

5123-3-01

Licensed residential facilities - administration and operation.**(A) Purpose**

This rule sets forth requirements for administration and operation of residential facilities licensed in accordance with section 5123.19 of the Revised Code.

(B) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Abuser registry" has the same meaning as in rule 5123-17-03 of the Administrative Code.
- (2) "Accredited college or university" means a college or university accredited by a national or regional association recognized by the secretary of the United States department of education or a foreign college or university of comparable standing.
- (3) "Administrator" means the person responsible for administration of the residential facility who shall be directly and actively involved in the day-to-day operation of the residential facility and oversee provision of services by the residential facility.
- (4) "Certificate of high school equivalence" has the same meaning as in section 3301.80 of the Revised Code and includes the equivalent of a certificate of high school equivalence described in division (C) of that section.
- (5) "Department" means the Ohio department of developmental disabilities.
- (6) "Direct support professional" means a person who is employed in a "direct services position" as that term is defined in section 5123.081 of the Revised Code.
- (7) "Health-related activities" has the same meaning as in rule 5123:2-6-01 of the Administrative Code.
- (8) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (9) "Individual" means a person with a developmental disability.
- (10) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program

plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

- (11) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (12) "License" means written approval by the department to a licensee to operate a residential facility.
- (13) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.
- (14) "Operator" means the entity responsible for management of and provision of services at the residential facility.
- (15) "Person-centered planning" has the same meaning as in rule 5123-3-03 of the Administrative Code.
- (16) "Related party" has the same meaning as in section 5123.16 of the Revised Code.
- (17) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
- (18) "Specialized services" means any program or service designed and operated to serve primarily individuals with developmental disabilities, including a program or service provided by an entity licensed or certified by the department. If there is a question as to whether an entity is providing specialized services, an operator may request that the director of the department make a determination. The director's determination is not subject to appeal. Programs or services available to the general public are not specialized services.
- (19) "Supervisory staff" means employees of the residential facility who provide direction or exercise supervision over one or more direct support professionals.
- (20) "Support staff" means employees of the residential facility who are not direct support professionals, such as those in human resources positions, secretaries, clerks, housekeepers, maintenance workers, and laundry workers.
- (21) "Volunteer" means a person who donates time, effort, and/or talent to meet a need or advance the mission of a residential facility and who is not paid or otherwise remunerated by the residential facility. "Volunteer" does not include a family member, guardian, friend, or other associate of an individual simply interacting with that individual.

(C) General requirements

- (1) A residential facility shall be licensed by the department in accordance with section 5123.19 of the Revised Code. The license to operate a residential facility is not transferable and is valid only for the licensee, the premises named on the license, the number of individuals specified on the license, and the term specified on the license. The license shall be available at the residential facility and shown to anyone upon request.
- (2) A licensee shall serve as operator of the residential facility or contract with another entity to serve as operator of the residential facility. When a licensee contracts with another entity to serve as operator:

 - (a) The licensee and operator shall enter into an agreement that establishes the operator's responsibility to provide the licensee all information necessary to comply with paragraphs (C)(4)(a) to (C)(4)(g) of this rule.
 - (b) The licensee remains responsible for ensuring compliance with all rules and regulations governing the residential facility.
- (3) When home and community-based services are provided at a residential facility, the licensee or the operator, as applicable, shall submit an application for approval to provide home and community-based services in accordance with procedures established by the department, obtain and maintain a medicaid provider agreement with the Ohio department of medicaid, and comply with rules in Chapter 5123-9 of the Administrative Code for the specific home and community-based services provided.
- (4) A licensee shall:

 - (a) Electronically notify the department if the licensee, operator, or administrator has been or is formally charged with, convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code within fourteen calendar days after the date of such charge, conviction, guilty plea, or finding.
 - (b) Electronically notify the department within fourteen calendar days if the licensee, operator, or administrator is or becomes a related party of a person or government entity for which the department refused to issue or renew or revoked a supported living certificate pursuant to section 5123.166 of the Revised Code.
 - (c) Electronically notify the department within fourteen calendar days of occurrence, and provide the name, date of birth, and social security

number for any person newly acquiring a financial interest of five per cent or more in the residential facility (including a direct, indirect, security, or mortgage financial interest).

(d) Provide and maintain on file with the department, the licensee's and the operator's current physical address, telephone number, and electronic mail address.

(e) At the point of application for licensure and upon request by the department, provide:

(i) A certificate of a continuing policy of general liability insurance in an amount of at least one million dollars which includes coverage for individuals' losses due to theft or property damage.

(ii) Proof of a continuing line of credit in the licensee's name in an amount of at least ten thousand dollars.

(f) Electronically notify the department within seven calendar days of any bankruptcy petition for which the licensee or operator is the subject and provide related documents to the department upon request.

(g) Electronically notify the department within fourteen calendar days of determining that the administrator has had a professional registration, certification, or license (other than a driver's license) suspended or revoked.

(5) An operator shall:

(a) Comply with rules in Chapter 5123-3 of the Administrative Code, rules in other chapters of the Administrative Code adopted by the department to license or regulate the operation of residential facilities, and all applicable federal, state, and local regulations including but not limited to, the Americans with Disabilities Act, fire safety code, wage and hour, workers' compensation, unemployment compensation, and withholding taxes.

