

TO BE RESCINDED

5123:2-2-01 **Provider certification.**

(A) Purpose

The purpose of this rule is to establish the procedures and standards for certification of providers of supported living services and to comply with the requirements of section 5123.045 of the Revised Code. This rule does not apply to a person or government entity licensed as a residential facility under section 5123.19 of the Revised Code.

(B) Definitions

- (1) "Agency provider" means an entity, including a county board of mental retardation and developmental disabilities, that employs persons for the purpose of providing services for which the entity must be certified under this rule.
- (2) "Applicant" means a person, agency, or county board of mental retardation and developmental disabilities seeking to become a certified provider.
- (3) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (4) "Family consortium" means an association of family members related to two or more individuals who reside together, formed for the purpose of providing services for which the family consortium must be certified under this rule.
- (5) "GED" means general educational development, a diploma equivalent to a high school diploma issued by the Ohio department of education.
- (6) "Independent provider" or "individual provider" means a self-employed person who provides services for which he or she must be certified under this rule and does not employ, either directly or through contract, anyone else to provide the services.
- (7) "Individual" means a person with mental retardation or other developmental disability.
- (8) "Provider" means a person, family consortium, or agency that is required to be certified under this rule.

(C) Minimum standards for providers

(1) Each provider shall:

(a) Provide to the department written commitment to comply with the requirements of this rule and other standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the specific service(s) to be provided; and

(b) Maintain a current mailing address on file with the department.

(2) Each independent provider; each member of a family consortium; each chief executive officer or person responsible for administration of an agency provider; and each employee, contractor, and employee of a contractor of an agency provider who is engaged in a direct services position shall:

(a) Be at least eighteen years of age.

(b) Hold a high school diploma or GED, except for:

(i) Persons who, on the day immediately prior to the effective date of this rule, hold individual provider certification issued by the department; and

(ii) Persons who, on the day immediately prior to the effective date of this rule, are employed by or under contract with an agency provider certified by the department.

(c) Have a valid social security number and one of the following forms of identification:

(i) State of Ohio identification;

(ii) A valid driver's license; or

(iii) Other government-issued photo identification.

(d) Have, at the point of application for initial certification in the case of an agency provider and at the point of application for initial and renewal certification in the case of an independent provider, a current report

from the bureau of criminal identification and investigation (BCII), which demonstrates that he/she has not been convicted of or pleaded guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code. If the subject of the background investigation cannot present proof that he/she has been a resident of Ohio for the five-year period immediately prior to the date of the background investigation, he/she shall request that BCII obtain information regarding his/her criminal record from the federal bureau of investigation. A BCII report shall be considered current if it is not more than one year old.

- (e) Not be listed on the abuser registry established pursuant to sections 5123.50 to 5123.54 of the Revised Code.
 - (f) Not be listed on the nurse aide registry established pursuant to section 3721.32 of the Revised Code indicating that the director of the Ohio department of health has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the person.
 - (g) 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.
 - (h) Be able to effectively communicate with the individual receiving services.
- (3) Except for providers of services specified in paragraph (C)(4) of this rule and members of a family consortium, each independent provider and each employee, contractor, and employee of a contractor of an agency provider who is engaged in a direct services position, shall meet the following requirements:
- (a) Hold valid "American Red Cross" or equivalent certification in first aid.
 - (b) Hold valid "American Red Cross" or equivalent certification in cardiopulmonary resuscitation ("CPR").
 - (c) Have completed, prior to application for initial certification in the case of an independent provider and prior to providing services in the case of an employee, contractor, or employee of a contractor of an agency provider, eight hours of training in accordance with guidelines established by the department that addresses the following topics:

