

Guide to Public Participation in the Rule-Making Process

Introduction

This guide is published to assist stakeholders (individuals and families who receive services, county boards of developmental disabilities, providers of services, and advocacy groups) and the general public in understanding how rules are adopted by the Ohio Department of Developmental Disabilities (DODD). The purpose of this guide is to provide a general overview of the rule-making process and to assist those who participate, or who may wish to participate, in this process.

Mission

The mission of the DODD is continuous improvement of the quality of life for Ohio's citizens with developmental disabilities and their families. The Department is a state agency created by statute and charged with the responsibility of administering and enforcing Chapters 5123. and 5126. of the Ohio Revised Code. The Department's functional responsibilities are managed by the director and deputy directors of eight divisions:

- Developmental Centers,
- Fiscal Administration,
- Human Resources,
- Information Technology Services,
- Legal and Oversight,
- Legislative Affairs and Communications,
- Medicaid Development and Administration, and
- Policy and Strategic Direction.

Rule-Making Authority

The Department is authorized to adopt, amend, and rescind rules necessary to carry-out the provisions of Chapters 5123. and 5126. of the Ohio Revised Code. The director is responsible for adopting rules for the proper execution of the powers and duties of the Department as prescribed by these chapters. Through these rules, the Department establishes standards:

- to be followed by county boards of developmental disabilities in administering, providing, arranging, and operating programs and services under Chapter 5126. of the Ohio Revised Code, which include adult services, family support

services, early intervention, service and support administration, transportation, and residential services;

- for the registration and certification of employees of county boards;
- for determining eligibility for services and supports;
- for the management of DODD-operated developmental centers;
- for distributing state funds;
- for promoting and advancing the quality of life for individuals with developmental disabilities;
- for licensing and regulating the operation of residential facilities;
- for the provision of supported living;
- for administering Medicaid Home and Community-Based Services waivers; and
- to ensure that services and supports are furnished in a manner that provides for the health, safety, and welfare of individuals with developmental disabilities.

The Department's rules can be found under agency designation 5123 of the Ohio Administrative Code and are published at the State of Ohio website (<http://codes.ohio.gov/orc>) and at the Department's *Rules in Effect* webpage (<http://mrdd.ohio.gov/rules/>).

Rule Review Process

Under Ohio law, the Department is required to review each of its rules at least once every five years. The purpose of this review is to determine whether a rule should be continued without change, be amended, or be rescinded, taking into consideration the rule's purpose and scope and the intent of the statute under which the rule was adopted. Each rule is reviewed to determine whether the rule duplicates, overlaps, or conflicts with other rules and whether the rule needs to be revised to eliminate unnecessary paperwork or, when possible, to give local agencies more flexibility. In making this review, the Department considers the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that may have changed in the subject matter affected by the rule. Aside from the five-year review required by law, the Department may consider rules at any time to determine what, if any, modifications may be needed as a result of new legislation or change in policy or direction.

Prior to the scheduled review date of a rule, the Department solicits input from stakeholders (individuals and families who receive services, county boards of developmental disabilities, providers of services, and advocacy groups). Stakeholders are asked to review particular rules and identify issues and concerns and to make recommendations to the Department for possible revisions. Anyone may provide input to the Department during the process. Stakeholders and the public can learn about opportunities to provide input in the rule review process through the Department's *Rules Under Development* webpage (<http://mrdd.ohio.gov/rules/development.htm>) or through *Pipeline*, the Department's electronic newsletter. The Department takes into consideration the recommendations received from stakeholders and any other input or comments and

decides what course of action will be taken concerning each reviewed rule. A rule may be filed as unchanged or may be submitted for amendment or rescission.

New rules may also be proposed to address concerns. The Department seeks input from stakeholders on proposed new rules as well. Once a rule is filed as required by law, stakeholders and the public have an opportunity to provide additional input during the Department's public hearing, which is scheduled 31 to 40 days after the rule is filed.

Rule-Making Process

The Department is required by law to file rules using the procedures set forth under either section 111.15 or 119.03 of the Ohio Revised Code. Proposed rules are filed with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission (LSC), the Secretary of State, the Ohio Department of Development's Office of Small Business if the rules affect individuals, small businesses, or small organizations, and the Ohio Department of Aging if the rules primarily affect persons aged 60 or older. The Department is required to hold a public hearing on all rules proposed under section 119.03 of the Ohio Revised Code. Public notice of the hearing date is given at least 30 days prior to the date set for the hearing by publishing the notice at the *Register of Ohio* website maintained by the Legislative Service Commission, electronically disseminating the notice to individuals and organizations on an electronic listserv, and providing notice through *Pipeline*, the Department's electronic newsletter. The hearing notice and full text of proposed rules are also available on Department's *Rules Under Development* webpage (<http://mrdd.ohio.gov/rules/development.htm>).

The public hearing, which is held in Columbus, offers an opportunity for anyone affected by the proposed rules to present oral or written comments or concerns to the Department. For those who cannot provide oral or written testimony at the hearing, written remarks may be submitted to the Department on or before the hearing date by mail, fax, or email. Any comments received prior to the hearing are considered as testimony. The Department considers all testimony and decides whether to make changes to the rules as proposed. If changes are warranted, the rules are refiled with JCARR, LSC, and the Secretary of State. The Department is not required to conduct another public hearing when rules are refiled.

Upon completion of the public hearing and if applicable, refiled rules, the rules are scheduled for a JCARR meeting agenda. JCARR is comprised of five members of the Ohio Senate and five members of the Ohio House of Representatives. The Committee's primary function is to review proposed rules to ensure that:

- a) the rules do not exceed the scope of the Department's rule-making authority,
- b) the rules do not conflict with any other rules,
- c) the rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed, and

- d) the Department has prepared a complete and accurate rule summary and fiscal analysis describing each proposed rule and its estimated cost of compliance to all directly affected parties.

The JCARR meeting provides the public a final opportunity to comment on proposed rules; however, the comments before JCARR must address only the four issues that are within JCARR jurisdiction. If, during the review process, JCARR determines that one of the areas within its jurisdiction has been violated, the Committee may recommend to the Ohio General Assembly the adoption of a concurrent resolution to invalidate the rules or parts thereof. If the General Assembly approves the resolution, the Department would not be able to make any more rules on the subject matter at issue until the next session of the General Assembly. If the proposed rules are not invalidated, the Department may take final action to make the rules effective. Rules become effective no sooner than 10 days after final filing.

Department Contact

The Department's Division of Legal and Oversight is responsible for overseeing the administrative rule functions of the Department. Anyone who wishes to provide feedback or comments on rules being reviewed or proposed by the Department may do so by contacting:

Becky Phillips, Administrative Rules Coordinator

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Conclusion

The expertise of persons who receive and provide services in the developmental disabilities field is an essential component of the Department's rule-making process. The Department encourages comments and recommendations from individuals and families who receive services, county boards of developmental disabilities, providers of services, advocacy groups, and the public and actively seeks input when reviewing and/or drafting rules. The Department takes into consideration all correspondence received on rules being reviewed or drafted.