Ohio | Department of Developmental Disabilities

Mike DeWine, Governor
Jeff Davis, Director

Rescission of Rule 5123:2-2-01 (Provider Certification) and Adoption of Replacement Rules 5123-2-08 and 5123-2-09
Clearance Period: November 10-24, 2020

5123-2-08 (Provider Certification - Agency Providers)

Comment	By Whom	Department's Response
Rule Implementation: The Ohio Health Care Association (OHCA) is concerned about the timing of the effective date of the rule. DD providers are in the middle of trying to serve people in a pandemic and are focusing on keeping people safe and healthy. The number of things that have changed in both agency operations and the requirements for Direct Support Professionals are already challenging enough at this time. Expecting providers to have time to prepare for a May 2021 effective date is a lot to ask at this time. Providers will need time to: a. Obtain lines of credit b. Increase general liability insurance, especially given the potential increase in rates due to COVID-19 c. Create written training plans and adjust training programs to meet the new training requirements d. Create policies and set-up training and background checks for volunteers e. Understand the impact of the State's transition to the Provider Network Management module OHCA asks the Department to delay the finalization of this rule until the end of the public health emergency to allow providers time to prepare for these changes.	Debbie Jenkins, Policy Director, Ohio Health Care Association	Based on your feedback and the work undertaken by the Ohio Department of Medicaid to develop the Ohio Medicaid Enterprise System and the Provider Network Management module, the Department plans to make the new rules effective September 1, 2021.

Comment	By Whom	Department's Response
Given the extreme challenges faced by Ohio's provider community including a surging virus and a rapidly deepening workforce emergency, we had hoped changes to rule 5123:2-2-01 would be an opportunity to; • Increase capacity for the direct support workforce. • Simplify processes leading to greater focus on quality service delivery. • Facilitate collaborative partnership model for compliance and quality assurance. As we served on the workgroup developing changes to this rule, we understand the intent was, in part, to ensure quality supports and appropriately manage state resources by limiting the number of new, unproven providers entering into Ohio's developmental disability service system. The proposed changes were also intended to simplify processes and alleviate unnecessary administrative requirements for existing providers to renew their certification. We recognize the inherently difficult task the Department had to undertake to synthesize the differing viewpoints of a large, diverse stakeholder group. We are greatly appreciative of this work, however, after review, our Members feel the proposed rule profoundly misses the mark in accomplishing these goals. Instead, they see the changes as creating new complexities, confusions, and burdens throughout the initial and recertification processes. The COVID-19 pandemic has stretched providers in ways we could never have imagined and has altered the entire way providers hire staff and deliver services. We are concerned about the ability for providers to appropriately prepare for these changes due to the continuing impact of COVID-19. Given the current virus surge, worsening workforce crisis, and identified issues with the proposed rule, we believe that implementation in May 2021 would be a mistake. We believe it is prudent for the Department to reconvene the provider certification workgroup, at a time of greater stability, to ensure stakeholder consensus on these important issues. We look forward to continued collaboration with the workgroup!	Peter Moore, President/CEO, Ohio Provider Resource Association	We appreciate and respect the many hours of time spent by members of the Ohio Provider Resource Association (OPRA) and others over the course of more than one year to discuss provider certification processes and rules. It is not the Department's intent to limit the number of providers. The Department's goal, which we believe is shared by OPRA and other system stakeholders who participated in the effort, is to build a system that better prepares and supports providers of services to ensure their success and ultimately, the provision of high-quality services to Ohioans with developmental disabilities and their families. We believe the new rules reflect the input from diverse perspectives and will move us closer to the goal. These exceptional times highlight the importance of better preparing Direct Support Professionals to meet the tasks they encounter as critical frontline caregivers. It is imperative they serve with the confidence of knowing that they are valued and supported throughout the system and the State. We recognize the many challenges facing providers. As indicated, we postponed the projected effective date for the new rules to September 1, 2021 and remain committed to implementing the rules in a manner that eases transition for all affected.

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Provider Services Management System: There are multiple provisions in the rule that refer to a provider providing data through the provider services management system. Will this change align with the State's new Provider Network Management module?	Debbie Jenkins, Policy Director, Ohio Health Care Association	Yes; Department staff are working closely with staff of the Ohio Department of Medicaid during development of the Ohio Medicaid Enterprise System and the Provider Network Management module. As this work has evolved since initial development of the draft rules, we added references to the Provider Network Management module throughout the rule to ensure the rule accurately accommodates the process.
(D)(1)(e): Refers to a written training plan. Given that (D)(1) requires written policies and procedures, the "written" in (D)(1)(e) should be removed as it is redundant.	Debbie Jenkins, Policy Director, Ohio Health Care Association	Paragraph (D)(1)(e) was revised in accordance with your suggestion.
(J)(1)(a): OHCA would request that the 18-year-old minimum age requirement be removed. While we understand that many families and guardians may not be comfortable with a minor providing services to their loved one, we also believe that there are situations where 16 or 17-year-olds may be caring, compassionate people who can support those who need assistance.	Debbie Jenkins, Policy Director, Ohio Health Care Association	Allowing 16 and 17-year-olds to work in a limited capacity under direct supervision was explored at great length by the Provider Certification Workgroup. Some Workgroup members advanced the concept as a viable tool to recruit Direct Support Professionals (DSP); others thought it would not effectively address the staff shortage because administering medication requires a DSP to be 18 years old; yet others were entirely opposed. It became evident that this concept was causing a great deal of apprehension and anxiety among families and other advocates and would likely be met with opposition. We did consider removing the requirement for a DSP employed by an agency provider to hold a high school diploma or GED. More than ever, our field is recognizing and emphasizing the important role of DSP: how much we expect of them in implementing the service plan, participating in the team, and serving as a trusted ally of the individual. While a diploma or GED does not guarantee success in the DSP role, it is a marker of educational achievement which contributes to success in this and other occupations. While many provider representatives wanted to eliminate this requirement, there was not wholesale support for this position. The Department intends to proceed with the rule as drafted. Please know we intend to continue to study how to engage younger people in learning about the rewarding employment opportunities that exist in Ohio's developmental disabilities service delivery system and will evaluate the age and diploma/GED requirements
(J)(1)(a) and (J)(1)(b): I have been an Agency Provider for seven years. In the new proposed rule, the age requirement to work is still 18 in addition to the requirement for high school diploma. I remember discussions of potentially lowering the minimum age to 16 and eliminating the diploma requirement previously and was hopeful to see that change reflected in the new proposed rule. With the critical shortage of Direct Support Professionals (DSPs) statewide, I strongly feel that if the minimum age were lowered to 16 and the requirement for diploma/GED were dropped, we would have access to a large untapped resource of potential DSPs.	Tamie Peel, Chief Executive Officer, Creative Connections, LLC	