- (i) Overview of serving individuals with developmental disabilities;
 - (ii) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
 - (iii) Overview of basic principles and requirements of providing home and community-based services (HCBS) waiver services;
 - (iv) The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety; and
 - (v) Universal precautions for infection control, including hand washing and the disposal of bodily waste.
- (4) Members of a family consortium and providers of the following HCBS waiver services are exempt from the requirements set forth in paragraph (C)(3) of this rule:
- (a) Adaptive and assistive equipment;
 - (b) Environmental accessibility adaptations;
 - (c) Home delivered meals;
 - (d) Informal respite only if provided to the provider's own family member;
 - (e) Interpreter;
 - (f) Nutrition;
 - (g) Personal emergency response systems;
 - (h) Social work; and
 - (i) Specialized medical equipment and supplies.
- (D) Additional standards for agency providers
- (1) Agency providers shall provide evidence to the department to demonstrate that

the applicant employs a chief executive officer or a person responsible for administration of the agency who has the following qualifications:

- (a) At least one year of full-time, paid work experience in the provision of services to individuals with developmental disabilities which included responsibility for the following functions:
 - (i) Personnel matters;
 - (ii) Supervision of employees;
 - (iii) Program services; and
 - (iv) Financial management.
 - (b) A bachelor's degree from an accredited institution or at least four years of full-time, paid work experience as a supervisor of programs or services for individuals with developmental disabilities.
- (2) Agency providers shall ensure that, at a frequency of at least once every three years, the chief executive officer or person responsible for administration of the agency and each employee, contractor, and employee of a contractor who is engaged in a direct services position shall undergo a background check by BCII which demonstrates that he/she has not been convicted of or pleaded guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code.
- (3) Agency providers shall provide to the department written policies and procedures that address the agency's management practices in the following areas:
- (a) Principles of individuals' self-determination;
 - (b) Confidentiality of individuals' records;
 - (c) Safeguarding individuals' funds;
 - (d) Incident reporting and investigation;
 - (e) Individuals' satisfaction with services delivered;

- (f) Internal monitoring and evaluating procedures to improve services delivered;
 - (g) Supervision of staff;
 - (h) Staff training plan; and
 - (i) Annual written notice to each of its employees and contractors explaining the conduct for which the employee or contractor or the contractor's employees may be placed on the abuser registry and setting forth the requirement for each employee, contractor, and employee of a contractor who is engaged in a direct services position to report in writing to the agency provider, if he/she is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code within fourteen calendar days after the date of such charge, conviction, or guilty plea.
- (E) Reciprocity for certified providers under HCBS waivers administered by the Ohio department of aging and the Ohio department of job and family services
- (1) The department may issue, to persons and entities certified to provide services under HCBS waivers administered by the Ohio department of aging or the Ohio department of job and family services, provider certification for similar services under HCBS waivers administered by the department.
 - (2) Applicants seeking certification under paragraph (E)(1) of this rule shall be required to:
 - (a) Maintain provider certification issued by the Ohio department of aging or the Ohio department of job and family services;
 - (b) Meet the requirements set forth in paragraphs (C)(1) and (C)(2) of this rule;
 - (c) Hold valid "American Red Cross" or equivalent certification in first aid;
 - (d) Hold valid "American Red Cross" or equivalent certification in cardiopulmonary resuscitation ("CPR");
 - (e) Have completed, prior to application for initial department certification in

the case of an independent provider and prior to providing services in the case of an employee, contractor, or employee of a contractor of an agency provider, four hours of training in accordance with guidelines established by the department that addresses overview of serving individuals with developmental disabilities, the provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code, and the requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety; and

- (f) Submit an application to the department for supported living services and the HCBS waiver service(s) the applicant seeks to deliver on forms and in accordance with procedures prescribed by the department, including payment of the application fee specified in paragraph (K) of this rule.

