



**Department of  
Mental Health**

## NOTICE OF PUBLIC HEARING

Pursuant to section 119.03 of the Ohio Revised Code (ORC), the Ohio Department of Mental Health (ODMH) hereby gives notice of its intent to amend, rescind and/or adopt the Ohio Administrative Code (OAC) rules as identified below and to conduct a public hearing thereon.

### **General Rule Provisions**

The following rules are being revised as described below.

<b>5122-1-02</b>	<b>Public hearing and method of notice</b> The rule describes the public hearing process.  The rule is being revised to remove requirement that recording of public hearing is an audio recording	<b>Amend</b>
<b>5122-3-01</b>	<b>Consultation with constituencies affected by rules</b> The rule describes the procedures ODMH will follow to notify and consult with relevant constituencies which may be impacted by rules, regulations, standards or guidelines issued by ODMH.  The rule is being rescinded due to amending over 50 % of the rule, and replaced with new 5122-3-01.	<b>Rescind</b>
<b>5122-3-01</b>	<b>Consultation with constituencies affected by rules</b> The rule describes the procedures ODMH will follow to notify and consult with relevant constituencies which may be impacted by rules, standards or guidelines issued by ODMH.  General changes when compared to the existing rule include a simplified description of the process for consultation with relevant constituents in alignment with ORC 5119.06 (L), remove the listing of specific organizations and replace with description of categories of constituents, and added reference to ODMH rules webpage and posting of draft rules.	<b>New</b>

## **General Rule Provisions (continued)**

<b>5122-22-01</b>	<b>Trusts for supplemental services</b> The rule describes the requirements for maintenance and distribution of a trust for supplemental services.  The rule is being amended to revise the definition of "county board" to be consistent with definition used in other ODMH rules, and update ORC references in accordance with the renumbering of ORC Chapter 1339. to ORC Chapter 5815.	<b>Amend</b>
<b>5122-34-01</b>	<b>Physician loan repayment</b> The rule describes the physician loan repayment program utilized to enhance the ability of the department of mental health (ODMH) to recruit and retain psychiatrists in ODMH-operated regional psychiatric hospitals.  The rule changes the term "behavioral healthcare organization" to "regional psychiatric hospital".	<b>Amend</b>

## **Certification Standards for Community Mental Health Agencies**

The following rules are being revised as described below.

<b>5122-26-11</b>	<b>Affiliation agreement</b> The rule describes required affiliation agreements.  The department is proposing to eliminate the requirement that a community mental health agency which is not certified for crisis obtain an affiliation agreement. The department is revising paragraph (C) to reflect that the agreements are known as continuity of care agreements.	<b>Amend</b>
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## **Certification Standards for Community Mental Health Agencies (continued)**

<b>5122-26-17</b>	<b>Accessibility, availability, appropriateness, and acceptability of Services</b>	<b>Amend</b>
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The rule describes the criteria to ensure that services are accessible, available, appropriate and acceptable to the persons served.

The rule eliminates the provision requiring agencies to provide services regardless of ability to pay, as this provision was previously removed from ORC 340.12, removes the requirement that an agency maintain a TTY unless its use is requested by a deaf or hard-of-hearing client, and allows the agency to utilize phone interpreter services and removes the requirement that agencies access specific, identified client needs and advocate with other organizations if the agency does not provide these services, and, consistent with accrediting body standards, now states that the agency shall make a referral to other organizations if a client has an identified need not provided by the agency and removes references to service evaluation and quality assurance activities.

<b>5122-29-28</b>	<b>Intensive home based treatment (IHBT) service</b>	<b>Amend</b>
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This rule describes IHBT service, and lists the standards for eligibility for the service, staff qualifications and supervision, and service delivery.

The rule is revised to correct/update terminology and rule references, remove previous paragraph (D) to align with the requirements of House Bill 153 (129<sup>th</sup> General Assembly) and Ohio Administrative Code 5122-25-03, and correct an error in the current rule in which paragraph (E)(1) [revised rule] is repeated in paragraph (F)(2) [revised rule], and is unrelated to the subject matter of paragraph (F). The correct language is included in the revised version.

### **Licensure of Adult Care Facilities**

The Department is revising the following rules to update ORC and OAC references within the rules and/or statutory authority, based upon Ohio Administrative Code rule renumbering under House Bill 153 of the 129th General Assembly, and to change any references from the Department of Health to the Department of Mental Health.

<b>5122-33-01</b>	<b>Definitions</b>	<b>Amend</b>
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This rule includes definitions utilized in Chapter 5122-33 of the Administrative Code.

