

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5123-1-04

**Rule Type:** New

**Rule Title/Tagline:** Community capital assistance funds - development of licensed residential facilities.

**Agency Name:** Department of Developmental Disabilities

**Division:**

**Address:** 30 East Broad Street, 12th Floor Columbus OH 43215-3414

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#### I. Rule Summary

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5123.04, 5123.351
5. **What statute(s) does the rule implement or amplify?** 5123.04, 5123.351, 5123.36, 5124.60
6. **What are the reasons for proposing the rule?**

The Department is rescinding rule 5123:1-1-04 and adopting replacement rule 5123-1-04. Based on the five-year review of rule 5123:1-1-04, the title of the rule is being adjusted and internal references to an administrative rule are being corrected. The only other revision being made at this time is to the rule number itself, which in accordance with the Department's established course, is being changed to eliminate the division number.

- 7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rule sets forth a process for the Department to make available community capital assistance funds for boards of county commissioners, county boards of developmental disabilities, and nonprofit corporations to develop licensed residential facilities for individuals who are transitioning from developmental centers or converted facilities and who are enrolled in a Home and Community-Based Services waiver administered by the department.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The incorporated references are exempt pursuant to Section 121.75 of the Revised Code because they are to the Revised Code, the Administrative Code, and Fannie Mae forms. The Revised Code and the Administrative Code are available at <http://codes.ohio.gov>. The Department's administrative rules are also available the Department's website ([dodd.ohio.gov](http://dodd.ohio.gov)). Fannie Mae forms collect information and do not establish principles of law or policy. The forms are available at <https://singlefamily.fanniemae.com/selling-servicing-guide-forms>.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$ 0

Rescinding rule 5123:1-1-04 and adopting replacement rule 5123-1-04 will neither increase nor decrease revenues or expenditures of the Department.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Applying for community capital assistance funds requires staff of the applicant to complete forms and report information. The amount of time it takes to apply will vary depending on the nature and complexity of the proposal submitted. Department staff estimate that discussing an application with Department staff and completing required forms takes, on average, four to twelve staff-hours. Additional time may be required for complex proposals. Department staff are available to answer questions and provide assistance as needed.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** No
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** No
15. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not applicable.

### **III. Common Sense Initiative (CSI) Questions**

16. **Was this rule filed with the Common Sense Initiative Office?** Yes
17. **Does this rule have an adverse impact on business?** Yes
  - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business?** No
  - B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms?** Yes

Paragraph (H) sets forth that an applicant shall repay community capital assistance funds if provisions of the rule are violated and that failure to comply with the rule may result in the denial of future requests for community capital assistance funds.

- C. **Does this rule require specific expenditures or the report of information as a condition of compliance?** Yes

The rule requires an applicant to submit an application with supporting documents and assurances to the Department.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

**IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

- 18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

- A. How many new regulatory restrictions do you propose adding?

Not Applicable

- B. How many existing regulatory restrictions do you propose removing?

Not Applicable

**\*\*\*Proposed Revisions - June 22, 2020\*\*\*****5123:1-1-04 5123-1-04 Community capital assistance funds ~~for the~~ development of licensed residential facilities.**

## (A) Purpose

This rule sets forth a process for the department to make available community capital assistance funds for boards of county commissioners, county boards of developmental disabilities, and nonprofit corporations to develop licensed residential facilities for individuals who are transitioning from developmental centers or converted facilities and who are enrolled in a home and community-based services waiver administered by the department.