(b) Have written policies and procedures that address management practices regarding:

(i) Person-centered planning and self-determination;

(ii) Individuals' satisfaction with services delivered;

- (iii) Internal monitoring and evaluation procedures to improve services delivered;
 - (iv) Supervision of staff;
 - (v) The training plan described in paragraph (D)(7) of this rule;
 - (vi) Service delivery;
 - (vii) Background investigations for employment in accordance with rule 5123-2-02 of the Administrative Code; and
 - (viii) Volunteers (when the residential facility engages volunteers).
 - (c) Demonstrate that it has an established internal compliance program to ensure compliance with requirements for:
 - (i) Residential facilities in accordance with rules in Chapter 5123-3 of the Administrative Code;
 - (ii) Background investigations and appropriate actions in accordance with rule 5123-2-02 of the Administrative Code, for its administrator, licensee, operator, supervisors of direct support professionals, direct support professionals, and when applicable, volunteers;
 - (iii) Service delivery, service documentation, and billing for services in accordance with Chapter 5123. of the Revised Code and rules adopted pursuant to that chapter for supported living services and the specific home and community-based services provided; and
 - (iv) Management of individuals' funds.
 - (d) Participate as requested by the department in service delivery system data collection initiatives.
 - (e) Ensure the operator and its employees interact with individuals in a way to safeguard the rights of individuals enumerated in sections 5123.62 and 5123.65 of the Revised Code.
 - (f) Meet the requirements established under sections 5123.63 and 5123.64 of the Revised Code.
- (6) When a residential facility is governed by a board of directors, board members shall:

- (a) Ensure the fiscal integrity of the residential facility by reviewing and approving the residential facility's annual audit, if otherwise required, or annual financial statements and by monitoring the residential facility's financial status including trends and challenges;
- (b) Review and evaluate all compliance review reports by the department or the Ohio department of health and the operator's response, including the plan of correction;
- (c) Monitor the effectiveness of the operator's internal compliance program described in paragraph (C)(5)(c) of this rule; and
- (d) Promote the delivery of high-quality services.

(D) Staffing

An operator shall:

- (1) Conduct background investigations and take appropriate actions in accordance with rule 5123-2-02 of the Administrative Code for the administrator, supervisors of direct support professionals, direct support professionals, and when applicable, volunteers. The administrator shall consent to be enrolled in the Ohio attorney general's retained applicant fingerprint database (also known as "Rapback"). When the licensee and/or operator is a natural person, the licensee and/or operator shall be subject to background investigations in accordance with the requirements for candidates set forth in rule 5123-2-02 of the Administrative Code and consent to be enrolled in the Ohio attorney general's retained applicant fingerprint database (also known as "Rapback").
- (2) Annually notify in writing, each of its staff members explaining the conduct for which the staff member may be placed on the abuser registry and setting forth the requirement for each staff member who is a supervisor of direct support professionals or a direct support professional to report in writing to the operator, if the staff member is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code within fourteen calendar days after the date of such charge, conviction, guilty plea, or finding.
- (3) Be current in payment of payroll taxes, workers' compensation premiums, and unemployment compensation premiums.

- (4) Ensure that staff are on duty on the basis of the needs of individuals being served. Staff schedules shall be prepared in advance and available for review at each residential facility.
- (5) Provide sufficient support staff so that direct support professionals are not required to perform support services to the extent that these duties interfere with the exercise of their primary duties.
- (6) Maintain personnel records for each employee in accordance with the residential facility's personnel policies.
- (7) Develop and implement a written training plan for its administrator, supervisors of direct support professionals, direct support professionals, support staff, and when applicable, volunteers that:
 - (a) Is consistent with the needs of individuals served, best practice, and the requirements set forth in appendix A, appendix B, appendix C, and appendix D to this rule.
 - (b) Describes the method (e.g., written test, skills demonstration, or documented observation by supervisor) that will be used to establish competency in areas of training.
 - (c) Is updated at least once every twelve months and identifies who is responsible for arranging or providing the training and projected timelines for completion of the training.
- (8) Maintain a written record of training completed by the administrator, supervisors of direct support professionals, direct support professionals, support staff, and volunteers that includes a description of the training completed, the date of training, the duration of training, and when applicable, the instructor's name.

(E) Requirements for administrator

- (1) An operator shall employ an administrator. When the operator is a natural person, the operator may serve as the administrator provided the operator meets the requirements for administrators set forth in this rule.
- (2) An administrator shall:
 - (a) Have a valid birth certificate.
 - (b) Be at least twenty-one years of age.