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(J)(1)(b): It is disappointing that the need for a Direct Support Professional to have a high school diploma or GED is still in the proposed rule.	Susan Ferrick, Director of Operations, North East Ohio Network Council of Governments	over the next two years.
(J)(1)(b): Please reconsider permitting an alternative (e.g., National Career Readiness Certificate) for the high school diploma or GED requirement as discussed by the workgroup on several occasions. We know that there are many people who don't have a high school diploma or GED who are great caregivers, especially some of the immigrant population who can care for those recipients with similar backgrounds, languages, and culture.	Debbie Jenkins, Policy Director, Ohio Health Care Association	There did not seem to be support for the National Career Readiness Certificate among Workgroup members. If there is interest, we will restore it as an alternative to the diploma/GED.
(L): Given the addition of the requirement for a written policy for volunteers and the requirements for volunteers in section (L), we believe there should be a definition of volunteer which excludes family members, guardians, or other friends of people receiving services. These people with on-going relationships with the people we serve often come to visit their loved one and may want to help with providing support to their loved one within the residential setting. They should not be subject to the prohibition in (L)(3) and also shouldn't be mandated to meet the requirements in (L)(4).	Debbie Jenkins, Policy Director, Ohio Health Care Association	A definition of "volunteer" was added as paragraph (B)(22) to make clear that family members, guardians, and friends simply interacting with individuals who receive services are not volunteers.
Appendix A and Appendix C: The Department is proposing several changes to the training requirements for Direct Support Professionals (DSPs) and Directors of Operations. I support additional training for traditional agency providers to maintain their certification. We have maintained our agency certification for the sole purpose of providing Residential Respite in our Intermediate Care Facility (ICF) homes. The only reason we do this is because there is a great need for respite in our community. Can we propose that the DSP and Director of Operations requirements be waived for this specific service? As we all know, ICFs are already regulated to a different standard which should be sufficient to provide a waiver respite service as an on-site service. I see the rule as it stands as a deterrent for ICFs to provide this waiver service.	Michele Giess, Superintendent, Richland County Board of Developmental Disabilities	We plan to revise rule 5123:2-3-01 (Licensed Residential Facilities - Administration and Operation) to better align the training requirements for staff of licensed residential facilities with those for staff of certified providers. In the interim, an ICF may submit a request for the Department to waive the training requirements for DSPs employed by ICFs that are providing Residential Respite (although the Department is not inclined to waive training in Empathy-Based Care).

5123-2-09 (Provider Certification - Independent Providers)

Comment	By Whom	Department's Response
Appendix A: From my experience, many in our field struggle to understand training expectations when the topics areas are left too broad or do not give specific examples. As an example, your proposed annual training for independent providers states that they need to have six hours in components of quality care, health and safety, or positive behavioral support. I think my phone is going to ring off the hook and my email will be packed with questions regarding what you really want from these broad topic areas. I am sure you are trying to be open-ended to allow for flexibility, but it also creates concern and anxiety when providers are not certain if they have met your expectations (especially when their certifications are at stake). Please consider something like: Components of quality care - examples include, but are not limited to, relationship-building, communication skills, teamwork, etc. If training expectations are written like this, they satisfy the needs of people who want specifics as well as those who want the flexibility to find a unique training to suit the individual's support needs. Thank you for your consideration of this proposal for improved specific examples within training requirements.	Bonnie Bazill-Davis, Training Specialist, Developmental Disabilities of Clark County	Based on your feedback the wording was revised as indicated: Six hours of training in topics selected by the independent provider from the following list that are relevant to the services provided and individuals served by the independent provider: (a) Components of quality care (~~e.g.,~~ examples include but are not limited to: interpersonal relationships and trust; cultural competency; effective communication; person-centered philosophy, planning, and practice; implementing individual service plans; trauma-informed care; empathy-based care) (b) Health and safety (~~e.g.,~~ examples include but are not limited to: signs and symptoms of illness or injury and procedure for response; transportation safety) (c) Positive behavioral support (~~e.g.,~~ examples include but are not limited to: creating a positive culture; general requirements for intervention and behavioral support strategies and role of independent provider including documentation; crisis intervention techniques)