## **Licensure of Adult Care Facilities (continued)**

<b>5122-33-02</b>	<b>General prohibitions</b> This rule lists the general prohibitions related to licensure of adult care facilities.	<b>Amend</b>
<b>5122-33-03</b>	<b>License application and renewal procedures</b> The rule describes the content of initial and renewal license application, including documentation and fee, and circumstances under which an individual is prohibited from applying for a license.	<b>Amend</b>
<b>5122-33-04</b>	<b>Application review process</b> This rule describes the process by which ODMH reviews a license application, and information to take into consideration.	<b>Amend</b>
<b>5122-33-05</b>	<b>Issuance, renewal, and denial of licenses</b> This rule prescribes that ODMH shall issue a license (initial or renewal) to an applicant in substantial compliance with Chapter 5122-33 of the Administrative Code, circumstances under which ODMH may deny a license, how to determine the numbers of residents allowed, the fee for inspections, and the process following an inspection.	<b>Amend</b>
<b>5122-33-06</b>	<b>Inspections; access to facilities; standards of conduct</b> The rule describes when ODMH inspects adult care facilities, the individuals (ODMH employees and others) permitted to access a facility at any time and during reasonable hours, and that one must respect the rights, dignity, and privacy of residents, and be cooperative and professional.	<b>Amend</b>
<b>5122-33-07</b>	<b>Notice of violations and opportunity to correct</b> The rule describes that process for an operator to be issued a notice of violation, and the potential consequences for failure to correct violations.	<b>Amend</b>
<b>5122-33-08</b>	<b>Change in statement of ownership; closure, transfer, or sale of facility</b> The rule requires the owner to notify ODMH within ten days if the manager changes, or if there is a change in ownership. The rule requires that an owner give ODMH, residents and others identified at least 30 days' notice prior to closing a facility, that ODMH monitor the transfer of residents, that the owner notify residents of changes in possession of the facility, and that an owner maintains certain liabilities after transferring ownership.	<b>Amend</b>

**Licensure of Adult Care Facilities (continued)**

<b>5122-33-09</b>	<b>Fire protection standards for adult family homes</b> The rule exempts adult family homes from building inspections by a certified inspector/department of commerce, and fire inspections by the state fire marshal or fire inspector official. The rule lists the standards with which an adult family home must comply, and that ODMH shall conduct the inspection.	<b>Amend</b>
<b>5122-33-10</b>	<b>Building and fire safety requirements for adult group homes</b> This rule lists building and fire safety requirements, including inspections, for adult group homes, and requires that non-ambulatory residents must be located on a floor that exits to the ground level.	<b>Amend</b>
<b>5122-33-11</b>	<b>Water, sewage, and plumbing requirements for adult care facilities</b> This rule describes the water and sewage requirements for facilities not connected to public systems, and plumbing requirements.	<b>Amend</b>
<b>5122-33-12</b>	<b>Facility management responsibilities</b> The rule describes the responsibilities of the facility manager, including additional responsibilities if a resident is known to have been assessed with mental illness.	<b>Amend</b>
<b>5122-33-13</b>	<b>General staffing requirements</b> The rule defines who is a “staff member”, requirements to be a staff member, including TB testing and training, the minimum requirements for staffing a facility, requirements for a manager, and when an individual is ineligible to be a staff member and/or ineligible to work in a facility.	<b>Amend</b>
<b>5122-33-14</b>	<b>Additional staffing requirements</b> The rule lists the additional training and continuing education requirements for a facility which accepts individuals diagnosed with mental illness.	<b>Amend</b>
<b>5122-33-15</b>	<b>Recordkeeping</b> The rule describes the records which a facility must maintain, storage of records, and the requirements to maintain confidentiality of information in resident records.	<b>Amend</b>
<b>5122-33-16</b>	<b>Resident agreement; other information to be provided upon admission</b> The rule requires that a facility enter into a resident agreement with each resident, minimum content requirement, and that residents be provided a copy of the resident right and other policies, including house rules.	<b>Amend</b>

