



Promoting wellness and recovery

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### Public Notice

Pursuant to section 119.03 of the Ohio Revised Code, the Ohio Department of Mental Health and Addiction Services will hold a public hearing for the purpose of accepting testimony on the proposed changes to the Ohio Administrative Code rules identified below.

The public hearing will be held August 7, 2015 at 9:00 a.m., in Room 3602 of the Rhodes State Office Tower located at 30 East Broad Street, Columbus, Ohio 43215, 36<sup>th</sup> Floor. At this hearing, OhioMHAS will accept verbal and written testimony on the rules under consideration.

The hearing will be conducted in accordance with Chapter 119 of the Revised Code. Any person affected by the rule actions, may appear and be heard in person, by his attorney, or both, may present his position, arguments, or contentions, orally or in writing, offer and examine witnesses, and present evidence tending to show that the rule actions, if adopted or effectuated, will be unreasonable or unlawful.

To obtain copies of these rules, please visit the Register of Ohio at [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us).

Persons may also submit written testimony in lieu of appearing at the public hearing. Written testimony sent by mail shall be postmarked no later than the day of the hearing. Written testimony transmitted by fax or email shall be received no later than 5:00 p.m. on the day of the hearing. Written testimony may be mailed to: Ohio Department of Mental Health and Addiction Services, c/o Bureau of Legal Services, 30 East Broad Street, 36<sup>th</sup> Floor, Columbus, Ohio, 43215-3430; or emailed to [MH-SOT-rules@mha.ohio.gov](mailto:MH-SOT-rules@mha.ohio.gov).

### Chapter 5122-25 Certification

Rule Number	Title	New, Amended, No Change or Rescinded Rule	Summary of Major Proposed Changes/Rule Subject
5122-25-01	<b>Applicability.</b>	<ul style="list-style-type: none"> <li>Amended</li> </ul>	<ul style="list-style-type: none"> <li>Paragraph (A) is updated to be consistent with current statutory language, and has been reformatted for easier reading.</li> </ul>
5122-25-	<b>Accreditation and</b>	<ul style="list-style-type: none"> <li>Amended</li> </ul>	<ul style="list-style-type: none"> <li>The rule is being amended to</li> </ul>



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02	<b>deemed status.</b>		incorporate AoD programs from ODADAS rule 3793:2-1-01.1. A deemed provider is now required to notify the Department upon not renewing its accreditation on which the deemed status is based. Provisions for partial deemed status have been added to the rule for those occasions in which a provider is accredited in some services but not all. Paragraphs (H) through (M) incorporate provisions for granting deemed status formerly located in OAC 5122-25-03.
5122-25-03	<b>Certification procedure for non-deemed status.</b>	<ul style="list-style-type: none"> <li>• New</li> </ul>	<ul style="list-style-type: none"> <li>• This is a new rule containing the certification procedure formerly found in 5122-25-04, but for non-deemed status providers only. The rule sets forth the contents of an application for certification, and the review and survey procedures for the Department to make a determination regarding the application.</li> </ul>
5122-25-04	<b>Certification procedure for deemed status.</b>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• This is an existing rule, but is being amended to be the certification procedure for deemed status providers only. The certification procedure for deemed and non-deemed providers is being separated into distinct rules in order to provide clarity of what is required of providers. The rule sets forth the</li> </ul>



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			requirements for a deemed status application, and the review and survey procedures for the Department to make a determination regarding the application.
5122-25-05	<b>Provisions of certification.</b>	<ul style="list-style-type: none"> <li>Amended (To be filed as new)</li> </ul>	<ul style="list-style-type: none"> <li>This rule sets the provisions under which a certificate of services is issued. Paragraph (A) requires that for the enumerated services, a provider must have either an established history of providing the service or an accreditation as set forth in 5122-25-02. Paragraphs (B) and (C) concern the type of certificate issued: conditional, interim, and full; and the circumstances under which may be issued. Paragraphs (D) through (F) specify that certificates are site and service specific and may not be transferred. The rule also requires that a certificate be available for inspection and that a provider notify the Department of any changes that would affect the provider's compliance with certification requirements.</li> </ul>
5122-25-06	<b>Waivers and variances.</b>	<ul style="list-style-type: none"> <li>Amended</li> </ul>	<ul style="list-style-type: none"> <li>This rule sets forth the waiver and variance procedures for the verification procedures. The rule is being amended only to change the usage of "agency" to "provider."</li> </ul>



