

**Department of
Developmental Disabilities**

Mike DeWine, Governor
Jeff Davis, Director

NOTICE OF PUBLIC HEARING

DATE: November 1, 2019

TIME: 10:00 a.m.

PLACE: Lobby Hearing Room
Rhodes State Office Tower
30 East Broad Street
Columbus, Ohio 43215

Pursuant to Chapter 119. of the Revised Code, the Ohio Department of Developmental Disabilities hereby gives notice of its intent to rescind, adopt, and amend the following rules of the Administrative Code on a permanent basis on or about January 1, 2019, and to conduct a public hearing thereon.

The Department assumed administration of the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) program from the Ohio Department of Job and Family Services in January 2013. At that time, the Department adopted 28 rules based on rules of the Ohio Department of Job and Family Services. Thirteen of the rules adopted in 2013 are due for five-year review. The Department is proposing to rescind the 13 rules and adopt nine replacement rules. The new replacement rules reflect the following revisions:

- References to "intermediate care facilities" were changed to

"intermediate care facilities for individuals with intellectual disabilities" or "ICFIID."

- References to the "Ohio Office of Medical Assistance" were changed to the "Ohio Department of Medicaid."
- References to the Administrative Code and the Revised Code were updated.

Actions being taken regarding the 13 rules include:

The Department is rescinding rule 5123:2-7-02 (Intermediate Care Facilities - Provider Agreements) and adopting new replacement rule 5123-7-02 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Provider Agreement and Other Essential Requirements). The rule sets forth requirements for an ICFIID to be eligible for initial and continued participation in the Ohio Medicaid program and to receive payment for ICFIID services to eligible residents. New rule 5123-7-02 includes necessary provisions from rule 5123:2-7-03.

The Department is rescinding rule 5123:2-7-03 (Intermediate Care Facilities - Institutions Eligible to Participate in Medicaid). The rule sets forth requirements that an operator of an ICFIID must meet to participate in the Ohio Medicaid program and receive payment for providing ICFIID services. Several necessary provisions of rule 5123:2-7-03 are being incorporated into new rule 5123-7-02 (described above).

The Department is rescinding rule 5123:2-7-04 (Intermediate Care Facilities - Payment During the Ohio Office of Medical Assistance Administrative Appeals Process for Termination of a Provider Agreement) and adopting new replacement rule 5123-7-04 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Payment During the Ohio Department of Medicaid Administrative Appeals Process for Termination of a Provider Agreement). The rule sets forth conditions for payment to an ICFIID during termination of the ICFIID's Medicaid provider agreement.

The Department is rescinding rule 5123:2-7-05 (Intermediate Care Facilities - Payment During the State Survey Agency's Administrative

Appeals Process for Termination or Non-Renewal of Medicaid Certification) and adopting new replacement rule 5123-7-05 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Payment During the Ohio Department of Health Administrative Appeals Process for Termination or Non-Renewal of Medicaid Certification). The rule sets forth conditions for payment to an ICFIID during termination or non-renewal of the ICFIID's certification by the Ohio Department of Health.

The Department is rescinding rule 5123:2-7-07 (Intermediate Care Facilities - Resource Assessment Notice). The rule requires an ICFIID to furnish written notice of an individual's right to have a resource assessment performed by the county department of job and family services. There is no replacement rule. The rule is no longer necessary as resource assessment is performed by the county department of job and family services as part of the Medicaid application and eligibility determination process for each individual who applies for Medicaid benefits.

The Department is rescinding rule 5123:2-7-09 (Intermediate Care Facilities - Personal Needs Allowance Accounts and Other Resident Funds) and adopting new replacement rule 5123-7-09 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Personal Needs Allowance Accounts). The rule establishes requirements for an ICFIID with regard to managing, accounting for, and maintaining records related to the personal needs allowance accounts of residents of the ICFIID. Much of the content of rule 5123:2-7-09 is no longer necessary because it pertains to ICFIID licensed by the Ohio Department of Health--none exists--or it is addressed in newer rule 5123:2-2-07 (Personal Funds of the Individual).

The Department is rescinding rule 5123:2-7-13 (Intermediate Care Facilities - Rate Recalculations, Interest on Overpayments, Penalties, Repayment of Overpayments, and Deposit of Repayment of Overpayments). The rule describes the process for recalculating a provider's rate due to an amended cost report, a finding based on an audit, or a finding based on an exception review. There is no replacement rule as all provisions contained therein are addressed in

Sections 5124.41, 5124.42, 5124.43, 5124.44, and 5124.45 of the Revised Code.

The Department is rescinding rule 5123:2-7-14 (Intermediate Care Facilities - Debt Estimation, Debt Summary Report, and Successor Liability Agreements for Change of Operator, Facility Closure, Voluntary Termination, Involuntary Termination, or Voluntary Withdrawal) and adopting new replacement rule 5123-7-14 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Debt Estimation, Debt Summary Report, and Successor Liability Agreements for Change of Operator, Facility Closure, Involuntary Termination, or Voluntary Termination). The rule sets forth procedures for estimating the debt an exiting operator of an ICFIID owes the Department and the federal Centers for Medicare and Medicaid Services at the time of a change of operator, facility closure, involuntary termination, or voluntary termination.

