



## Department of Developmental Disabilities

### **Guide to Public Participation in the Rulemaking Process**

This guide is published to assist people with developmental disabilities and their families, advocacy groups, county boards of developmental disabilities, providers of services, and the general public in understanding how rules are adopted by the Ohio Department of Developmental Disabilities. The purpose of this guide is to provide a general overview of the rulemaking process and to assist those who participate, or who may wish to participate, in this process. The expertise of persons who receive and provide services in the developmental disabilities system is an essential component of the Department's rulemaking process; the Department actively seeks and considers input regarding rules being reviewed or proposed.

#### **Mission**

The Department offers support across the lifespan of people with developmental disabilities and oversees a statewide system of supportive services that focus on ensuring health and safety, supporting access to community participation, and increasing opportunities for meaningful employment. Rules of the Department direct the planning and provision of services for people with developmental disabilities. The Department's functions are managed by the Director and deputy directors of eight divisions:

- External Relations,
- Fiscal Administration,
- Human Resources,
- Information Technology Services,
- Legal and Oversight,
- Medicaid Administration,
- Policy and Strategic Direction, and
- Residential Resources.

#### **Rulemaking Authority**

The Department is authorized to adopt, amend, and rescind rules necessary to carry-out the provisions of Chapters 5123, 5124, 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 those chapters. Through administrative rules, the Department

establishes standards:

- For advancing the quality of life for people with developmental disabilities,
- To be followed by county boards of developmental disabilities in administering, arranging, and operating programs and services,
- For determining eligibility for services and supports,
- For distributing state funds,
- For the provision of Supported Living services,
- For administering Medicaid Home and Community-Based Services waivers,
- For licensing and regulating residential facilities,
- For Intermediate Care Facilities for Individuals with Intellectual Disabilities, and
- To ensure that services and supports are furnished in a manner that provides for the health, safety, and welfare of people with developmental disabilities.

The Department's rules can be found under agency designation 5123 of the Ohio Administrative Code and are published by the State of Ohio (<http://codes.ohio.gov/oac>) and at the Department's website (<https://dodd.ohio.gov/forms-and-rules/rules-in-effect/administrative-rules-list>).

### **Rule Review Process**

The Department is required to review each of its rules at least once every five years in accordance with Section 106.03 of the Ohio Revised Code. The purpose of this review is to determine whether the rule should be amended or rescinded for the purpose of reducing regulatory restrictions or because the rule:

- Exceeds or conflicts with the purpose, scope, or intent of the statute under which the rule was adopted,
- Provides inadequate flexibility at the local level,
- Creates a compliance or oversight burden for the Department, or for any person or entity, that is greater than the burden that would be created if the Department accomplished the intended purpose of the restriction by other means,
- Is no longer useful or beneficial,
- Does not appropriately incorporate a text or other material by reference,
- Duplicates, overlaps with, or conflicts with a federal law or rule or another law or rule of this state,
- Has an adverse impact on businesses (as defined in Section 107.52 of the Ohio Revised Code),
- Has an adverse impact on any other person or entity,
- Contains words or phrases that in contemporary usage are understood as being derogatory or offensive,
- Requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure,
- Imposes a more severe duty or liability than restrictions in neighboring states in order to accomplish the same goal, or

- Implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.

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. Prior to the scheduled review date of a rule, the Department seeks input from stakeholders. Stakeholders are asked to review 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 general public can learn about opportunities to provide input in the rule review process at the Department's website (<https://dodd.ohio.gov/forms-and-rules/rules-under-development/1-participate+in+rulemaking>). Comments regarding rules are public records; therefore, stakeholders should refrain from submitting confidential or personal information about themselves or any other person.

The Department takes into consideration the recommendations received and other input or comments and decides what course of action will be taken concerning each reviewed rule. A rule may be filed to continue without change or may be amended or rescinded. 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 a change in policy and may propose new rules as well.

### **Rulemaking Process**

The Department is required to file rules using the procedures set forth in the Ohio Revised Code. Proposed rules are filed with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission, the Secretary of State, and the Ohio Department of Aging. Once a rule is filed, stakeholders and the general public have an opportunity to provide additional input during the Department's public hearing which is conducted 31 to 40 days after the rule is filed. Notice of the public hearing is given at least 30 days prior to the date set for the hearing by publishing the notice at the *Register of Ohio* website (<https://www.registerofohio.state.oh.us/>) maintained by the Legislative Service Commission and electronically disseminating the notice. Anyone can subscribe to rules notifications at the Department's website (<https://dodd.ohio.gov/your-family/all-family-resources/subscribe>). The public hearing notice and full text of proposed rules are also available at the Department's website (<https://dodd.ohio.gov/forms-and-rules/rules-under-development/Public+Hearings+for+Proposed+Rules>).

The public hearing, which is held in Columbus, offers an opportunity for anyone affected by a proposed rule to present oral or written testimony to the Department. It is not necessary to attend the public hearing to provide testimony; written remarks may be submitted to the Department on or before the public hearing date by email or United States mail to the

Department's Administrative Rules Coordinator. Comments regarding rules are public records; therefore, stakeholders should refrain from submitting confidential or personal information about themselves or any other person. The Department considers all testimony and decides whether to make changes to the proposed rule. If changes are warranted, the rule is refiled with JCARR, the Legislative Service Commission, the Secretary of State, and the Ohio Department of Aging.

Upon completion of the public hearing and when applicable, refiling of the rule, the rule is 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 each proposed rule to ensure that:

- The rule does not exceed the scope of its statutory authority,
- The rule does not conflict with the legislative intent of the statute under which it was proposed,
- The rule does not conflict with another rule,
- Incorporations by reference within the rule meet requirements set forth in statute,
- The Department has prepared a complete and accurate Rule Summary and Fiscal Analysis of the rule,
- The Department, through a Business Impact Analysis and related documents, has demonstrated that the regulatory intent of the rule justifies its adverse impact on businesses in the state,
- The Department has justified the proposed adoption, amendment, or rescission of a rule containing a regulatory restriction, and
- The proposed rule does not implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.

The JCARR meeting provides another opportunity to comment on the proposed rule. If JCARR determines that a rulemaking agency has failed to comply with one or more of the areas within JCARR's jurisdiction, JCARR may recommend to the Ohio General Assembly the adoption of a concurrent resolution to invalidate the rule. As long as the proposed rule is not invalidated, the Department may take final action to make the rule effective. A rule becomes effective no sooner than 10 days after final filing.

### **Department Contact**

The Department's Division of Legal and Oversight is responsible for the administrative rule functions of the Department. Anyone who wishes to provide feedback or comments regarding a proposed rule may do so by contacting Becky Phillips, Administrative Rules Coordinator, via phone at 614-644-7393 or via email at [becky.phillips@dodd.ohio.gov](mailto:becky.phillips@dodd.ohio.gov).