

**Department of
Developmental Disabilities**

Mike DeWine, Governor
Jeff Davis, Director

Hearing Summary Report**Hearing Date:** 03/30/2021**Today's Date:** 04/09/2021**Rule Numbers:** 5123:2-2-01 (Rescind), 5123-2-08 (New), and 5123-2-09 (New)
5123:2-5-05 (Rescind) and 5123-10-05 (New)**If no comments at hearing, please check the box.** ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

5123-2-08:

Cassie Elvin, CEO, Starlight Enterprises, Inc.
Debbie Jenkins, Policy Director, Ohio Health Care Association
Debra Shumard, CEU Certificates
Christine Touvelle, Director of Advocacy, Ohio Provider Resource Association

5123-2-09:

Debra Shumard, CEU Certificates

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

5123-2-08:

(C)(4) and (C)(5): Agency providers should have the authority to determine their own amount of line of credit and general liability coverage to meet their business needs. (Cassie Elvin)

Department's Response: The rule workgroup recommended these thresholds to ensure an agency provider has a realistic and sustainable business model.

(D)(3): There are already established rules of governance for any board. (Cassie Elvin)

Department's Response: The rule does not dictate governance for an agency provider's board. The rule merely requires board members to:

- review the agency's annual audit or financial statements and monitor financial status,
- review the agency's compliance review report (once every three years, unless a special compliance review is conducted which may indicate an existing or emerging issue of which the board should be aware), and
- monitor the agency's internal compliance program (which may be achieved in a manner determined by the agency).

Over the years, we discovered that board members of an agency provider are sometimes unaware when the organization is failing to the point of jeopardizing the health and welfare of individuals served. We also know that successful agency providers are already engaging their boards in this manner. We are setting a standard to ensure that issues are timely identified and corrected.

(E)(1): Established agency providers have their tables of organization and personnel titles established. This should not be mandated. (Cassie Elvin)

Department's Response: The rule is not mandating an agency provider's table of organization or personnel titles. "Director of Operations" is defined in paragraph (B)(8) of the rule. An agency provider must employ someone who meets the definition and complies with the requirements for the person serving in that role. Based on feedback from the rule workgroup, "Director of Operations" was selected as the label for the role for the purposes of the rule. The Department is not concerned about the person's title within the agency provider's organization.

(J)(1): Insert back into rule requirement for Social Security Number and identification for Direct Support Professionals. (Cassie Elvin)

Department's Response: Verifying a person's identification and eligibility for employment and completing the federal Form I-9 is required of all employers in the United States. We need not say so in our rule.

(L)(4): Agency providers should be permitted to establish their own guidelines for volunteers. (Cassie Elvin)

Department's Response: Stakeholders asked us to standardize requirements for volunteers across the service delivery system. The requirements in paragraph (L) reflect those already in place for licensed residential facilities (rule 5123:2-3-01) and county boards of developmental disabilities (rule 5123-4-01).

(H)(2), (H)(3), (I)(6), and Appendix A: Mandating number of training hours annually is not necessary. (Cassie Elvin)

(J)(3)/Appendix C: The training should be at the discretion of the agency provider and not a mandated curriculum from a specific source. (Cassie Elvin)

Department's Response: Training standards in this rule are intended to affect a culture change. The emphasis on empathy and the National Alliance for Direct Support Professionals Code of Ethics is deliberate to establish the foundational philosophy for the manner in which all services are to be delivered. Ensuring Directors of Operations are prepared and elevating the critical role of Direct Support Professionals (DSP) is essential to the success of the service delivery system. Controlling a small portion of the annual training is the only way to ensure that all veteran Directors of Operations and DSP receive uniform training. The rule affords agency providers flexibility to control four of the six hours of annual training for Directors of Operations and six of the eight hours of annual training for

DSP and permits agency providers to conduct all of the training for DSP that is to be completed within 30 days of hire.

Appendix C, page 2, first paragraph: The training to be completed within 30 days of hire should instead be required at hire. (Debra Shumard)

Department's Response: Members of the rule workgroup felt covering all topics at the point of hire might be overwhelming and therefore, less effective. The rule as written, however, permits an agency provider discretion to provide or arrange for the training at hire.

Appendix C, page 2, (1): Regarding "two hours of training provided by the department or by an entity using department-provided curriculum," may established training providers who currently offer annual training streamline this content to the six hours listed in appendix C, page 2, (2)? (Debra Shumard)

Department's Response: Each Direct Support Professional must annually complete a total of eight hours of training:

- two hours provided by the Department or by an entity using the Department's curriculum plus
- six additional hours provided or arranged by the employing agency provider.