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5122-25-07	<b>Denial, revocation, and termination of certification.</b>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• This rule sets forth the conditions and procedures under which the Department may deny or revoke a certificate. The rule is being amended to add to the list of reasons for which a certificate may be denied, revoked, or terminated. The additional reasons being added to the rule include misuse of state or federal funds, falsifying data, and failing to discipline an employee who has abused or neglected a client. The rule now provides for a five year ban on providers who have their certification revoked by the Department and a three year ban on providers who have applications for new certification denied by the Department. In both cases, the provider may request written permission from the Department to re-apply early. The reasons for termination of a certificate now include a failure to reapply sixty days after being notified by the Department of the provider's failure to file an application.</li> </ul>
5122-25-08	<b>Certification fees.</b>	<ul style="list-style-type: none"> <li>• New (Replaces existing)</li> </ul>	<ul style="list-style-type: none"> <li>• This rule sets forth the certification fee structure, it replaces the existing structure. The fee structure applies to all certified service providers, including AoD and prevention</li> </ul>



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			<p>service providers who did not incur a fee prior to consolidation. Deemed status providers are exempt for all services for which they are accredited, but are required to pay the fees for those services which they are certified for but not accredited. Certification fees are due at the time of initial application or sixty days prior to the expiration of the current certification. Fees are based on the provider's annual budget for the certified, but not accredited, services. Small providers with a budget under \$75,000, consumer operated services, and health home providers attempting to obtain accreditation pay no fees. Additionally, driver intervention program providers may exclude the cost of the housing provided as part of the program from the annual budget used to determine the fee.</p>
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**5122-26 Policies and Procedures for the Operation of Mental Health Services Agencies**

<b>Rule Number</b>	<b>Title</b>	<b>New, Amended, No Change or Rescinded Rule</b>	<b>Summary of Major Proposed Changes/Rule Subject</b>
5122-26-01	<b>Purpose.</b>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• Updated to be consistent with new statutory language.</li> </ul>



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5122-26-02	<b>Applicability.</b>	<ul style="list-style-type: none"> <li>Amended (To be filed as new)</li> </ul>	<ul style="list-style-type: none"> <li>Updated to be current with statutory authority language, and mirrors the applicability language of 5122-25-01.</li> </ul>
5122-26-03	<b>Governing body and governance.</b>	<ul style="list-style-type: none"> <li>Amended</li> </ul>	<ul style="list-style-type: none"> <li>This rule sets forth the requirements for provider leadership, and in the case of non-profit providers a specific governance structure. The rule is being amended to require that governing bodies provide for orientation for new members of the board and that the governing body shall approve the organization's quality assurance plan. Government providers are also now required to have their board or governing body annually review the organizations quality assurance plan. The rule also now provides for greater flexibility in the naming of the provider's executive director or chief executive position.</li> </ul>
5122-26-04	<b>Policy and procedure manual.</b>	<ul style="list-style-type: none"> <li>Amended</li> </ul>	<ul style="list-style-type: none"> <li>Updated to be consistent with new statutory language.</li> </ul>
5122-26-06	<b>Human resources management.</b>	<ul style="list-style-type: none"> <li>Amended</li> </ul>	<ul style="list-style-type: none"> <li>This rule sets forth the human resource program requirements for providers. Paragraph (C) is being amended to require that clinical services are provided under the supervision of one who is eligible to do so as set forth in OAC 5122-29-30 and who has</li> </ul>



