



Chapter 5123:2-3 (Licensed Residential Facilities) Clearance Period: February 14-28, 2022

General Comments

Comment	By Whom	Department's Response
<p>On February 14, 2022, the Ohio Department of Developmental Disabilities (DODD) shared proposed revisions to nine residential care facilities licensure rules and requested written comments. The Ohio Health Care Association (OHCA) appreciates the opportunity to written provide comments. However, we had previously requested and are once again requesting DODD to convene a stakeholder meeting to discuss potential revisions to these rules. The last two years have been extremely challenging to licensed residential care facilities, as they have been for all developmental disabilities providers. The pandemic and the workforce crisis have both influenced how services are provided, what people want for their daily lives and how providers ensure the health and safety of their residents. Additionally, many of the changes recommended by DODD result in increased responsibilities on the providers at a time when most staff, including administrative staff, are having to focus on providing services to people. Not only is administrative time limited, DODD is implementing other changes which all have learning curves and will at least initially require more resources from residential care facilities, including the new OhioISP, the Technology First rule, etc. OHCA would like to work with DODD to prioritize the initiatives which will require resources to be taken away from providing direct care to individuals. These initiatives are in addition to the Centers for Medicare and Medicaid Services vaccine mandate that is requiring an abundance of administrative resources for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID). Given the short timeframe DODD gave to review the proposed changes, we would prefer a meeting with stakeholders to discuss all of the various requirements of these rules.</p>	<p>Debbie Jenkins, Policy Director, Ohio Health Care Association</p>	<p>Department staff met with representatives of the Ohio Health Care Association, the Ohio Provider Resource Association, and the Values and Faith Alliance on April 8, 2022. The discussion covered the comments submitted in writing (included in this document) as well as broad themes such as simplification and expanded flexibility in light of the staffing shortage and lessons learned during the pandemic, and more specifically:</p> <ul style="list-style-type: none">• Transition period for implementing new requirements in rule 5123-3-01.• Requirements in rule 5123-3-02 regarding facility size, bedrooms, and bathrooms.• How residents of residential facilities spend their day addressed in rule 5123-3-04.• Abbreviated compliance review process addressed in rule 5123-3-06.• Waiving provisions of rules.• Need for training and guidance regarding flexibility permitted by rules. <p>Based on the discussion, additional revisions were made to rule 5123-3-04 and process-related flexibilities are being adopted.</p>

Comment	By Whom	Department's Response
<p>The Ohio Provider Resource Association (OPRA) is appreciative for the many efforts over the past few years to streamline and restructure these important rules. However, the volume of rules under review, alongside other major system initiatives such as the OhioISP, changes to provider certification rules, and the Blueprint, as well as many others, amidst a continuing global pandemic and staffing crisis present a major challenge to providers working to implement all of the proposed changes. We believe providers will require additional time and flexibility when implementing these many initiatives. While we are appreciative of many of the changes and reorganization of both sets of rules, we offer the below comments and suggestions in areas where we have additional concerns and/or believe there are greater opportunities while these rules are open and under review. As stated earlier, we are understanding and appreciative of DODD's efforts to streamline and simplify our very complicated waiver and service system. And while we are supportive of many aspects of these changes, we also urge as much flexibility as possible in their implementation and/or the delay of some components of this rule package to allow our system partners to process and plan for the multitude of changes heading their way. We appreciate any opportunity to discuss this feedback and/or provide additional or clarifying comments.</p>	<p>Scott Marks, Director of Operations, Ohio Provider Resource Association</p>	<p>We will give residential facilities time to come into compliance with new requirements in rule 5123-3-01 as we did when we implemented new requirements for certified providers set forth in rule 5123-2-08 (<i>Provider Certification - Agency Providers</i>). Please see page 3 of this document for details.</p>

5123:2-3-01 (Administration and Operation)

