan to be developed in writing and approved thirty days before a child's admission to the facility. Paragraph (A) also indicates who is required to be invited to be involved in the development and implementation of the service plan, which now will include the probation officer and any other service providers, if applicable. Language was also added in paragraph (A)(2)(e) as well as in paragraph (C) to allow a civil service employee engaging in social work or professional counseling for a residential facility operated by a public children services agency (PCSA) to provide written approval of the service plan. However, if the civil service employee is not a licensed social worker or licensed counselor, the employee is not permitted to approve service plans for any other facility except the residential facility operated by the PCSA they are employed with. Language was added in paragraph (B) to require the service plan to contain a description of

religious activities that will be provided to the child and to require the specifications for supervision of the child.

OAC rule 5101:2-9-14, entitled "Medications" provides requirements regarding medications. Paragraph (A) was added to require that a staff person or any other person administering medication to a child in a residential facility do so in accordance with Chapter 4723. of the Revised Code and Chapter 4723-13 of the Administrative Code.

OAC rule 5101:2-9-16, entitled "Visiting and communications" provides guidance regarding visiting and communications in a foster care residential facility. Paragraph (A) was amended to clarify that the residential facility shall develop procedures to ensure that visitation and communication arrangements between the child and family or friends are consistent with the case plan and they are documented in the service plan. Language was added to paragraph (B) to prohibit a residential facility from opening or reading a child's mail unless specified in the child's case plan or service plan and approved by the child's custodian. This paragraph allows for the facility to require a child to open mail in front of a staff person if contraband is suspected. Language was added to paragraph (E) to require the facility to allow a child to confer with his or her caseworker, custodial agency worker, or probation officer, in addition to his or her attorney and guardian ad litem, when requested. Language was added to paragraph (G) that requires the facility to ensure that a child who has access to electronic media, including internet, cell phones, and email, within or outside of the facility while under the supervision of agency staff, adheres to the agency's policy regarding communications.

OAC rule 5101:2-9-19, entitled "Personal belongings, hygiene, socialization, and education" provides guidance regarding a child's money and areas of a personal nature. Paragraph (B) currently requires that when a child in a residential facility has the opportunity to receive or earn money, that the money be maintained in an account at a financial institution, or by the residential facility. If the money is kept at the residential facility, the facility is required to provide a written report to the child at least every three months that contains the current balance, deposits, withdrawals, and any interest earned. Language was added to this paragraph to require that a copy of this written report be maintained in the child's record.

OAC rule 5101:2-9-20, entitled "Food and nutrition" describes food and nutrition requirements. Paragraph (D) was amended to require the facility to make available a minimum of three servings of pasteurized milk, vitamin D fortified. The term "children's crisis care facility" was added to paragraph (I) to apply formula requirements to that type of facility.

OAC rule 5101:2-9-21, entitled "Care, supervision, and discipline" gives guidance for discipline to foster care residential facilities. Paragraph (B)(4) was amended to prohibit the agency from cancelling a group activity due to the behavior of one child. Paragraph (B)(6) was also amended to add a certified or licensed practitioner of behavioral science as an approved authorizer of denial of social activities for more than five days. Paragraph (B)(19) was added to prohibit prone restraint in residential facilities. Paragraph (D) was

added to prohibit any agency employee, contract staff, student interns and volunteers from engaging in any act of omission or commission that results in the injury, illness, abuse, neglect, exploitation or death of any child.

OAC rule 5101:2-9-22, entitled "Isolation, seclusion and restraint" provides guidance for isolation, seclusion and restraint for foster care residential facilities. Paragraphs (B), (C), and (D) were added to provide more guidance for isolation and isolation rooms. Paragraph (E) was amended to reduce the time in an isolation room without supervisory approval from thirty minutes down to fifteen minutes. Paragraphs (O) and (P) were added to give further instruction to facilities on the use of restraint.

OAC rule 5101:2-9-23, entitled "Notification and documentation of critical incidents" provides guidance on the notification and documentation of critical incidents in a foster care residential facility. Paragraph (A) was amended to instruct the facility to include the agency holding custody on a notification of a critical incident. Paragraph (B) was amended to require the incident report to be provided to the custodial agency no later than the next business day after the occurrence.