Established training providers will need to align the two-hour training with the new curriculum that will be provided by the Department.

Appendix C, page 2, (2): Annual training requirements are not consistent with rule 5123-9-30 for Homemaker/Personal Care (HPC). Add topics from paragraph (C)(6) of HPC rule to choices of topics. (Debra Shumard)

Department's Response: As Direct Support Professionals employed by agency providers of HPC will be subject to the requirements in rule 5123-2-08, we are planning to remove the requirement for eight hours of annual training set forth in paragraph (C)(6) of rule 5123-9-30.

Appendix C, page 2: Training on rule 5123-17-02 is not listed in annual training requirements; please add this requirement. (Debra Shumard)

Department's Response: The annual training requirement in Appendix C, page 2, (2)(a) is intentionally more focused on agency-specific experience with major unusual incidents (MUI) with the goal of preventing MUI. In response to your comment, however, the requirement was revised as indicated:

Recognizing and reporting major unusual incidents and unusual incidents, agency-specific data regarding major unusual incidents, and strategies for preventing major unusual incidents.

Appendix C, page 2, (2)(a): Regarding "agency-specific data regarding major unusual incidents and strategies for preventing major unusual incidents," it may be unclear to agency directors how to statistically calculate qualitative and quantitative data to conduct this training. Could this training be provided to agency directors by Department MUI unit or county investigative unit separately from this annual training requirement? (Debra Shumard)

Department's Response: Yes; training is available. Interested providers may contact the Department's MUI Unit or the local county board of developmental disabilities.

The staff shortage has been exacerbated by the pandemic. (Debbie Jenkins and Christine Touvelle)

The rule should allow 16- and 17-year-olds to work in our field. (Debbie Jenkins)

The rule limits hiring potential employees without a diploma or GED (Christine Touvelle)

Department's Response: At this time, we are not proposing to eliminate the requirement for Direct Support Professionals to have a diploma or GED nor generally permit the hire of 16- or 17-year-olds. We are committed to finding ways to inform workers about the opportunities and rewards available in Ohio's developmental disabilities service delivery system, recruit and retain workers, and engage young people in pursuing a career in this field. We look forward to working with the Ohio Health Care Association, the Ohio Provider Resource Association, and other stakeholders to achieve this shared goal.

The rule adds non-profit reporting requirements (Christine Touvelle)

Department's Response: Paragraph (C)(8) requires an agency provider to notify the Department if it is subject to a bankruptcy petition. Paragraph (I) includes several new requirements for an agency provider to report when the Director of Operations:

- has a professional registration, certification, or license suspended or revoked,
- serves as Director of Operations for more than one agency provider, or
- served as Director of Operations in the past five years for an agency provider that had certification revoked or not renewed.

These safeguards were added in response to real-world situations that have put persons served by an agency provider at risk.

Reconvene a provider certification workgroup. (Debbie Jenkins and Christine Touvelle)

Department's Response: The pandemic presented unprecedented challenges and intensified existing issues. The paramount role providers and Direct Support Professionals play in the lives of persons with developmental disabilities has never been more evident. We feel it important to advance the product of many hours of stakeholder time and energy and plan to move forward with the rule as filed. We also remain committed to working with providers and other stakeholders to further examine issues and implement solutions.

5123-2-09:

Appendix A, page 2, (1): Regarding "two hours of training provided by the department or by an entity using department-provided curriculum," may established training providers who currently offer annual training streamline this content to the six hours listed in appendix A, page 2, (2)? (Debra Shumard)

Department's Response: Each independent provider must annually complete a total of eight hours of training:

- two hours provided by the Department or by an entity using the Department's curriculum plus
- six additional hours selected by the independent provider.

Established training providers will need to align the two-hour training with the new curriculum that will be provided by the Department.

Appendix A, page 2, (2): Annual training requirements are not consistent with rule 5123-9-30 for Homemaker/Personal Care (HPC). Add topics from paragraph (C)(6) of HPC rule to choices of topics. (Debra Shumard)

Department's Response: As providers of HPC will be subject to the requirements in 5123-2-09, we are planning to remove the requirement for eight hours of annual training set forth in paragraph (C)(6) of rule 5123-9-30.

Appendix A, page 2: Training on rule 5123-17-02 is not listed in annual training requirement; please add this requirement. (Debra Shumard)

Department's Response: Training in rule 5123-17-02 is required as part of the two hours of training provided by the Department or by an entity using Department's curriculum described in (1)(d).

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

Comments were incorporated as indicated above.