Comment	By Whom	Department's Response
<p>(C)(4), (C)(5), (C)(6), (D)(7), (D)(8), (E)(2), (F)(2), (G), (H), & (I): All of these sections include substantive changes from the current licensure regulations. While OHCA understands that these changes are being made to bring consistency with the provider certification requirements, we ask DODD to provide a transition period for licensed residential facilities to come into compliance with these requirements. We know that some ICFs also provide waiver services and having two different sets of requirements has been a challenge. Many of those providers are fairly well positioned to transition to these new requirements. However, there are other ICF providers who do not also provide waiver services and have not yet begun the preparation to transition to these requirements. Those providers will need sufficient time to come into compliance with the numerous changes being proposed in this revision. We would suggest using a six-month transition period for providers to come into compliance with all of these new requirements.</p>	<p>Debbie Jenkins, Policy Director, Ohio Health Care Association</p>	<p>We recognize that some residential facilities are better poised to adopt the new training requirements in paragraphs (D), (E), (F), (G), (H), and (I). We have been allowing flexibility for residential facilities that requested to adopt these new training requirements when rule 5123-2-08 (<i>Provider Certification - Agency Providers</i>) went into effect in September 2021. We will continue to be flexible. Existing residential facilities will have:</p> <ul style="list-style-type: none">• 90 days after the effective date of new rule 5123-3-01 to come into compliance with training requirements for new hires.• Until December 31, 2023 to complete the new annual training requirements for existing staff. (For calendar year 2022, a residential facility may choose to comply with either the existing or new annual training requirements. Compliance review teams will not begin reviewing 2022 annual training until calendar year 2023.) <p>We will afford existing residential facilities at least 180 days from the effective date of the new rule to:</p> <ul style="list-style-type: none">• Acquire the additional general liability insurance required by paragraph (C)(4)(e)(i).• Arrange the continuing line of credit required by paragraph (C)(4)(e)(ii).• Develop the written policies and procedures required by paragraph (C)(5)(b).• Include management of individuals' funds in its internal compliance program as specified in paragraph (C)(5)(c)(iv).

Comment	By Whom	Department's Response
<p>(C)(5)(b): This paragraph requires written policies and procedures that address management practices regarding:</p> <ul style="list-style-type: none"> (i) Person-centered planning and self-determination; (ii) Individuals' satisfaction with services delivered; (iii) Internal monitoring and evaluation procedures to improve services delivered; (iv) Supervision of staff; <p>While these areas are part of the training programs or some of the quality indicator language, it appears to be a bit of a mission creep to think that having a policy and procedure is the solution to this problem. Since when is the policy and procedure on satisfaction for service delivery a requirement and a policy and procedure for internal monitoring a requirement in a policy on supervision of staff a requirement?</p>	<p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>Quality indicators described in rule 5123-7-34 (<i>Intermediate Care Facilities for Individuals with Intellectual Disabilities - Quality Indicators and the Quality Incentive Payment Program</i>) apply only to ICFIID. The rules in Chapter 5123:2-3 apply more broadly to all residential facilities (ICFIID and non-ICFIID) licensed pursuant to Section 5123.19 of the Revised Code. Requiring written policies and procedures provides the mechanism for advancing the desired outcome, that is, high-quality services to residents of residential facilities.</p>
<p>(C)(5)(c)(iii): Why is there an insertion of rules related to Supported Living in the licensure rule?</p>	<p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>An internal compliance program for service delivery, service documentation, and billing for services is an existing requirement in paragraph (C)(9)(c) of currently effective rule 5123:2-3-01. We tweaked the language to align with wording used in newer rules. The rules in Chapter 5123:2-3 apply broadly to all residential facilities licensed pursuant to Section 5123.19 of the Revised Code, which includes ICFIID and non-ICFIID. The services provided to residents of non-ICFIID are Supported Living, as that term is defined in Section 5126.01 of the Revised Code.</p>
<p>(C)(5)(e) & (C)(5)(f): (f) is redundant to (e).</p>	<p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>We respectfully disagree. Paragraph (C)(5)(e) addresses how facility staff interact with residents. Paragraph (C)(5)(f) addresses the specific requirements upon a provider of services (i.e., to distribute copies of rights to persons served in accordance with Section 5123.63 and to establish policies and programs to ensure that staff are familiar and observe rights in accordance with Section 5123.64).</p>
<p>(F)(6): Revise paragraph as indicated:</p> <p>Successfully completes the training specified in appendix B to this rule <u>per the timelines stipulated</u>.</p>	<p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>Paragraph (F)(6) was revised in accordance with your suggestion.</p>