## **Licensure of Adult Care Facilities (continued)**

<b>5122-33-17</b>	<b>Personal care services; resident medications; home health care</b> The rule requires describes personal care services and requires the facility to provide them to residents in need, and other residents upon request. The rule prohibits facility staff from administering medications, requires a physician to provide a written statement that a resident is capable to self-administer medications, and provides an exception when the resident is receiving skilled nursing care when skilled nursing care is permitted under the rule. The rule also describes how a staff may assist a resident with administering medications, and that medications must be stored in a locked area.	<b>Amend</b>
<b>5122-33-18</b>	<b>Resident assessments; mental health plan for care</b> The rule describes the initial and on-going health assessments for a resident, requirement for TB testing and follow-up if indicated, and additional requirements in the facility admits individuals diagnosed with mental illness.	<b>Amend</b>
<b>5122-33-19</b>	<b>Changes in residents' physical health and behavioral status; incidents</b> The rule describes the facility responsibilities when there is a significant change in a resident's physical or behavioral health.	<b>Amend</b>
<b>5122-33-20</b>	<b>Dietary services</b> The rule lists the requirements for providing meals and snacks to residents, the proper storage, preparation and handling of food, and when a facility must obtain a food service license.	<b>Amend</b>
<b>5122-33-21</b>	<b>Laundry services; activities; resident property</b> The rule describes the laundry services a facility must provide, that the facility should encourage social activities, a resident's right of access to his/her funds, requirements for storage of a resident's property and/or handling a resident's funds, and prohibits an owner/manager/facility from being a legal guardian, except as allowed by the rule, and prohibits an owner/manager/facility from maintaining a power of attorney.	<b>Amend</b>
<b>5122-33-22</b>	<b>Space, equipment, safety, and sanitation</b> The rules describes the general requirements for space, such as bathrooms, dining area, bedrooms, etc., that residents have access to a non-pay telephone for local calls, and the minimum requirements in order to maintain a safe, sanitary facility.	<b>Amend</b>

## **Licensure of Adult Care Facilities (continued)**

<b>5122-33-23</b>	<b>Residents' rights</b> The rule describes the rights of residents, explanation and posting of rights, and who may assert rights on behalf of a resident.	<b>Amend</b>
<b>5122-33-24</b>	<b>Transfer and discharge rights</b> The rule describes the circumstances under which a facility may transfer or discharge a resident, and the process for emergency and non-emergency transfer or discharge.	<b>Amend</b>
<b>5122-33-25</b>	<b>Waivers</b> The rule allows ODMH to waive requirements for licensure that do not jeopardize the health and safety of any resident, and describes the process, including the right to a hearing if a waiver is denied.	<b>Amend</b>
<b>5122-33-26</b>	<b>Imposition of civil penalties</b> The rule allows ODMH to impose civil penalties for violations of Chapter 5119 of the Revised Code or Chapter 5122-33 of the Administrative Code. The rule describes the different classifications of violations, the process for issuing civil penalties and requiring correction of the violation, and the right of the facility to request a conference and a hearing under Chapter 119 of the Revised Code.	<b>Amend</b>
<b>5122-33-27</b>	<b>Suspending admission of residents to an adult care facility</b> The rule allows ODMH to suspend admissions to a facility when the facility is in violation of Chapter 5119 of the Revised Code or Chapter 5122-33 of the Administrative Code, describes the process for issuing such an order and the right of the facility to request a conference and a hearing under Chapter 119 of the Revised Code.	<b>Amend</b>

## **Certification of Adult Foster Homes**

The Department is revising the following rules to update ORC and OAC references within the rules and/or statutory authority, based upon Ohio Administrative Code rule renumbering under House Bill 153 of the 129th General Assembly, and to change any references from the Department of Aging and/or Department of Health to the Department of Mental Health.

<b>5122-35-01</b>	<b>Introduction and definitions</b> This rule includes definitions of terms utilized in Chapter 5122-35 of the Administrative Code.	<b>Amend</b>
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## **Certification of Adult Foster Homes (continued)**

<b>5122-35-02</b>	<b>Certification</b> The rule allows an area agency on aging to certify a home within its planning and service area, describes the certification process, and allows the area agency on aging or ODMH to conduct an unannounced inspection.	<b>Amend</b>
<b>5122-35-03</b>	<b>Operator standards</b> The rule lists the standards that an operator must meet, such as being free from communicable diseases unless efforts are made to minimize the risk of transmitting the disease to a resident, meeting certain criminal background requirements, financial, providing proof of ownership or a valid lease agreement, etc.	<b>Amend</b>
<b>5122-35-04</b>	<b>Caregiver standards</b> The rule requires that a caregiver must be free from communicable diseases unless efforts are made to minimize the risk of transmitting the disease to a resident, meet certain criminal background requirements, and have a licensed physician statement that he/she is mentally and physically fit of providing care.	<b>Amend</b>
<b>5122-35-05</b>	<b>Facility standards</b> The rule describes the general requirements for space, such as bathrooms, hallways, bedrooms, etc., that residents have access to a telephone, and the minimum requirements in order to maintain a safe, sanitary facility.	<b>Amend</b>
<b>5122-35-06</b>	<b>First aid standards</b> The rule lists the contents of the required first aid kit, and requires medications to be stored in a locked area.	<b>Amend</b>
<b>5122-35-07</b>	<b>Fire safety standards</b> The rule describes fire safety standards, including inspections, fire extinguishers and detectors, drills, and requirements for furnaces, electrical, and other potential fire hazards.	<b>Amend</b>
<b>5122-35-08</b>	<b>Denial or revocation of certification</b> The rule describes the process when an area agency on aging processes to deny or revoke an adult foster home's certification, including time frames and the right to appeal to ODMH, the requirement to notify residents and/or sponsors if a certification is denied/revoked, and circumstances under which an operator may not apply for certification or be granted certification.	<b>Amend</b>