(F) Duties regarding provision of services

- (1) The following prohibitions apply to each independent provider, to each member of a family consortium, and to each agency provider and its employees, contractors, and employees of contractors:
 - (a) Providing services to his/her minor child (under age eighteen) or his/her spouse;
 - (b) Engaging in sexual conduct or having sexual contact with an individual for whom he or she is providing care; and
 - (c) Administering any medication to or performing health care tasks for individuals who receive services unless he/she meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.
- (2) The following standards of practice apply to each independent provider, to each member of a family consortium, and to each agency provider and its employees, contractors, and employees of contractors:
 - (a) Providing services only to individuals whose needs he/she can meet.
 - (b) Implementing services in accordance with the individual's service plan (ISP).
 - (c) Taking all reasonable steps necessary to prevent the occurrence or

reoccurrence of incidents adversely affecting health and safety of individuals served.

- (d) Complying with the requirements of behavior supports established under rules adopted by the department.
 - (e) Ensuring that anyone responsible for implementing behavior support plans receives training in the plan components prior to implementation of the plans.
 - (f) Arranging for substitute coverage, if necessary, only from a provider certified by the department and as identified in the ISP; notifying the individual or legally responsible person(s) in the event that substitute coverage is necessary; and notifying the person identified in the ISP when substitute coverage is not available to allow such person to make other arrangements.
 - (g) Notifying, in writing, the individual or the individual's guardian and the individual's service and support administrator in the event that the provider intends to cease providing services to the individual no less than thirty calendar days prior to termination of services. If, however, an independent provider intends to cease providing services to an individual because the health or safety of the independent provider is at serious and immediate risk, the provider shall immediately notify the county board of mental retardation and developmental disabilities by calling the county board's twenty-four hour emergency telephone number; once the board has been notified, the independent provider may cease providing services.
- (3) The following ongoing training requirements apply to each independent provider, to each member of a family consortium, and to each agency provider and its employees, contractors, and employees of contractors:
- (a) To annually complete training, in accordance with standards established by the department, in the provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and
 - (b) To annually complete training, in accordance with standards established by the department, in the requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety.

(G) Procedure for obtaining initial certification

- (1) The applicant shall submit an application to the department for supported living services and the HCBS waiver service(s) the applicant seeks to deliver on forms and in accordance with procedures prescribed by the department.
- (2) The department shall provide the applicant with all relevant application materials and service-specific standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the service(s) the applicant seeks to deliver.
- (3) The applicant shall submit the application with supporting documentation as evidence that standards are met as required by this rule and service-specific standards established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code.
- (4) An application is considered complete when the department has received from the applicant all completed components of the application, including applicable signatures and supporting documentation that demonstrates compliance with the certification standards for the service(s) the applicant is seeking to deliver, and the application fee specified in paragraph (K) of this rule.
- (5) If the application is complete, the department shall review the application and notify the applicant in writing of its decision to approve or deny certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved. The department shall obtain a medicaid provider number from the Ohio department of job and family services for certified providers of HCBS waiver services; the department shall notify the certified provider in writing within twenty calendar days of receipt of the medicaid provider number.
- (6) If the application is incomplete, the department shall, within forty-five calendar days of receipt of the application, notify the applicant in writing that the application is deficient and advise that the applicant has ninety calendar days to submit documentation needed to complete the application.
 - (a) When documentation is received by the department within the specified ninety calendar days that results in a complete application, the department shall review the application and notify the applicant in writing of its decision to approve or deny the certification within

forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved. The department shall obtain a medicaid provider number from the Ohio department of job and family services for certified providers of HCBS waiver services; the department shall notify the certified provider in writing within twenty calendar days of receipt of the medicaid provider number.

(b) If after ninety calendar days, the applicant fails to submit documentation that results in a complete application, the department shall take no further action with respect to the application.

(H) Procedure for obtaining certification to provide additional HCBS waiver service(s) during the term of existing department-issued certification

- (1) A department-certified provider seeking to deliver additional HCBS waiver service(s) shall request application materials from the department.
- (2) The department shall provide the applicant with all relevant application materials and service-specific standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the additional HCBS waiver service(s) the applicant seeks to deliver.
- (3) The applicant shall submit the application with supporting documentation as evidence that standards are met as required by this rule and service-specific standards established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code.
- (4) An application is considered complete when the department has received from the applicant all completed components of the application, including applicable signatures and supporting documentation that demonstrates compliance with the certification standards for the service(s) the applicant is seeking to deliver, and the application fee specified in paragraph (K) of this rule.
- (5) If the application is complete, the department shall review the application and notify the applicant in writing of its decision to approve or deny certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved.