Comment	By Whom	Department's Response
Appendix A, (7) under 30-day training for Administrator: Internal compliance programs are not required programs in ICFIIDs.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	Sections 5123.19 and 5124.03 of the Revised Code authorize the Department to establish requirements for licensed residential facilities generally and ICFIID specifically. Paragraph (C)(9) of currently effective rule 5123:2-3-01 requires residential facilities to have an internal compliance program.
Appendix A, (1)(c) under annual training for Administrator: Health and Welfare Alerts are useful tools but should not be viewed as required documents. May need to be eliminated from annual training requirements. If you want them inserted, put them as part of the Department's training curriculum and reference them.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	That is exactly what we do. Requirement (1) under annual training describes the elements of the Department-provided training for Administrators. We are letting stakeholders know what topics will be covered in the Department-provided training instead of simply saying the Administrator will complete "two hours of Department-provided training."
Appendix B, (2)(e) under training prior to providing direct services for Direct Support Professionals: This (Recognizing and Reporting Major Unusual Incidents and Unusual Incidents) is where Health and Welfare Alerts can be inserted by the Department in a general overview. They should not be required for further training beyond a general overview. They are interesting additional information; they are not required training.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	Paragraph (P) of currently effective rule 5123-17-02 (<i>Addressing Major Unusual Incidents and Unusual Incidents to Ensure Health, Welfare, and Continuous Quality Improvement</i>) requires annual training regarding Health and Welfare Alerts.
Appendix B, (a) & (b) under 30-day training for Direct Support Professionals: Unclear as to why these sections (Person-Centered Planning and Provision of Services; Facilitating Community Participation and Integration for Individuals Served) are here since number three under training prior to providing direct services incorporates training specific to individuals' service plans (community integration, employment goals, behavior support strategies, etc.) which are all a part of the person-centered planning process. This seems redundant and just throwing more word salad at us.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	The training specified here addresses service delivery generally and is not specific to an individual's service plan. A residential facility may certainly exceed the requirements and/or have Direct Support Professionals complete the training at the point of hire if that is more efficient for the facility's operation.
Appendix B, (c) under 30-day training for Direct Support Professionals: Again, I would move to strike Health and Welfare Alerts from a required training tool. This is not Supported Living; this is an ICFIID. We make these tools available, but we go beyond much of these documents.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	Please see responses above.

Comment	By Whom	Department's Response
Appendix B, (e) under 30-day training for Direct Support Professionals: We assume this (Fire Safety, Operation of Fire Safety Equipment and Warning Systems, and Emergency Response Plan) can be combined with our general fire safety and emergency procedures as noted in section (1)(e) under training prior to providing services.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	Yes; an operator may conduct the more in-depth training at the same time as the Overview of Fire Safety and Emergency Procedures that a Direct Support Professional must complete prior to providing direct services. These requirements are the same as those in currently effective rule 5123:2-3-02.
Appendix B, (2) under annual training for Direct Support Professionals: Why does the Department feel that six hours is magical?	Dan Housepian, Director of ICF Services, Luther Home of Mercy	We feel a requirement to annually complete eight hours of training is reasonable for someone with so important a role. We wanted to give operators control over much of the training so they can tailor the training to their specific facility and staff needs. The Department is providing a smaller share based on our commitment to ensuring some topics are covered uniformly throughout the system.
Appendix B, (2)(b) under annual training for Direct Support Professionals and Appendix C, (2)(b) under annual training for Support Staff: Omit Health and Welfare Alerts.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	Please see responses above.

