

**Department of
Developmental Disabilities**

Mike DeWine, Governor
Jeff Davis, Director

NOTICE OF PUBLIC HEARING

DATE: October 7, 2020
TIME: 10:00 a.m.
PLACE: Room 1240
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 amend, rescind, and adopt the following rules of the Administrative Code on a permanent basis on or about November 19, 2020, and to conduct a public hearing thereon. 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 (becky.phillips@dodd.ohio.gov) or by U.S. mail to 30 East Broad Street, 12th Floor, Columbus, Ohio 43215-3414.

The Department is amending rule 5123-2-04 (Compliance Reviews of Certified Providers). The rule governs compliance reviews conducted by the Department and county boards of developmental disabilities to ensure compliance by certified providers with applicable requirements. The rule is being amended to add paragraph (H) which authorizes the Director of the

Department, during the COVID-19 state of emergency, to suspend or alter the scheduling of routine compliance reviews and submission and review of plans of correction and to add paragraph (B)(8) which defines "Department" and was unintentionally omitted from the currently effective rule.

The Department is amending rule 5123-8-01 (Developmental Disabilities Level of Care). The rule sets forth criteria and process used to determine whether an individual requires the level of care necessary to receive Medicaid-funded services from an Intermediate Care Facility for Individuals with Intellectual Disabilities or through enrollment in a Home and Community-Based Services waiver administered by the Department. The rule is being amended to add paragraph (E) which authorizes the Director of the Department, during the COVID-19 state of emergency, to permit assessments to be conducted via telephone or video conference.

The Department is amending rule 5123-9-06 (Home and Community-Based Services Waivers - Documentation and Payment for Services Under the Individual Options and Level One Waivers). The rule establishes standards governing documentation and payment for Home and Community-Based Services under the Individual Options Waiver and the Level One Waiver. The rule is being amended to add paragraph (M) which authorizes the Director of the Department, during the COVID-19 state of emergency, to:

- Suspend the requirement for an individual to request prior authorization;
- Suspend the Level One Waiver payment limitations;
- Suspend the requirement that county boards of developmental disabilities complete cost projections; and
- Permit use of the cost projection tool to be optional rather than mandatory.

The Department is amending rule 5123-9-07 (Home and Community-Based Services Waivers - Request for Prior Authorization for Individuals Enrolled in the Individual Options Waiver). The rule establishes standards and procedures for prior authorization of waiver services when an individual funding level exceeds the funding range determined by the Ohio Developmental Disabilities Profile for an individual enrolled in the Individual Options Waiver. The rule is being amended to add paragraph (H) which authorizes the Director of the Department, during the COVID -19 state of emergency, to waive or suspend standards and procedures set forth in the rule.

The Department is amending rule 5123-9-31 (Home and Community-Based Services Waivers - Homemaker/Personal Care Daily Billing Unit for Sites

Where Individuals Enrolled in the Individual Options Waiver Share Services). The rule establishes a daily billing unit for Homemaker/Personal Care when individuals share the services of the same agency provider at the same site as part of the Individual Options Waiver. The rule is being amended to add paragraph (H) which authorizes the Director of the Department, during the COVID-19 state of emergency, to suspend the adjustment made to the payment rate when services provided are more than three percent below projected services.

The Department is amending rule 5123-9-34 (Home and Community-Based Services Waivers - Residential Respite Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers). The rule defines Residential Respite and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to add paragraph (G) which authorizes the Director of the Department, during the COVID-19 state of emergency, to modify the limitation on Residential Respite days per waiver eligibility span from 90 to 180, permit additional Residential Respite days based on risk to health and welfare, and suspend the Level One Waiver payment limitation.

The Department is amending rule 5123-10-01 (Early Intervention Program - Procedural Safeguards). The rule sets forth the procedural safeguards in the Early Intervention program, including the provisions of parental consent and notice; retention, confidentiality, access to, and amendment of records; and dispute resolution. The rule is being amended to add paragraph (M) which authorizes the Director of the Department, during the COVID-19 state of emergency, to waive the requirements to complete specified Early Intervention forms if the required information, notice, or consent described in a form is otherwise provided or secured and documented in writing.

