

PUBLIC HEARING NOTICE
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

DATE: October 9, 2007
TIME: 1:30 p.m.
LOCATION: Room 1948, Vern Riffe Center
77 South High Street
Columbus, Ohio 43215

Pursuant to Sections 5111.033, 5111.034 and 5111.85, and Chapter 119. of the Ohio Revised Code, the director of the Ohio Department of Job and Family Services (ODJFS) gives notice of the department's intent to consider the adoption and rescission of the rules as identified below and of a public hearing thereon.

Rule 5101:3-12-25, entitled Criminal Records Checks Involving Agency-employed Providers of ODJFS-administered Waiver Services, is being proposed for rescission so that it can be renumbered, and to implement provisions of RC 5111.033, adopted under Am. Sub. H.B. 119, 127th General Assembly, relating to administration of home and community-based service HCBS waivers. It is being replaced by rule 5101:3-45-07 of the Administrative Code. This rule sets forth the process and requirements for the criminal records checks of persons under final consideration for employment with a waiver agency, and existing employees with a waiver agency in a full-time, part-time or temporary position, and who are providing HCBS in an ODJFS-administered waiver.

Rule 5101:3-12-26, entitled Criminal Records Checks Involving Independent Providers of ODJFS-administered Waiver Services, is being proposed for rescission so that it can be renumbered, and to implement provisions of RC 5111.034, adopted under Am. Sub. H.B. 119, 127th General Assembly, relating to administration of HCBS waivers. It is being replaced by rule 5101:3-45-08 of the Administrative Code. This rule sets forth the process and requirements for the criminal records checks of persons under final consideration for employment with a consumer, and existing employees with a consumer in a full-time, part-time or temporary position, and who are providing HCBS in an ODJFS-administered waiver.

Rule 5101:3-45-07, entitled ODJFS-administered Waiver Program: Criminal Records Checks Involving Agency Providers, is being proposed for adoption to replace rule 5101:3-12-25 of the Administrative Code for the purpose of renumbering rule 5101:3-12-25, and to implement provisions of RC 5111.033, adopted under Am. Sub. H.B. 119, 127th General Assembly, relating to administration of HCBS waivers. This rule sets forth the process and requirements for the criminal records checks of persons under final consideration for employment with a waiver agency, and existing employees with a waiver agency in a full-time, part-time or temporary position, and who are providing HCBS in an ODJFS-administered waiver. Changes between this new rule and the rule it is replacing are that the applicant must now request the background check from the Bureau of Criminal Identification and Investigation (BCII), rather than the waiver agency; the report must be sent to the waiver agency directly from BCII, rather from than

the applicant; the waiver agency must take into consideration whether the applicant has been found eligible for intervention in lieu of conviction for any of the disqualifying offenses as outlined in RC 5111.033; the waiver agency cannot employ an applicant who has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for more than one disqualifying offense even if the applicant meets the personal character standards listed in the rule; the personal character standards have been expanded to include the following: the disqualifying offense was not perpetrated against an individual under age eighteen or age sixty or older, or against an individual of any age with disabilities, the disqualifying offense was disorderly conduct and the conviction was not based upon an original complaint or indictment involving one of the violent offenses listed in the rule, five years have passed since the applicant was fully discharged from imprisonment, probation and/or parole for the disqualifying offense, and the disqualifying offense was not related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, and the applicant agrees, in writing, to have the waiver agency notify the potential consumer of the disqualifying offense prior to commencing service delivery; and the rule adds soliciting, Workers' Compensation fraud, identity fraud, disorderly conduct, endangering children, falsification (in a theft offense or to purchase a firearm), attempting to commit an offense, engaging in a pattern of corrupt activity, and drug paraphernalia to the list of disqualifying offenses as outlined in RC 5111.033 (formerly RC 5111.95).

Rule 5101:3-45-08, entitled ODJFS-administered Waiver Program: Criminal Records Checks Involving Non-agency Providers, is being proposed for adoption to replace rule 5101:3-12-26 of the Administrative Code for the purpose of renumbering rule 5101:3-12-26, and to implement provisions of RC 5111.034, adopted under Am. Sub. H.B. 119, 127th General Assembly, relating to administration of HCBS waivers. This rule sets forth the process and requirements for the criminal records checks of persons under final consideration for employment with a consumer, and existing employees with a consumer in a full-time, part-time or temporary position, and who are providing HCBS in an ODJFS-administered waiver. Changes between this new rule and the rule it is replacing are: A non-agency provider given information and notification about the criminal records check requirements who fails to access, complete and forward the form or fingerprint impression sheet, or who fails to instruct the BCII to submit the completed report to the ODJFS shall not be approved as a non-agency provider; ODJFS shall not issue a new medicaid provider agreement to, or shall terminate an existing Medicaid provider agreement of, a non-agency provider if the non-agency provider has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for more than one disqualifying offense even if the non-agency provider meets the personal character standards listed in the rule; the personal character standards have been expanded to include the following: the disqualifying offense was not perpetrated against an individual under age eighteen or age sixty or older, or against an individual of any age with disabilities, the disqualifying offense was disorderly conduct and the conviction was not based upon an original complaint or indictment involving one of the violent offenses listed in the rule, five years have passed since the non-agency provider was fully discharged from imprisonment, probation and/or parole for the disqualifying offense, and the disqualifying offense was not related to fraud, theft, embezzlement, breach of

fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, and the non-agency provider agrees, in writing, to inform each potential consumer of the disqualifying offense prior to commencing service delivery; and the rule adds soliciting, Workers' Compensation fraud, identity fraud, disorderly conduct, endangering children, falsification (in a theft offense or to purchase a firearm), attempting to commit an offense, engaging in a pattern of corrupt activity, and drug paraphernalia to the list of disqualifying offenses as outlined in RC 5111.034 (formerly RC 5111.96).

A copy of the proposed rules is available, without charge, to any person affected by the rules at the address listed below. The rules are also available on the internet at <http://www.registerofohio.state.oh.us/>. A public hearing on the proposed rules 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 rules or comments on the rules 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@odjfs.state.oh.us.