- (6) If the application is incomplete, the department shall, within forty-five calendar days of receipt of the application, notify the applicant in writing that the application is deficient and advise that the applicant has ninety calendar days to submit documentation needed to complete the application.
 - (a) When documentation is received by the department within the specified ninety calendar days that results in a complete application, the department shall review the application and notify the applicant in writing of its decision to approve or deny the additional certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved.
 - (b) If after ninety calendar days, the applicant fails to submit documentation that results in a complete application, the department shall take no further action with respect to the application.

(I) Procedure for obtaining renewal certification

- (1) The department shall notify providers by regular mail to the address on file of required certification renewal no later than sixty calendar days prior to the date the provider's certification expires. The notification shall include the procedures for submitting the certification renewal application and application fee in accordance with this rule.
- (2) The provider shall submit the certification renewal application with supporting documentation as evidence that standards are met as required by this rule and service-specific standards established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code.
- (3) An application is considered complete when the department has received from the applicant all completed components of the application, including applicable signatures and supporting documentation that demonstrates compliance with the certification standards for the service(s) the applicant is seeking to deliver, and the application fee specified in paragraph (K) of this rule.
- (4) If the application is complete, the department shall review the application and notify the applicant in writing of its decision to approve or deny certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the

certification and the specific service(s) for which the applicant is approved.

- (5) If the application is incomplete, the department shall, within forty-five calendar days of receipt of the application, notify the applicant in writing that the application is deficient and advise that the applicant has ninety calendar days to submit documentation needed to complete the application.
 - (a) When documentation is received by the department within the specified ninety calendar days that results in a complete application, the department shall review the application and notify the applicant in writing of its decision to approve or deny the renewal certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved.
 - (b) If after ninety calendar days, the applicant fails to submit documentation that results in a complete application, the department shall take no further action with respect to the application.
- (6) A provider shall not provide services or submit claims for reimbursement for services delivered subsequent to expiration of the provider's certification.

(J) Time-limited certification

- (1) The department shall implement time-limited certification for providers certified prior to the effective date of this rule in a manner and for a term determined by the department not to exceed three years. The department shall notify providers by regular mail to the address on file that the providers' certification is being converted to a time-limited certification in accordance with this rule.
- (2) Initial certifications issued subsequent to the effective date of this rule shall be for a term of one year.
- (3) Renewal certifications issued subsequent to the effective date of this rule shall be for a term of three years.

(K) Application fees

- (1) Applicants seeking certification to provide the following HCBS waiver services shall not be subject to an application fee:

- (a) Adaptive and assistive equipment;
 - (b) Environmental accessibility adaptations;
 - (c) Home delivered meals;
 - (d) Interpreter;
 - (e) Nutrition;
 - (f) Personal emergency response systems;
 - (g) Social work; and
 - (h) Specialized medical equipment and supplies.
- (2) Applicants seeking certification to provide services other than those specified in paragraph (K)(1) of this rule shall submit an application fee at the time of application for initial certification, application for certification to provide additional HCBS waiver service(s) during the term of existing department-issued certification, and application to renew certification.
- (a) Application fee for initial certification
 - (i) The application fee for an independent provider or a family consortium seeking initial certification shall be fifty dollars.
 - (ii) The application fee for a small agency provider (i.e., one that serves or plans to serve fifty or fewer individuals) seeking initial certification shall be three hundred dollars.
 - (iii) The application fee for a large agency provider (i.e., one that serves or plans to serve fifty-one or more individuals) seeking initial certification shall be seven hundred dollars.
 - (b) Application fee for certification to provide additional HCBS waiver service(s) during the term of existing department-issued certification
 - (i) The application fee for an independent provider or a family

consortium seeking certification to provide additional HCBS waiver service(s) shall be fifteen dollars.