### **Residential State Supplement Program**

The Department is revising the following rules to update ORC and OAC references within the rules and/or statutory authority, based upon Ohio Administrative Code rule renumbering under House Bill 153 of the 129th General Assembly, and to change any references from the Department of Aging to the Department of Mental Health. There are additional revisions to rules 5122-36-02 and 5122-36-05, also in accordance with House Bill 153, which are noted below.

<b>5122-36-01</b>	<b>Introduction and definitions</b> This rule includes definitions of terms utilized in Chapter 5122-36 of the Administrative Code.	<b>Amend</b>
<b>5122-36-02</b>	<b>Eligibility criteria</b> The rule lists the eligibility requirement for the program, and provides an exception for individuals in certain living arrangements prior to November, 1990.  The language regarding eligibility is being updated in accordance with revisions in House Bill 153 (129 <sup>th</sup> General Assembly), resulting from the transfer of licensing of adult care facilities and adult foster homes to ODMH.	<b>Amend</b>
<b>5122-36-03</b>	<b>Enrollment process</b> This rule describes how an individual shall request consideration for enrollment in the program, information to be assessed, removing individuals from the waiting list, and the right to a hearing under Chapter 119 of the Revised Code if an applicant is determined ineligible.	<b>Amend</b>
<b>5122-36-04</b>	<b>Responsibilities of the living arrangement</b> This rule describes the responsibilities of each living arrangement in which an individual receiving funds from the program lives.	<b>Amend</b>
<b>5122-36-05</b>	<b>Allowable fee</b> This rule describes the allowable fee, which is the amount that a resident pays to a particular living arrangement, and which is utilized by the county department of jobs and family services to determine the amount of payment under the program.  The allowable amounts are being increased in accordance with Section 337.30.50 of House Bill 153 (129 <sup>th</sup> General Assembly).	<b>Amend</b>

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## **Operations Management**

The following rule is being rescinded as described below.

**5122:2-1-09**

### **Community Plan**

**Rescind**

The rule describes the community plan process for county community mental health and county alcohol drug addiction and community mental health boards.

This rule is being rescinded as there is no requirement for ODMH to promulgate the rule. ODMH will continue to consult with affected constituents, as required by ORC 340.03 (C) and 5119.61 (G).

A public hearing on the proposed rules will be held on **Wednesday, January 4, 2012**, beginning at **1:30 pm**, continuing until all persons in attendance have had an opportunity to testify. The hearing will be held in **Room 806 of the Rhodes State Office Tower located at 30 East Broad Street, Columbus, Ohio 43215, 8<sup>th</sup> FL**. At this hearing, ODMH will accept verbal and/or written testimony on the proposed rules under consideration.

Persons may also submit written testimony via mail/e-mail. Any written comments received or postmarked on or before the public hearing date will be treated as testimony. Submittal of written comments may be made to Janel M. Pequignot, Chief, Standards Development and Administrative Rules, by e-mail to [Janel.Pequignot@mh.ohio.gov](mailto:Janel.Pequignot@mh.ohio.gov); by fax to 614-752-9453; or by mail to 30 East Broad Street, 8th Floor, Columbus, Ohio 43215-3430.

Copies of these rules are available for review at the Register of Ohio website: [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us) or the ODMH website <http://mentalhealth.ohio.gov/what-we-do/protect-and-monitor/licensure-and-certification/rules/index.shtml> (Follow link to "Pending Rules"). A request for a copy of the proposed rules may also be submitted by mail to Janel M. Pequignot, Chief, Standards Development and Administrative Rules, 30 East Broad Street, 8th Floor, Columbus, Ohio 43215-3430 or by e-mail to [Janel.Pequignot@mh.ohio.gov](mailto:Janel.Pequignot@mh.ohio.gov).