The Department is amending rule 5123-10-02 (Early Intervention Program - Eligibility and Services). The rule sets forth the Early Intervention program requirements for eligibility, developmental screening, evaluation, assessment, individualized family service plan meetings and content, transition to preschool and other programs, service coordination, early intervention records, and exiting and transferring from the Early Intervention program. The rule is being amended to add paragraph (Q) which authorizes the Director of the Department, during the COVID-19 state of emergency, to:

- Waive the requirements to complete specified Early Intervention forms if the required information, notice, or consent described in a form is otherwise provided or secured and documented in writing;

- Waive the requirement for periodic review to change methods of delivering services or the locations of services;
- Waive the requirement that children determined to be eligible have eligibility determined annually when doing so is not feasible;
- Waive the requirement that the parent and Early Intervention Service Coordinator be physically present at the individualized family services plan meeting and permit them to participate by telephone or video conference; and
- Modify the limitation that restricts availability of an interim individualized family service plan.

The Department is amending rule 5123-10-03 (Early Intervention Program - System of Payments). The rule establishes a structure to pay for activities and expenses that are reasonable and necessary for implementing Ohio's Early Intervention program for eligible children and their families. The rule is being amended to add paragraph (I) which authorizes the Director of the Department, during the COVID-19 state of emergency, to waive the requirements to complete specified Early Intervention forms if the required information, notice, or consent described in a form is otherwise provided or secured and documented in writing.

The Department is amending rule 5123-14-01 (Preadmission Screening and Resident Review for Nursing Facility Applicants and Nursing Facility Residents with Developmental Disabilities). The rule sets forth a process for the Department and county boards of developmental disabilities to determine whether an individual is eligible for admission to a nursing facility or eligible to continue to receive services in a nursing facility. The rule is being amended to permit assessments to be conducted in person, by video conference, or by telephone.

The Department is amending rule 5123-17-02 (Addressing Major Unusual Incidents and Unusual Incidents to Ensure Health, Welfare, and Continuous Quality Improvement). The rule establishes the requirements for addressing major unusual incidents and unusual incidents and implements a continuous quality improvement process to prevent or reduce the risk of harm to individuals. The rule is being amended to add paragraph (Q) which authorizes the Director of the Department, during the COVID-19 state of emergency, to:

- Permit Service and Support Administrators and employees of agency providers to conduct interviews working under the guidance of an Investigative Agent; and
- Extend timelines to reach a preliminary finding, enter incident reports into

the Incident Tracking System, and provide written summaries of investigation of Category A and Category B major unusual incidents.

The Department is rescinding rule 5123:2-2-06 (Behavioral Support Strategies that Include Restrictive Measures) and adopting replacement rule 5123-2-06 (Development and Implementation of Behavioral Support Strategies). The rule limits the use of, and sets forth requirements for, development and implementation of behavioral support strategies that include restrictive measures. Rule 5123-2-06 reflects adjustments to paragraph (L) to make clear that a written request submitted by a county board of developmental disabilities or provider is not necessary for the Director of the Department to waive a condition or specific requirement of the rule.

The Department is rescinding rule 5123:2-3-10 (Licensed Residential Facilities - Procedures to Waive Rule Requirements) and adopting replacement rule 5123-3-10 of the same title. The rule sets forth procedures for the Director of the Department to waive a condition or specific requirement of a rule in Chapter 5123:2-3 of the Administrative Code or a rule in another chapter of the Administrative Code adopted by the Department to license or regulate the operation of residential facilities. Rule 5123-3-10 reflects adjustments to paragraphs (A) and (C) to make clear that a written request submitted by a licensee is not necessary for the Director of the Department to waive a condition or specific requirement of a rule.

The Department is rescinding rule 5123:2-6-07 (General Provisions and Compliance for Performance of Health-Related Activities and Administration of Prescribed Medication) and adopting replacement rule 5123-6-07 of the same title. The rule sets forth general requirements for the Medication Administration Information System database, documentation of performance of health-related activities and administration of prescribed medication, compliance and quality assessment, and actions that may be taken by the Department regarding certification issued under Chapter 5123:2-6 of the Administrative Code. Rule 5123-6-07 includes new paragraph (I) which authorizes the Director of the Department, during the COVID-19 state of emergency, to suspend quality assessment reviews.