The Department is rescinding rule 5123:2-7-17 (Intermediate Care Facilities - Leased Staff Services). The rule sets forth conditions under which an ICFIID may be reimbursed for costs related to leased staff services. There is no replacement rule. An ICFIID may be reimbursed for costs related to leased staff services, as evidenced by the accounts described in the Appendix to rule 5123-7-12 for reporting costs of purchased services.

The Department is rescinding rule 5123:2-7-18 (Intermediate Care Facilities - Capital Asset and Depreciation Guidelines) and adopting new replacement rule 5123-7-18 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Capital Assets and Depreciation). The rule establishes requirements for determining when an asset of an ICFIID is capitalized and depreciated. The Appendix to the rule (Estimated Useful Lives of Capital Assets) is being eliminated but is incorporated by reference to the new rule along with the American Hospital Association's *Estimated Useful Lives of Depreciable Hospital Assets*, for purposes of determining the useful life of a capital asset. Replacement rule 5123-7-18 includes a new paragraph to address salvage value.

The Department is rescinding rule 5123:2-7-21 (Intermediate Care Facilities - Compensation Cost Limits, Reasonable Costs for Compensation, and Compensation Disallowances if Any for Owners and Relatives of Owners) and adopting new replacement rule 5123-7-21 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Compensation Cost Limits for Owners and Relatives of Owners). The rule establishes limits, applicable to the cost report of an ICFIID, for the amount of compensation that may be claimed for owners or relatives of owners of the ICFIID.

The Department is rescinding rule 5123:2-7-22 (Intermediate Care Facilities - Compensation Cost Limits, Reasonable Costs for Compensation, and Compensation Disallowances if Any for Administrators) and adopting new replacement rule 5123-7-22 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Compensation Cost Limits for Administrators Who Are Not Owners or Relatives of Owners). The rule establishes limits, applicable to the cost report of an ICFIID, for the amount of compensation that may be claimed for administrators of the ICFIID who are not owners or relatives of owners.

The Department is rescinding rule 5123:2-7-23 (Intermediate Care Facilities - Method for Establishing the Other Protected Costs Component of the Prospective Rate) and adopting new replacement rule 5123-7-23 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Method for Establishing the Other Protected Costs Component of the Prospective Rate). The rule establishes procedures for establishing an ICFIID's other protected costs.

In addition to taking actions regarding the 13 ICFIID rules due for five-year review, the Department is amending two existing rules governing the ICFIID program:

- 5123-7-12 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Cost Report and Chart of Accounts). The rule sets forth standards and requirements for an ICFIID to submit cost reports to the Department and maintain supporting documentation. The Appendix to

the rule (Chart of Accounts) is being amended to replace account 8070 with new accounts 8071 and 8072. References to the Administrative Code have been corrected throughout the rule and the Appendix.

- 5123-7-33 (Intermediate Care Facilities for Individuals with Intellectual Disabilities - Resident Assessment Classification System Based on Administration of the Ohio Developmental Disabilities Profile). The rule sets forth a method and process for determining the per resident/per day rate paid to an ICFIID for direct care costs using the Ohio Developmental Disabilities Profile. The Appendix to the rule (Point Values Assigned to Responses to Questions on the Ohio Developmental Disabilities Profile by Domain) is being amended to replace references to "retardation" with "developmental disabilities." No revisions are proposed to the text of the rule.

In addition to taking actions regarding rules governing the ICFIID program, the Department is rescinding rule 5123:1-15-01 (Protective Services System for Guardianship, Trusteeship, Protectorship, or Conservatorship) and adopting a new replacement rule of the same title numbered 5123-15-01. The rule establishes policies for administering the statewide system of protective services for individuals with developmental disabilities in accordance with Section 5123.56 of the Revised Code. New rule 5123-15-01 reflects "clean-up" revisions identified through the required five-year rule review, including correcting references to administrative rules.

At this public hearing, the Department will accept verbal and/or written testimony regarding the proposed rule actions. Persons unable to attend the public hearing may submit written comments regarding the proposed rule actions. Any written comments received on or before the public hearing date will be treated as testimony and made available for public review. Submittal of written comments may be made to Becky Phillips, Administrative Rules Coordinator, by email to becky.phillips@dodd.ohio.gov or by U.S. mail to 30 East Broad Street, 12th Floor, Columbus, Ohio 43215-3414.

The rules are available for review at the Register of Ohio website (<http://registerofohio.state.oh.us>) and at the Department's website (<http://dodd.ohio.gov/RulesLaws/Pages/Rules-Under-Development.aspx>). The rules are also available for review at each county board of developmental disabilities.