5123:2-3-02 (Physical Environment Standards, Fire Safety, and Emergency Response Planning)

Comment	By Whom	Department's Response
<p>(C)(6): Revise paragraph as indicated:</p> <p>No part of the residential facility shall be off limits to individuals except for staff quarters <u>(office areas)</u>, bathrooms located in or adjacent to staff quarters, bedrooms of other individuals unless consent is given, and mechanical and boiler rooms <u>or support buildings</u> or other areas of the facility that present a health or safety risk to an individual as identified in the individual service plan <u>or consent documents</u>.</p>	Dan Housepian, Director of ICF Services, Luther Home of Mercy	<p>In response to your feedback, paragraph (C)(6) was revised as indicated:</p> <p>No part of the residential facility shall be off limits to individuals except for <u>office areas used exclusively by staff</u>, staff quarters, bathrooms located in or adjacent to staff quarters, bedrooms of other individuals unless consent is given, and mechanical and boiler rooms or other areas of the facility that present a health or safety risk to an individual as identified in the individual service plan.</p> <p>We do not believe we can flatly exclude "support buildings" as the nature and use of such buildings vary widely among facilities.</p>

Comment	By Whom	Department's Response
<p>(F)(15)(c): Just from a matter of what we do and all of that.... If this really does happen....wouldn't it be nice if we didn't need to be on the phone with people...since this sounds horrific... Can we make one call and have one point of contact.... Make sense?</p>	<p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>It is important that the county department of job and family services be aware of such movements, and thus, the residential facility needs to make contact if residents are relocated. Making one contact to DODD via telephone or email, however, will achieve notification to state agencies (DODD, the Ohio Department of Health, and the Ohio Department of Medicaid). Paragraph (F)(15)(c) was revised as indicated to reflect the established process.</p> <p>Report to the department and the county department of job and family services within one business day when an emergency requires the operator to relocate individuals from the residential facility. and, in the case of <u>When the residential facility is</u> an intermediate care facility for individuals with intellectual disabilities, also <u>the department will</u> notify the Ohio department of health district office and the Ohio department of medicaid.</p>

5123:2-3-04 (Admission of Residents, Provision of Services, and Maintenance of Service Records)

Comment	By Whom	Department's Response
<p>(D)(1): Revise paragraph as indicated: The operator, administrator, and staff of the residential facility shall <u>(as much as reasonably can be expected)</u>:</p> <ul style="list-style-type: none">(a) Provide services in a person-centered manner.(b) Be able to effectively communicate with each individual receiving services.(c) Be knowledgeable in the individual service plan for each individual prior to providing services to the individual. [This is a specific area where this phrase truly applies.](d) Implement services in accordance with the individual service plan.(e) Take all reasonable steps necessary to prevent the occurrence or recurrence of major unusual incidents and unusual incidents.(f) Comply with the requirements of rule 5123-2-06 of the Administrative Code.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	These requirements have been in place for years and set forth widely-held expectations for service delivery. We do not believe adding the suggested phrase would provide clarity or benefit individuals and families served or operators of residential facilities.
<p>(D)(1)(f): Either refer to what you're talking about or do not refer to areas of the Code. You could at least give the heading of behavior support strategies, etc.</p>	Dan Housepian, Director of ICF Services, Luther Home of Mercy	<p>Thank you for this suggestion. Paragraph (D)(1)(f) was revised as indicated:</p> <p>Comply with the requirements of rule 5123-2-06 of the Administrative Code regarding development and implementation of behavioral support strategies.</p>