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			<p>demonstrated experience, competency, and training in the area being supervised. HR policies are now required to prohibit sexual harassment and include the specific safety procedures in OAC 5122-26-12, standards of acceptable behavior, standards for termination, and a requirement to inform employment applicants that the employer follows fair employment practices and respects confidentiality requirements in the hiring process. Providers who serve children and adolescents may no longer use employees who are under eighteen years of age for direct care positions, and all employees must meet the background requirements set forth in paragraph (E). Verification of professional credentials in employee files may now be electronic, and all personnel files now must include position description and other information regarding duties and qualifications. Providers must also document that employees have received and reviewed appropriate confidentiality regulations and the policies and procedures required by this rule.</p>
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5122-26-08	<b>Confidentiality.</b>	<ul style="list-style-type: none"> <li>• New</li> </ul>	<ul style="list-style-type: none"> <li>• This rule requires that access to and storage of client records and related information meet all federal and state regulations.</li> </ul>
5122-26-08.1	<b>Security of clinical records systems.</b>	<ul style="list-style-type: none"> <li>• New</li> </ul>	<ul style="list-style-type: none"> <li>• This rule was previously located in Chapter 5122-27, but is being moved as it more logically fits with the operation oriented rules. Added to the rule is the requirement that if a provider maintains an electronic health record, it must meet the requirements of federal and state law.</li> </ul>
5122-26-09	<b>Provider service plan.</b>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• This rule requires that providers have a detailed plan for providing each service for which they are certified. The rule is being amended to include a description of the service at each level of care if appropriate.</li> </ul>
5122-26-11	<b>Continuity of care agreements.</b>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• This rule is being amended to remove the affiliation agreement requirement which is being phased out.</li> </ul>
5122-26-12	<b>Environment of care and safety.</b>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• This rule sets forth environment requirements for the sites at which services are provided. Evacuation plans must now be posted and unvented kerosene or propane heaters are no longer permitted. Additionally, providers of halfway house, residential, or sub-acute detoxification services must meet</li> </ul>





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			minimum nutrition requirements for meals.
5122-26-13	<b>Incident notification and risk management.</b>	<ul style="list-style-type: none"> <li>Amended</li> </ul>	<ul style="list-style-type: none"> <li>This rule sets forth the requirements and procedures for notifying the Department of incidents. In addition to statutory reference updates, the rule now requires that providers amend incident reports if new information reveals that an additional incident category is involved in a previously reported incident. The appendices associated with this rule have also been updated to reflect the consolidated nature of the Department</li> </ul>
5122-26-14	<b>Provider closing or acquisition.</b>	<ul style="list-style-type: none"> <li>New</li> </ul>	<ul style="list-style-type: none"> <li>This new rule sets forth the procedures for a voluntary closing, and allows for the orderly transition of clients to new service providers.</li> </ul>
5122-26-15	<b>Medication handling and drug theft.</b>	<ul style="list-style-type: none"> <li>Amended</li> </ul>	<ul style="list-style-type: none"> <li>This rule sets forth the procedures for medication handling and dealing with drug theft. The rule is being amended to simplify training requirements for staff and require them to have basic and ongoing training regarding the safe and effective handling of medication. The rule now requires detailed policies and procedures for providers who allow clients to self-administer medication, including procedures</li> </ul>



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			<p>for storing and accounting for client medications on-site. Providers are also required to have policies and procedures regarding employee theft of any medications at the provider site, the procedures shall include the reporting of the theft to the appropriate authorities and taking appropriate discipline against the employee.</p>
5122-26-16 to 16.2	<p><b>Seclusion, restraint and time-out.</b></p> <p><b>Mechanical restraint and seclusion.</b></p> <p><b>Physical restraint.</b></p>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• These rules set forth seclusion and restraint procedures and have been amended to update the definition of an advance directive; and to broaden the understanding of the role of trauma and be consistent with recent revisions to similar rules by the Department of Developmental Disabilities.</li> </ul>
5122-26-17	<p><b>Accessibility, availability, appropriateness, and acceptability of services.</b></p>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• This rule sets forth standards regarding the accessibility and availability of services. The rule has been updated to use the term “Telecommunication Relay Services” (TRS), a broad definition of accessibility services that replaces the outmoded TDD/TTY devices. The rule has also been updated to require that no person be denied service based on their denial of a specific component of a service, so long as that is consistent with</li> </ul>