(ii) The application fee for a small agency provider (i.e., one that serves or plans to serve fifty or fewer individuals) seeking certification to provide additional HCBS waiver service(s) shall be fifty dollars.

(iii) The application fee for a large agency provider (i.e., one that serves or plans to serve fifty-one or more individuals) seeking certification to provide additional HCBS waiver service(s) shall be one hundred dollars.

(c) Application fee for renewal certification

(i) The application fee for an independent provider or a family consortium seeking renewal certification shall be one hundred dollars.

(ii) The application fee for a small agency provider (i.e., one that serves or plans to serve fifty or fewer individuals) seeking renewal certification shall be eight hundred dollars.

(iii) The application fee for a large agency provider (i.e., one that serves or plans to serve fifty-one or more individuals) seeking renewal certification shall be one thousand six hundred dollars.

(3) Applicants shall pay application fees in the form of a cashier's check, corporate check, or money order, payable to the Ohio department of mental retardation and developmental disabilities or, once the department has established the capability to accept fees electronically, by electronic funds transfer in accordance with procedures established by the department.

(4) Application fees are non-refundable.

(L) Continuing certification standards

(1) Certified providers shall comply with the requirements of this rule and other standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the specific service(s) provided.

- (2) Certified providers shall report in writing to the department, if the independent provider, a member of the family consortium, or the chief executive officer or person responsible for administration of the agency provider is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code within fourteen calendar days after the date of such charge, conviction, or guilty plea.

(M) Expired certifications

- (1) An applicant whose certification has been expired for less than one year shall be required to apply for and meet the requirements for renewal certification.
- (2) An applicant whose certification has been expired for one year or more shall be required to apply for and meet the requirements for initial certification.

(N) Denial, suspension, or revocation of certification

- (1) The department may deny an application for certification based on the applicant's failure to comply with the requirements of this rule or other standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the specific service(s) to be provided.
- (2) Certified providers shall comply with the continuing certification standards set forth in this rule. Certified providers shall be subject to monitoring and compliance reviews as set forth in rules promulgated by the department. Failure to comply with the requirements set forth in this rule or service-specific standards established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code may result in corrective action by the department, up to and including suspension or revocation of certification.
- (3) The department may deny, suspend, or revoke a provider's certification for good cause, including the following:
 - (a) Misfeasance;
 - (b) Malfeasance;
 - (c) Nonfeasance;

- (d) Substantiated abuse or neglect;
 - (e) Financial irresponsibility;
 - (f) Failure to meet the requirements of this rule;
 - (g) Other conduct the department determines is injurious to individuals being served;
 - (h) Failure to comply with other applicable rules;
 - (i) Failure to submit claims for reimbursement for twelve consecutive months; or
 - (j) The conviction or guilty plea of the independent provider, a member of a family consortium, or the chief executive officer or person responsible for administration of the agency provider to any of the offenses listed in division (E) of section 5126.28 of the Revised Code.
- (4) When denying, suspending, or revoking certification under this rule, the department shall comply with the notice and hearing requirements of Chapter 119. of the Revised Code and section 5123.166 of the Revised Code.

(O) Department's authority to waive provisions of this rule

- (1) When requested in writing with sufficient justification that demonstrates that the health and safety of individuals will not be adversely affected, the department may grant written, time-limited permission to applicants and certified providers to waive specific provisions of this rule.
- (2) The department's decision regarding the request to have a provision of this rule waived shall not be subject to appeal.

(P) HCBS waiver services

HCBS waiver services shall not be subject to sections 5126.40 to 5126.47 of the Revised Code.

Effective:

Five Year Review (FYR) Dates: 04/21/2015

Certification

Date

Promulgated Under: 119.03
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