<p>(I): During the pandemic, we have learned that many individuals may not want to attend the typical day program. While families and self-advocates have voiced this desire in our home and community-based programs, some residents of Intermediate Care Facilities for Individuals with Intellectual Disabilities also shared a preference to not attend typical day programs. OHCA acknowledges that the Centers for Medicare and Medicaid Services requires continuous active treatment and providers were able to meet this requirement in the home during the pandemic. We also understand the value that attending an off-site day program has for many ICFIID residents. However, we believe this should be a person-centered decision and would like to discuss options for changes to the rules that would allow individuals residing in ICFIIDs to decide how they want to spend their day.</p> <p>(I)(4): It is time to stop this restriction. We need to deal with what we have as resources and not have overly restrictive and pious ideas on program options.</p>	<p>Debbie Jenkins, Policy Director, Ohio Health Care Association</p> <p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>We agree; how a person spends time should be determined through a robust person-centered planning process! This perspective is supported, indeed is the point, of the person-centered planning requirements in currently effective rule 5123-3-03 (<i>Licensed Residential Facilities - Person-Centered Planning</i>) for residents of ICFIID and rule 5123-4-02 (<i>Service and Support Administration</i>) for residents of non-ICFIID residential facilities. In addition to having opportunities to pursue employment goals, residents of ICFIID should have choices among various activities at a variety of locations (e.g., learning to play a musical instrument, hiking, volunteering, or attending a college course). The intent is that residents have genuine opportunities to engage in their communities and live their best lives. That is only possible when ICFIIDs create or ensure access to activities that meet residents' needs, that is:</p> <ul style="list-style-type: none"> • there is recurring, meaningful conversation about a resident's interests and the activities he or she would like to pursue, • the resident is aware of what activities might be available and ways to access them, and • the resident has the opportunity to engage in those activities. <p>Currently effective rules 5123-3-03 and 5123-4-02 permit this flexibility.</p> <p>Paragraph (I) has been revised as indicated below to emphasize individuals exercising choice and having diverse opportunities to engage in their communities. We eliminated most references to "day activities" in recognition that opportunities for residents to participate in activities occur around the clock, not merely between the hours of 9:00 am and 3:00 pm.</p> <p>(I) Community participation and day activities for individuals who reside in intermediate care facilities for individuals with intellectual disabilities</p> <p>(1) The operator shall ensure that each individual:</p> <p class="margin-left: 40px;">(a) <u>Has opportunities to access age-appropriate activities, engage in meaningful employment and non-work activities, and pursue activities with persons of the individual's choosing;</u></p> <p class="margin-left: 40px;">(b) routinely has information in formats the individual understands about day activities <u>and programs related to community employment in accordance with rule 5123:2-2-05 of the Administrative Code</u> offered by other providers and as well as opportunities to explore and experience</p>
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Comment	By Whom	Department's Response
		<p>community participation in accordance with the individual service plan and the individual's desired outcomes as they relate to community employment in accordance with rule 5123:2-2-05 of the Administrative Code.</p> <p>(2) (c) The operator shall ensure that each individual participates in day activities that foster community participation unless the individual service plan indicates why, based on evaluations and assessments, such participation is medically contraindicated.</p> <p>(3) (d) The operator shall ensure that individuals have Has access to a variety of day activities that reflect what is important to the individual and what is important for the individual.</p> <p>(4) (2) Day activities The activities and programs described in paragraph (l)(1) of this rule shall not be provided in an intermediate care facility for individuals with intellectual disabilities or within two hundred feet of the intermediate care facility for individuals with intellectual disabilities except that:</p> <p>(a) an intermediate care facility for individuals with intellectual disabilities that was providing day activities in or on the grounds of the intermediate care facility for individuals with intellectual disabilities prior to July 1, 2005 in accordance with paragraph (H)(4) of rule 5123:2-3-04 of the Administrative Code in effect on the day immediately prior to the effective date of this rule, may continue to provide day activities at that same location.</p> <p>(b) An individual may choose to participate in activities and programs through virtual support under the following conditions:</p> <p>(i) Virtual support does not have the effect of isolating the individual from the community or preventing the individual from interacting with people with or without disabilities;</p> <p>(ii) The use of virtual support has been agreed to by the individual and the individual's team and is specified in the individual service plan; and</p> <p>(iii) The use of virtual support complies with applicable laws governing the individual's right to privacy and the individual's protected health information.</p>

Comment	By Whom	Department's Response
<p>(J)(2)(c): Really do not need to keep service notes. Usual standards are medical records.</p> <p>The following records for each individual shall be maintained:</p> <p>...</p> <p>All service documentation including notations of progress.</p>	Dan Housepian, Director of ICF Services, Luther Home of Mercy	This wording is not new and aligns with federal requirements set forth in 42 CFR 483.440(f)(1)(i) and Medicaid tag W255, as well as paragraph (E)(3)(g) of existing rule 5123-3-03 (<i>Licensed Residential Facilities - Person-Centered Planning</i>) which requires a Qualified Intellectual Disability Professional to review implementation of the plan at least quarterly.