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			prevailing standards of care. The example used in the rule is a client may refuse medication but cannot be denied other aspects of services such as counseling.
5122-26-18	<b>Client rights and grievance procedure.</b>	<ul style="list-style-type: none"> <li>• New (Replacing existing)</li> </ul>	<p>This rule sets forth the rights of clients with regard to certified service providers and the grievance procedures to be adopted by providers. Each provider is required to have a written client rights policy and grievance procedure; which includes a retention period of at least two years for the grievance, the process used to remedy the grievance, and documentation of any circumstances that extended the response time for responding to the grievance. Each provider shall post the rights enumerated in this rule at each site under the provider's control, and shall make copies of the rights available at those sites not under the provider's control. The rule enumerates client rights separately for forensic and non-forensic clients, but in each case the enumerated rights have been developed based on past</p>



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			<p>experience and through historical collaboration client advocate groups. Providers are required to explain the rights to each client at the beginning of their assessment or treatment; in the case of a crisis or emergency situation the provision of rights may be both verbal and only those rights immediately pertinent to the situation. The provider grievance procedure is detailed in the rule, generally requiring an obvious and manageable reporting procedure and a prompt acknowledgment of the grievance and resolution of the grievance. This rule is being filed as new, it replaces the existing rule and changes to both the content and the format of the rule are significant.</p>
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**Chapter 5122-29 Requirements and Procedures for Mental Health Services Provided by Agencies**

<b>Rule Number</b>	<b>Title</b>	<b>New, Amended, No Change or Rescinded Rule</b>	<b>Summary of Major Proposed Changes/Rule Subject</b>
5122-29-12	<b>Driver intervention program.</b>	<ul style="list-style-type: none"> <li>• New</li> </ul>	<ul style="list-style-type: none"> <li>• New rule that defines driver intervention programs. Material previously found in Chapter</li> </ul>



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			3793:4-1
5122-29-20	<b>Prevention service.</b>	<ul style="list-style-type: none"> <li>• New</li> </ul>	<ul style="list-style-type: none"> <li>• New rule that defines the prevention service. Material previously found in Chapter 3793:5-1</li> </ul>
5122-29-30	<b>Eligible providers and supervisors.</b>	<ul style="list-style-type: none"> <li>• Amended</li> </ul>	<ul style="list-style-type: none"> <li>• The rule and appendix are being updated to be current with eligible provider requirements.</li> </ul>

**Chapter 3793:2-1 Alcohol and Drug Addiction Programs**

The existing rules in O.A.C. 3793:2-1 listed below will be consolidated into the new rules shown, and the existing rule rescinded.

Consolidation of OAC 3793 Rules to OAC 5122	
Existing Rule	Consolidated Rule
3793:2-1-01 Program certification/licensure process	5122-25-03 to 05
3793:2-1-01.1 Deemed certification	5122-25-02
3793:2-1-02 Governing authority	5122-26-03
3793:2-1-03 Program administration	5122-26-03, 5122-26-04, 5122-26-06, 5122-26-12, 5122-26-14
3793:2-1-04 Quality assurance and improvement	5122-28-03
3793:2-1-07 Client rights and grievances	5122-26-18

**Chapter 3793:4-1 Certification of Driver Intervention Programs**

The existing rules in O.A.C. 3793:4-1 listed below will be consolidated into the new rules shown, and the existing rule rescinded.

Consolidation of OAC 3793 Rules to OAC 5122	
Existing Rule	Consolidated Rule
3793:4-1-01 Driver intervention program certification process.	5122-29-12 and 5122-25
3793:4-1-02 Driver intervention program	5122-29-12 and 5122-26



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requirements.	
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**Chapter 3793:5-1 Prevention Standards: General Provisions**

The existing rules in O.A.C. 3793:5-1 listed below will be consolidated into the new rules shown, and the existing rule rescinded.

Consolidation of OAC 3793 Rules to OAC 5122	
Existing Rule	Consolidated Rule
3793:5-1-01 Prevention standards - certification process	5122-29-20 and 5122-25
3793:5-1-02 Prevention standards - governing authority	5122-29-20 and 5122-26
3793:5-1-03 Prevention standards - administration	5122-29-20 and 5122-26
3793:5-1-04 Prevention standards - quality assurance and improvement	5122-29-20 and 5122-28-03
3793:5-1-05 Prevention standards - provision of services	5122-29-20 and 5122-25
3793:5-1-06 Prevention standards - activity/consumer records	5122-29-20 and 5122-27
3793:5-1-07 Prevention standards - consumer rights and grievances	5122-29-20 and 5122-26-18