- (c) Have a valid social security card and a valid government-issued photo identification.
 - (d) Be able to read, write, and understand English at a level sufficient to comply with all requirements set forth in administrative rules governing the services provided.
 - (e) Have at least:
 - (i) One year of full-time (or equivalent part-time) paid work experience in the provision of specialized services; or
 - (ii) Four years of experience providing care to a family member (i.e., parent, child, or sibling) with a developmental disability.
 - (f) Have at least one year of full-time (or equivalent part-time) paid work experience in:
 - (i) Supervision of employees;
 - (ii) Development, oversight, and/or supervision of programs or services; and
 - (iii) Financial management of an organization.
 - (g) Except for a person who, on September 30, 2016, was employed by or under contract with a residential facility as the administrator, hold either:
 - (i) A bachelor's degree from an accredited college or university; or
 - (ii) A high school diploma or certificate of high school equivalence and have at least:
 - (a) Four years of full-time (or equivalent part-time) paid work experience as a supervisor of specialized services; or
 - (b) Four years of experience providing care to a family member (i.e., parent, child, or sibling) with a developmental disability.
 - (h) Successfully complete the training specified in appendix A to this rule in accordance with the stipulated timelines.
- (3) An operator shall designate in writing a staff member to whom executive authority has been delegated in the temporary absence of the administrator.

(4) An operator shall electronically notify the department within fourteen calendar days when the administrator leaves or joins the residential facility's employ.

(a) When the administrator leaves a residential facility's employ, the operator shall provide the operator's plan for identifying a new administrator and identify the person to whom executive authority has been delegated in the interim period.

(b) A person newly appointed or employed as administrator shall complete the department-provided web-based orientation for administrators of residential facilities described in appendix A to this rule within thirty calendar days of appointment or hire.

(5) An administrator shall electronically notify the department if the administrator:

(a) Serves as administrator for more than one licensee.

(b) Is or was the administrator of a residential facility at a point in time within the last five years when the residential facility had its license revoked or not renewed.

(F) Requirements for direct support professionals

An operator shall ensure that each direct support professional:

(1) Is at least eighteen years of age.

(2) Holds a high school diploma or certificate of high school equivalence, except for persons who, on September 30, 2016, were employed by or under contract with a residential facility in a direct services position.

(3) Is able to read, write, and understand English at a level sufficient to comply with all requirements set forth in administrative rules governing the services provided.

(4) Obtains within sixty calendar days of hire and thereafter maintains valid "American Red Cross" or equivalent certification in first aid which includes an in-person skills assessment completed with an approved trainer. Until such time that certification in first aid is obtained, the direct support professional may provide direct services only when there is another staff member who holds valid certification in first aid present.

(5) Obtains within sixty calendar days of hire and thereafter maintains valid "American Red Cross" or equivalent certification in cardiopulmonary resuscitation which includes an in-person skills assessment completed with

an approved trainer. Until such time that certification in cardiopulmonary resuscitation is obtained, the direct support professional may provide direct services only when there is another staff member who holds valid certification in cardiopulmonary resuscitation present.

(6) Successfully completes the training specified in appendix B to this rule in accordance with the stipulated timelines.

(G) Requirements for supervisory staff

An operator shall ensure that each staff member who supervises direct support professionals:

(1) Meets the requirements set forth in paragraph (F) of this rule; and

(2) Has successfully completed training regarding all relevant duties and responsibilities of being a supervisor for the residential facility within ninety calendar days of becoming a supervisor.

(H) Requirements for support staff

An operator shall ensure that support staff successfully complete the training specified in appendix C to this rule in accordance with the stipulated timelines.

(I) Requirements for volunteers

(1) A residential facility may engage volunteers to provide supplementary services.

(2) An operator shall ensure that volunteers:

(a) Are at all times under supervision of paid supervisory staff of the residential facility.

(b) Do not provide intimate personal care (such as dressing, showering, bathing, toileting, or changing undergarments), administer medication, or perform health-related activities.

(3) An operator shall ensure that each volunteer who provides more than forty hours of service working directly with residents during a calendar year:

(a) Successfully completes the training specified in appendix D to this rule.

(b) Undergoes a background investigation which includes:

- (i) Requiring the volunteer to submit a statement to the operator with the volunteer's signature attesting that the volunteer has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.
 - (ii) Requiring the volunteer to sign an agreement under which the volunteer agrees to notify the operator within fourteen calendar days if the volunteer is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code. The agreement shall provide that failure to make the notification may result in termination of the volunteer's services.
 - (iii) Checking each of the databases described in paragraph (C)(2) of rule 5123-2-02 of the Administrative Code to determine if the volunteer is included.
 - (iv) Obtaining a criminal records check conducted by the Ohio bureau of criminal identification and investigation. If the volunteer does not present proof that the volunteer has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the criminal records check shall include information from the federal bureau of investigation.
- (4) An operator shall, at a frequency of no less than once every five years, conduct a background investigation in accordance with paragraph (I)(3)(b) of this rule for each volunteer who provides more than forty hours of service working directly with residents during a calendar year.
- (5) An operator shall not engage or continue to engage a volunteer who:
- (a) Is included in one or more of the databases described in paragraphs (C)(2)(a) to (C)(2)(f) of rule 5123-2-02 of the Administrative Code; or
 - (b) Has a conviction for, pleads guilty to, or is found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code if the corresponding exclusionary period as specified in paragraph (E) of rule 5123-2-02 of the Administrative Code has not elapsed.

Replaces: 5123:2-3-01

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Five Year Review (FYR) Dates:

Certification

Date

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