## (B) Definitions

- (1) "Applicant" means any of the following who submit an application to the department for state community capital assistance funds:
  - (a) A board of county commissioners;
  - (b) A county board of developmental disabilities; or
  - (c) A nonprofit corporation incorporated pursuant to Chapter 1702. of the Revised Code, granted 501(c)(3) status by the internal revenue service, and specifically chartered to provide a developmental disability service when such service fulfills a public purpose as provided by section 154.20 of the Revised Code. When the applicant is a nonprofit corporation, the applicant shall submit with the application, in addition to all other documents required by this rule, a copy of its articles of incorporation, code of regulations, and a current list of all directors, officers, and members.
    - (i) The articles of incorporation shall contain, in addition to provisions otherwise required by law, a specific statement of purpose that the corporation will provide a developmental disability service.
    - (ii) The code of regulations shall contain the following provisions in addition to those specifically required by law:
      - (a) A provision stating that services will neither be rendered nor denied on the basis of race, color, religion, national origin, disability, age, or unless programmatically justifiable, sex;
      - (b) A provision that upon dissolution of the corporation, if such dissolution occurs within the length of the project agreement, the department or its successor shall be a party to any judicial proceeding or dissolution agreement and that the department or its successor may be a distributee under such order or agreement to the extent of its participation and to the extent provided by law or the project agreement which originally set forth disbursement of funds to the corporation;

## **\*\*\*Proposed Revisions - June 22, 2020\*\*\***

- (c) A provision that no persons related by blood, marriage, or adoption (to a degree of first cousin) shall constitute a majority of the board of directors; and
  - (d) A provision requiring disclosure of potential conflicts of interest of a director, procedures for determining whether there is a conflict of interest, and establishing a course of action if a conflict of interest is identified.
- (2) "Appraisal" means a written report completed by a certified or licensed appraiser which includes a floor plan sketch of the residential facility; front, back, and street scene photographs of the residential facility; three interior photographs of the residential facility; a street map that shows the location of the residential facility and the comparable sales; front photographs of comparable sales; a statement of assumptions and limiting conditions; and the appraiser's certification. The appraisal shall be completed on the appropriate "Fannie Mae" form.
- (3) "Community capital assistance funds" means tax-exempt capital bond funds that are used for the purchase or construction of community-based housing projects. Based on available funding, the department shall distribute community capital assistance funds to applicants using a formula developed by the department. The department may participate at a percentage level of the cost of the residential facility.
- (4) "Construction" means the construction of new buildings or renovation of existing buildings as provided by section 154.01 of the Revised Code.
- (5) "Controlling board" means the board established by section 127.11 of the Revised Code.
- (6) "Converted facility" means an intermediate care facility for individuals with intellectual disabilities or a former intermediate care facility for individuals with intellectual disabilities that converted some or all of its beds to providing home and community-based services funded by the individual options waiver pursuant to section 5124.60 of the Revised Code.
- (7) "Department" means the Ohio department of developmental disabilities.
- (8) "Developmental center" means a state-operated intermediate care facility for individuals with intellectual disabilities.
- (9) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (10) "Individuals" means persons with developmental disabilities.
- (11) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (12) "Manufactured home" has the same meaning as in division (C) of section 4781.01 of

## **\*\*\*Proposed Revisions - June 22, 2020\*\*\***

the Revised Code.

- (13) "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation between the department and the applicant memorialized in a mortgage deed and recorded in the county in which the real property is located.
- (14) "Promissory note" means a written instrument that the department enters into with an applicant that evidences a promise to pay a monetary obligation, establishes a schedule for forgiveness of a monetary obligation through installments or otherwise, or a combination thereof, and which may be used to support a mortgage on real property.
- (15) "Renovation" means work done to a building to restore it to an acceptable condition and to make it functional for the purposes set forth in an application for community capital assistance funds, including architectural and structural changes and the modernization of mechanical and electrical systems. Renovation does not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.
- (16) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

### (C) Use of community capital assistance funds

- (1) Community capital assistance funds may be used for the purchase or construction of a residential facility of four or fewer beds for individuals who were residents of a developmental center or a converted facility immediately prior to enrollment in a home and community-based services waiver administered by the department when the department determines that:
  - (a) Viable alternative housing options in the community where the individuals desire to live are not otherwise available; and
  - (b) The residential facility purchased or constructed with community capital assistance funds will be compliant with federal guidelines for home and community-based services settings.
- (2) A residential facility purchased or constructed with community capital assistance funds shall be used as residences for individuals for at least one hundred eighty months.
- (3) The department shall maintain a mortgage interest in the residential facility that at least equals the amount of community capital assistance funds used to purchase or construct the residential facility. The term of the mortgage shall be one hundred eighty months.
- (4) Community capital assistance funds shall not be used to:

## **\*\*\*Proposed Revisions - June 22, 2020\*\*\***

- (a) Purchase equipment, furniture, and household items other than those fixed items customarily included in a purchase agreement or a construction contract;
  - (b) Purchase mobile homes; or
  - (c) Purchase or construct a residential facility when the purchase price or construction cost exceeds, by more than ten percent, the residential facility's appraised value.
- (D) Community capital assistance funds application and evaluation
- (1) The applicant shall secure approval for development of residential facilities pursuant to rule ~~5123:2-3-26~~ 5123:2-3-08 of the Administrative Code.
  - (2) Prior to purchasing a residential facility or initiating a residential facility construction project, the applicant shall submit an application for community capital assistance funds to the department in a form and manner prescribed by the department.
  - (3) The department shall evaluate applications with regard to compliance with federal guidelines for home and community-based services settings, programmatic suitability, economic feasibility, and ability or potential to meet applicable building and fire codes, licensure, and department or other governmental requirements and with consideration of the following criteria for residential facility construction project sites:
    - (a) Location, including sociological and demographic considerations of area and access to site and extent to which the site is integrated in a residential neighborhood;
    - (b) Cost of property, including comparison of similar property in the area;
    - (c) Zoning, transportation, and utilities including gas, electric, water, and sewage;
    - (d) Configuration, topography, and suitability for construction; and
    - (e) Environmental assessment that includes, but is not limited to, asbestos, polyvinyl chlorides, and chemical contaminants that may be present on the site.
  - (4) The director of the department or his or her designee shall have final discretion to determine if the purchase or construction project is suitable for the intended purpose.
  - (5) The department shall notify the applicant in writing whether the application is approved or disapproved. If an application is approved, the notification shall indicate the amount of community capital assistance funds approved, subject to favorable fund release action by the controlling board. The amount of community capital assistance funds awarded shall not exceed ninety percent of the purchase price or construction cost.
- (E) Applicant assurances and obligations after approval of the application
- (1) The applicant shall enter into an agreement and mortgage with the department which

## **\*\*\*Proposed Revisions - June 22, 2020\*\*\***

shall include:

- (a) An assurance that the applicant shall operate and maintain the residential facility in accordance with the agreement for one hundred eighty months. If the facility is used for an alternative purpose, the applicant shall pay to the department on a pro rata basis in accordance with paragraph (H)(1) of this rule any state funds reimbursed to the applicant or shall permit the department to operate or transfer the operation of the residential facility, including the assignment of any contracts or other interests, to another approved organization for the balance of the agreement.
  - (b) An assurance that the applicant shall keep the residential facility in good order and condition by:
    - (i) Making all necessary or appropriate repairs and replacements;
    - (ii) Complying with all laws, rules, insurance policies, and regulations;
    - (iii) Obtaining and maintaining any governmental licenses and permits required for the use, maintenance, repair, and operation of the residential facility;
    - (iv) Paying all costs, claims, damages, fees, and charges arising out of the possession, use, operation, or maintenance of the residential facility; and
    - (v) Remaining free of all liens, encumbrances, restrictions, and conditions which prevent or interfere with its use as a residential facility except such as may be imposed by zoning ordinances and regulations.
  - (c) The use and ownership of the residential facility if the agreement is terminated.
  - (d) The use and ownership of the residential facility if the licensee is dissolved.
  - (e) The use and ownership of the residential facility if the licensee files for bankruptcy.
  - (f) A provision that upon dissolution of the licensee, the department or its successor shall be a party to any judicial proceeding or dissolution agreement and that the department or its successor may be a distributee under such order or agreement based upon the amount of funds provided to the applicant under this rule and to the extent provided by law.
  - (g) A requirement that any proceeds from the sale of the residential facility shall be used to acquire a replacement residential facility in accordance with paragraph (G) of this rule.
- (2) For purchase of a residential facility, the applicant shall provide:
- (a) An appraisal that is no more than six months old;
  - (b) A signed purchase contract showing the intent to purchase and the purchase price;