OAC rule 5101:2-9-24, entitled "Child and family complaint policy and procedure" provides guidance concerning the complaint policies and procedures for a foster care residential facility. The rule was updated for clarity.

OAC rule 5101:2-9-25, entitled "Residential parenting facility and crisis care facility location and programmatic requirements" provides guidance for residential parenting and crisis care facilities. A new paragraph (D) was added to ensure the children in the facility are enrolled in school during the school year.

OAC rule 5101:2-9-27, entitled "Dining areas" provides guidance for dining room areas in foster care residential facilities. The rule was amended for clarity.

OAC rule 5101:2-9-28, entitled "Bedrooms" provides requirements for bedrooms in a residential facility. Language was added in paragraph (A) to require all facilities certified after the effective date of the rule to adhere to the square footage requirements in this rule. Residential facilities certified prior to the effective date of this rule who have an approved variance for the square footage requirements are permitted to remain in operation as long as the agency maintains a copy of the approved variance on file for review. Paragraph (H) was amended to clarify that bedrooms shall not have the entry located so as to require the child to pass through another bedroom or a bathroom to enter their room or to require another person to pass through the child's bedroom to enter another room. All facilities certified after the effective date of this rule are required to adhere to the pass through requirements. Residential facilities certified prior to the effective date of this rule who have an approved variance for the pass through requirement are permitted to remain in operation as long as the agency maintains a copy of the approved variance on file for review. Language was added in paragraph (J) to require all facilities certified after the effective date of the rule to adhere to the bed requirements in this paragraph. Residential facilities certified prior to the effective date

of this rule who have an approved variance for the bed requirements of this paragraph are permitted to remain in operation as long as the agency maintains a copy of the approved variance on file for review. A new paragraph (P) was added to allow the agency to make determinations about bedroom furniture items as related to the safety of the children. Language was added in paragraph (R) to require the facility to monitor for recall and safety information as issued by the Consumer Product Safety Commission and implement recommendations related to equipment used by the facility.

OAC rule 5101:2-9-29, entitled "Bathrooms" provides requirements for bathrooms. Paragraph (B) was reworded to clarify that a children's residential center shall have at least one bathroom with a sink and a toilet on the floor where sleeping rooms are located.

OAC rule 5101:2-9-30, entitled "Kitchens and kitchen supplies" includes requirements for kitchens and kitchen supplies. Paragraph (B) was amended to require each kitchen within a residential facility to contain permanent or disposable utensils. Paragraph (C) was amended to require each food serving location within a residential facility to be equipped with permanent or disposable dishes.

OAC rule 5101:2-9-32, entitled "Transportation" provides guidelines for transportation. Language was added in paragraph (C) to require all privately owned vehicles used to transport children of the facility to be annually inspected and approved by the Ohio State highway patrol and continually maintained in a safe operating condition. Paragraph (I) was added to require that the facility ensure the recall and safety information issued by the Consumer Product Safety Commission related to child safety seats or booster seats are reviewed and recommendations implemented.

OAC rule 5101:2-9-34, entitled "Building approval" provides guidelines for building approval. Paragraph (C) was added to require that a residential facility maintain compliance with all local and state building codes and ordinances.

OAC rule 5101:2-9-36, entitled "Additional requirements for children's crisis care facilities" describes additional requirements for children's crisis care facilities. Paragraph (C) was deleted due to its duplicative nature to Ohio Revised Code. Paragraph (I) was reworded to provide prescriptive guidelines for the management and prevention of communicable diseases. Paragraph (K) was reworded to provide prescriptive guidelines for handwashing procedures. Paragraph (S) and paragraphs (U) through (Z) were deleted due to their duplicative nature to language in rules 5101:2-9-05 and 5101:2-9-06.

A copy of the proposed rule(s) is available, without charge, to any person affected by the rule(s) at the address listed below. The rule(s) is also available on the internet at <http://www.registerofohio.state.oh.us/>. A public hearing on the proposed rule(s) will be held at the date, time, and location listed at the top of this notice. Either written or oral testimony will be taken at the public hearing. Additionally, written comments submitted or postmarked no later than the date of the public hearing will be treated as testimony.

Requests for a copy of the proposed rule(s) or comments on the rule(s) should be submitted by mail to the Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414, by fax at (614) 752-8298, or by e-mail at rules@jfs.ohio.gov.