5123:2-3-05 (Transfer and Termination of Services)

Comment	By Whom	Department's Response
<p>(B)(5)(b): Can this also include change of condition beyond capacity to give adequate care?</p> <p>Through a level of care determination in accordance with rule 5123-8-01 of the Administrative Code or a preadmission screening for developmental disabilities in accordance with rule 5123-14-01 of the Administrative Code, the individual is determined to require a level of services provided in another type of setting (e.g., a nursing facility).</p>	Dan Housepian, Director of ICF Services, Luther Home of Mercy	No; this would not be included in the definition of "emergency." This circumstance would be evaluated under paragraph (C)(1)(a) as a transfer or termination.
<p>(B)(9): Why wouldn't this be, or could it be the "administrator"?</p> <p>"Operator" means the entity responsible for management of and provision of services at the residential facility.</p>	Dan Housepian, Director of ICF Services, Luther Home of Mercy	A single person can be both the Operator and the Administrator.
<p>(C)(1)(e): Revise paragraph as indicated:</p> <p>The residential facility ceases to operate <u>or notice of reduction of capacity</u>.</p>	Dan Housepian, Director of ICF Services, Luther Home of Mercy	<p>In response to your feedback, new paragraph (C)(1)(e) was added:</p> <p><u>The residential facility permanently reduces its capacity; or</u></p> <p>and what was paragraph (C)(1)(e) is now (C)(1)(f).</p>

Comment	By Whom	Department's Response
<p>(C)(3)(a) & (D)(2): Can we address this via mail and email?</p> <p>Notify in writing via certified mail, the individual and the county board of the transfer or termination of services. The notice must contain:</p>	<p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>Section 5123.19 (G) of the Revised Code charges the Department with development of rules regarding transfer and termination of services. As this notice pertains to an individual's appeal rights, it is appropriate to follow the notification requirements in Chapter 119 of the Revised Code.</p>
<p>(D)(1): All of a sudden the administrator is in the rule? Appeal to operator or board.</p>	<p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>This is an existing requirement.</p>
<p>Just a question as to this entire process, having initiated this unfortunately in years past and also being on the receiving end of the admissions at developmental center as a result of termination of services. Just where does the county board fit into this process? We notify them [in accordance with paragraph (C)(3)(a)] but that is the last you hear about them in this rule. Why even bother notifying them? What is their role?</p>	<p>Dan Housepian, Director of ICF Services, Luther Home of Mercy</p>	<p>The county board provides support and advocacy for an individual who chooses to appeal the transfer or termination of services. The county board is:</p> <ul style="list-style-type: none"> ultimately responsible for persons with developmental disabilities in the county, required to provide Service and Support Administration once the individual no longer lives in an ICFIID, and has a role in coordinating discharge planning.

5123:2-3-06 (Compliance Reviews, Issuance of Licenses, Adverse Actions)

Comment	By Whom	Department's Response
<p>(C)(2)(b)(ii): This language is inconsistent with a mostly similar section in rule 5123-2-04 (<i>Compliance Reviews of Certified Providers</i>). We believe these two rules should be consistent with each other and these areas should be further reviewed and/or modified to ensure that the abbreviated review process is a meaningfully simplified process for nationally accredited agencies. We believe this is a great opportunity for system reform and simplification of our complicated system which will assist providers in ensuring they can provide the best quality services to those Ohioans needing support and services. This abbreviated review process would further advance the goals of the recently revised Provider Certification rules, putting compliance emphasis on new/untested agencies and alleviating administrative burden for agencies who have demonstrated adherence to a national quality standard. We would welcome the opportunity to provide additional feedback and language regarding these aspects of the rule, as well as the opportunity to look at true systemwide reform of the compliance review process.</p>	<p>Scott Marks, Director of Operations, Ohio Provider Resource Association</p>	<p>This paragraph exists in currently effective rule 5123:2-3-06 and aligns with paragraph (C)(2)(b)(ii) of rule 5123-2-04, with one exception. This rule includes one additional area to be examined during an abbreviated compliance review, set forth in paragraph (C)(2)(b)(ii)(e): community participation and integration. This area is important to ensure an individual living in a home owned by the provider of services has opportunities for engagement outside of the home.</p> <p>The emphasis of our compliance reviews is person-centered planning and service delivery and requirements related to health and welfare. National accrediting bodies (such as the Commission on Accreditation of Rehabilitation Facilities or the Council on Quality and Leadership) do not consider the same aspects reviewed during a Department compliance review. In our experience, there is not necessarily a correlation between holding national accreditation and compliance with Department rules. We are, however, sensitive to reducing demands on providers of services. Therefore, in March, the Department adjusted abbreviated compliance review sampling protocols for staff and individuals served at residential facilities. For example:</p> <ul style="list-style-type: none"> the sample size at a facility serving 100 residents was reduced from 10 staff and 10 residents to 6 staff and 6 residents, and the sample size at a facility serving 25 residents was reduced from 6 staff and 5 residents to 3 staff and 3 residents. <p>Additionally, some policy questions were eliminated. We will reevaluate the abbreviated compliance review tool after one year.</p> <p>If you have a crosswalk comparing national accreditation standards and Department compliance reviews, we would be interested in reviewing it.</p>