## **\*\*\*Proposed Revisions - June 22, 2020\*\*\***

- (c) A copy of the current title insurance policy that is no more than sixty days old;  
and
  - (d) Any other documents specified by the department.
- (3) For a residential facility construction project, the applicant shall:
- (a) Provide:
    - (i) An appraisal that is no more than six months old that appraises what the value of the real estate will be once the residential facility construction project is completed;
    - (ii) A signed purchase contract showing the intent to purchase the vacant real estate, which shall include the purchase price, or if the real estate is already in the name of the applicant, a copy of the current recorded deed;
    - (iii) A copy of the current title insurance policy that is no more than sixty days old, a map outlining the residential facility construction project site, and a deed;
    - (iv) A "bid tabulation," which means a list in tabular form of all of the project bidders' names, addresses, and dollar bid amount (with alternates as applicable) that are compiled, signed, and dated by the applicant's representatives officiating at the bid opening;
    - (v) A signed construction contract for the residential facility; and
    - (vi) Any other documents specified by the department.
  - (b) Enter into an agreement with the department that assures the completion of the residential facility construction project in accordance with standards set forth by the department and applicable federal, state, and local statutes.
  - (c) Agree to provide and maintain adequate comprehensive general insurance.
  - (d) Ensure that the residential facility design and construction conforms to all applicable building codes, standards, zoning, and licensing requirements.
  - (e) Ensure that all contractors agree to comply with applicable federal, state, and local laws in the conduct of the work hereunder and accept full responsibility for payment of all unemployment compensation, insurance premiums, income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by contractors in the performance of the work authorized by this agreement.
  - (f) Hold the department harmless for any liability resulting from liens issued against the project by contractors, subcontractors, material suppliers, or laborers.
  - (g) Begin the construction project within one year from the date of department

## **\*\*\*Proposed Revisions - June 22, 2020\*\*\***

approval. The director of the department or his or her designee has the discretion to withdraw funds at any time if the project is not proceeding in a timely manner.

### (F) Distribution of community capital assistance funds

- (1) The department shall pay the applicant for approved costs for an amount up to but not exceeding the maximum state share of the purchase or construction project cost stated in the approved application. No additional funds will be approved over the maximum state share of the purchase or construction project cost once the funds are awarded.
- (2) For purchase of a residential facility:
  - (a) The department shall issue a check for all or a portion of the funds awarded to an applicant after determining that all requirements of this rule have been met. The department may present the check at the closing.
  - (b) Within sixty calendar days of closing, the applicant shall provide the department with copies of the final closing statement, the promissory note, the recorded deed (with restrictions noted as necessary), and the recorded mortgage.
- (3) For a residential facility construction project:
  - (a) The department shall issue a check for all or a portion of the funds awarded to an applicant after determining that all requirements of this rule have been met.
  - (b) Within sixty calendar days of completion, the applicant shall provide the department with a copy of the occupancy permit which has been issued for the residential facility construction project.

### (G) Acquisition of a replacement residential facility

- (1) To sell a residential facility purchased or constructed with community capital assistance funds under this rule and obtain a replacement residential facility, the applicant shall:
  - (a) Comply with sections 5123.37 to 5123.375 of the Revised Code;
  - (b) Secure approval for development of residential facilities pursuant to rule ~~5123:2-3-26~~ [5123:2-3-08](#) of the Administrative Code;
  - (c) Provide the department with an appraisal that is no more than six months old, promissory note, mortgage, and recorded deed for the replacement residential facility; and
  - (d) Comply with all other requirements of this rule.
- (2) The net sale proceeds shall equal the amount of funds owed to the department on a pro rata basis in accordance with paragraph (H)(1) of this rule.

## **\*\*\*Proposed Revisions - June 22, 2020\*\*\***

### (H) Failure to comply with this rule

- (1) The applicant shall repay community capital assistance funds if any provisions of this rule are violated. The repayment shall be calculated by multiplying the amount of funds provided under this rule by the ratio of one hundred eighty minus the number of months used as a residential facility (as determined by the department) to the total term of one hundred eighty months, that is:  $\text{funds provided} \times [(180 - \text{number of months used as residential facility})/180] = \text{repayment}$ .
- (2) Failure to comply with this rule may result in the denial of future requests for community capital assistance funds.