The Department is rescinding rule 5123:2-9-01 (Home and Community-Based Services Waivers - Enrollment, Denial of Enrollment, Disenrollment, and Reenrollment) and adopting replacement rule 5123-9-01 of the same title. The rule establishes procedures for the enrollment, denial of enrollment, disenrollment, and reenrollment of individuals in Home and

Community-Based Services waivers administered by the Department. Rule 5123-9-01 includes new paragraph (K) which authorizes the Director of the Department, during the COVID-19 state of emergency, to suspend some reasons for disenrollment of an individual from a Home and Community-Based Services waiver. Rule 5123-9-01 reflects additional adjustments to the timelines for a county board of developmental disabilities to submit a payment authorization for waiver services to the Department.

The Department is rescinding rule 5123:2-9-11 (Home and Community-Based Services Waivers - Free Choice of Providers) and adopting replacement rule 5123-9-11 of the same title. The rule establishes the responsibilities of a county board of developmental disabilities for assuring an individual's right to obtain Home and Community-Based Services from any qualified and willing provider in accordance with 42 CFR 431.51 and Sections 5123.044 and 5126.046 of the Revised Code. Rule 5123-9-11 includes new paragraph (H) which authorizes the Director of the Department, during the COVID-19 state of emergency, to permit a Service and Support Administrator to comply with requirements of the rule to the extent possible by using telephone, video conference, electronic communication, or other means. Rule 5123-9-11 reflects additional adjustments to:

- Make clear that an individual may choose only one service offered by a provider;
- Align requirements for county boards of developmental disabilities that provide Home and Community-Based Services with the federally-approved waivers and 42 CFR 441.301; and
- Update references to services.

The Department is rescinding rule 5123:2-9-14 (Home and Community-Based Services Waivers - Vocational Habilitation Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers) and adopting replacement rule 5123-9-14 of the same title. The rule defines Vocational Habilitation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Rule 5123-9-14 includes new paragraph (G) which authorizes the Director of the Department, during the COVID-19 state of emergency, to modify the definition of Vocational Habilitation to permit the service to be delivered virtually, through video conference, or on behalf of an individual and/or in an individual's home.

The Department is rescinding rule 5123:2-9-17 (Home and Community-Based Services Waivers - Adult Day Support Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers) and adopting

replacement rule 5123-9-17 of the same title. The rule defines Adult Day Support and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Rule 5123-9-17 includes new paragraph (H) which authorizes the Director of the Department, during the COVID-19 state of emergency, to modify the definition of Adult Day Support to permit the service to be delivered virtually, through video conference, or on behalf of an individual and/or in an individual's home.

The Department is rescinding rule 5123:2-9-33 (Home and Community-Based Services Waivers - Shared Living Under the Individual Options Waiver) and adopting replacement rule 5123-9-33 of the same title. The rule defines Shared Living and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Rule 5123-9-33 includes new paragraph (H) which authorizes the Director of the Department, during the COVID-19 state of emergency, to permit Shared Living and Homemaker/Personal Care to be billed on the same day as long as the services are not delivered at the same time or by the same person.

The Department is rescinding rule 5123:2-9-39 (Home and Community-Based Services Waivers - Waiver Nursing Services Under the Individual Options Waiver) and adopting replacement rule 5123-9-39 of the same title. The rule defines Waiver Nursing Services and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Rule 5123-9-39 includes new paragraph (H) which authorizes the Director of the Department, during the COVID-19 state of emergency, to permit visits to be conducted by video conference or telephone.

The rules are available for review at the Register of Ohio website (<http://registerofohio.state.oh.us>) and at the Department's website (<https://dodd.ohio.gov/wps/portal/gov/dodd/forms-and-rules/rules-under-development/3-public-hearings-scheduled-for-proposed-rules>). The rules are also available for review at each county board of developmental disabilities.

- * Please note that visitors to the Rhodes State Office Tower must enter the building through the Broad Street lobby. Visitors may be required to register at the security desk by showing government-issued photo identification and/or pass through a magnetometer. Visitors' belongings, such as purses and briefcases, may be subject to inspection.