

**NOTICE OF PUBLIC HEARING**

DATE: November 1, 2023

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 amend, rescind, and adopt rules of the Administrative Code on a permanent basis on or about January 1, 2024, 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 to becky.phillips@dodd.ohio.gov or by U.S. mail to 1810 Sullivant Avenue, Columbus, Ohio 43223-1239. Comments regarding rules are public records; persons submitting comments should refrain from including confidential or personal information about themselves or any other person.

The Department is modifying 11 rules to adjust and extend flexibility for delivery of services to Ohioans with developmental disabilities in the wake of the COVID-19 pandemic, remove provisions of rules that refer to the COVID-19 state of emergency, and increase payment rates to providers of four Home and Community-Based Services (HCBS): Homemaker-Personal Care, Participant-Directed Homemaker/Personal Care, Residential Respite, and Shared Living.

Rule 5123-2-08 (Provider Certification - Agency Providers) establishes procedures and standards for certification of agency providers of supported living services, including Medicaid-funded HCBS provided in accordance with Section 5123.045 of the Revised Code. An agency provider is an entity that directly employs at least one person in addition to a Director of Operations for the purpose of providing supported living services. The rule is being amended to:

- Clarify how applicants for and holders of provider certification submit applications, information, and documents.
- Offer an agency provider an alternative to having a line of credit as required in paragraphs (C)(4) and (M)(1)(b).
- Permit, in paragraphs (G)(9)(a) and (G)(9)(b), some direct support professionals to provide services to a minor child or spouse in accordance with Ohio Department of Medicaid proposed rule 5160-44-32 (Home and Community Based Medicaid Waiver Program Provider and Direct Care Worker Relationships).
- Add paragraphs (G)(9)(c) and (G)(9)(d) to clarify that a direct support professional may not provide services to the minor child or spouse of the agency provider's owner.
- Add paragraph (H)(5) to clarify that a person who is the parent of a minor child served by the agency provider or the spouse of an individual served by the agency provider may not serve as Director of Operations for the agency provider.
- Adjust training requirements set forth in the appendices.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-2-09 (Provider Certification - Independent Providers) establishes procedures and standards for certification of independent providers of supported living services, including Medicaid-funded HCBS provided in accordance with

Section 5123.045 of the Revised Code. An independent provider is a self-employed person who provides supported living services and does not employ, either directly or through contract, anyone else to provide the services. The rule is being amended to:

- Clarify how applicants for and holders of provider certification submit applications, information, and documents.
- Adjust training requirements set forth in the appendices.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-8-01 (Developmental Disabilities Level of Care) sets forth the 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 an HCBS waiver administered by the Department. The rule is being amended to:

- Eliminate paragraph (E) which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency.
- Align wording with newer rules.

Rule 5123-9-01 (HCBS Waivers - Enrollment, Denial of Enrollment, Disenrollment, and Reenrollment) establishes procedures for the enrollment, denial of enrollment, disenrollment, and reenrollment of individuals in HCBS waivers administered by the Department. The rule is being amended to:

- Eliminate paragraph (K) which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency.
- Align wording with newer rules.

Rule 5123-9-07 (HCBS Waivers - Request for Prior Authorization for Individuals Enrolled in the Individual Options Waiver) 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:

- Eliminate paragraph (H) which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency.
- Correct citations to the Administrative Code.

- Align wording with newer rules.

Rule 5123-9-11 (HCBS Waivers - Free Choice of Providers) establishes the responsibilities of a county board of developmental disabilities for assuring an individual's right to obtain HCBS from any qualified and willing provider in accordance with 42 C.F.R. 431.51 and sections 5123.044 and 5126.046 of the Revised Code. The rule is being amended to:

- Eliminate paragraph (D)(1)(c) which required a county board of developmental disabilities to implement and report progress on benchmarks regarding the number of individuals for whom the county board provided day services.
- Eliminate paragraph (H) which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-30 (HCBS Waivers - Homemaker/Personal Care Under the Individual Options and Level One Waivers) defines Homemaker/Personal Care 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 new paragraph (D)(7) to permit Homemaker/Personal Care to be provided to an individual in an acute care hospital.
- Increase payment rates effective January 1, 2024 and July 1, 2024.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-31 (HCBS Waivers - Homemaker/Personal Care Daily Billing Unit for Sites Where Individuals Enrolled in the Individual Options Waiver Share Services) 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 daily billing unit for individuals/sites that qualify is used by agency providers instead of the fifteen-minute billing unit established in rule 5123-9-30 of the Administrative Code. Rule 5123-9-31 is being amended to:

- Eliminate paragraph (H) which authorized the Director of the Department to

- waive provisions of the rule during the COVID-19 state of emergency.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-32 (HCBS Waivers - Participant-Directed Homemaker/Personal Care Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers) defines Participant-Directed Homemaker/Personal Care 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 new paragraph (D)(8) to permit Participant-Directed Homemaker/Personal Care to be provided to an individual in an acute care hospital.
- Increase payment rates effective January 1, 2024 and July 1, 2024.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-33 (HCBS Waivers - Shared Living Under the Individual Options Waiver) defines Shared Living 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 new paragraph (D)(9) to permit Residential Respite to be provided on the same day as Shared Living.
- Eliminate existing paragraph (D)(10) which permitted Homemaker/Personal Care to be provided on the same day as Shared Living during the COVID-19 state of emergency.
- Add new paragraph (D)(10) to address provision of Homemaker/Personal Care on a day the Shared Living caregiver does not bill for provision of Shared Living.
- Add new paragraph (D)(11) to permit Shared Living to be provided to an individual in an acute care hospital.
- Amend paragraph (G) to create additional exemptions that permit individuals who live with their caregivers to receive the Homemaker/Personal Care service instead of Shared Living.
- Increase payment rates effective January 1, 2024 and July 1, 2024.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-34 (HCBS Waivers - Residential Respite Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers) defines Residential Respite and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The Residential Respite service provides personal care and support furnished on a short-term basis because of the absence or need for relief of those persons routinely providing care. Due to the volume of necessary amendments, the existing rule is being rescinded and replaced by a new rule of the same number and title. New rule 5123-9-34 reflects revisions to:

- Create a 15-minute billing unit for Residential Respite for individuals residing in Shared Living settings that may be used on a day the Shared Living caregiver bills for provision of Shared Living.
- Permit independent providers to provide Residential Respite.
- Increase payment rates effective January 1, 2024 and July 1, 2024.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

The rules are available for review at the [Register of Ohio](#) and at the [Department's website](#). The rules are also available for review at each county board of developmental disabilities.

The Department is committed to providing access and inclusion and reasonable accommodation in its services, activities, programs, and employment opportunities in accordance with the Americans with Disabilities Act and other applicable laws. To request a reasonable accommodation due to a disability, please contact Becky Phillips, Administrative Rules Coordinator, no later than October 18, 2023, by email to becky.phillips@dodd.ohio.gov or by telephone (614-644-7393 / TTY 711).

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