Comment	By Whom	Department's Response
(C)(2)(b)(v)(b): What does having major unusual incidents (MUIs) have to do with not having a survey unless it is abuse or neglect?	Dan Housepian, Director of ICF Services, Luther Home of Mercy	A pattern of any type of MUIs may indicate the facility is struggling.
(H)(2): Certified mail with return receipt in this case. Why not the same? If such a determination is made, the department shall send a letter to the licensee by certified mail, return receipt requested. The letter shall explain the basis for termination of the license and inform the licensee of the licensee's right to request a hearing on the proposed termination of the license pursuant to Chapter 119. of the Revised Code. The licensee shall have thirty calendar days from the date the letter is mailed to request a hearing which, if timely requested, shall be held in accordance with Chapter 119. of the Revised Code.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	The process to notify a licensee that the Department intends to terminate a license is prescribed by Chapter 119 of the Revised Code.

5123:2-3-07 (Immediate Removal of Residents)

Comment	By Whom	Department's Response
(C)(1): Why is this the county and not the facility? No real role of the county in the 30-day notice rule, but here?	Dan Housepian, Director of ICF Services, Luther Home of Mercy	This is the avenue for a county board of developmental disabilities to ask the Department to remove a resident when the county board believes the resident is in danger.
(C)(4): By mail, certified mail?? Funny how we don't say when it's the Department.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	Immediate removal of a resident is an extremely rare occurrence. The Department has not removed a resident in decades. The method of notification may vary due to the need for immediate action and based on each specific situation. When circumstances are so dire that the Department is initiating immediate removal, it is unlikely U.S. mail will be the mode of notification.

5123:2-3-08 (Development and Renovation)

Comment	By Whom	Department's Response
<p>(C)(5): This paragraph limits the number of licensed beds to six unless the department determines the ICFIID requires greater capacity and then limits the number of licensed beds to eight. With the staffing crisis and the fact that the workforce may never grow to the extent needed to continue to provide services in smaller settings, we would like to have a conversation about changing this bed size limitation. The federal Centers for Medicare and Medicaid Services does not limit the size of ICFIID, so this is an Ohio specific requirement. Over the past year or so, many providers have had to consolidate settings in order to have sufficient staffing to meet the needs of the people they serve. While the department has been approving these on a temporary basis, there may be the need to increase setting size permanently. This is another area that OHCA would like to discuss with the department and other stakeholders so we can determine the best way to continue to provide the services and supports people need. The pandemic forced the developmental disabilities system to prioritize care over regulations. There were actions taken to protect residents and regulations were waived that were not directly related to the quality of care people with disabilities received. Following that experience is the perfect time to reflect on what was learned and use that knowledge as these licensure rules are being reviewed. We understand that the department has a timeline for reviewing rules and these licensure rules are beyond that timeline. However, it would be better for all parts of our system to take the time necessary to have open and productive discussions on how to modify these rules in a way that reflects the challenges our developmental disabilities system is facing while still promoting quality services.</p>	<p>Debbie Jenkins, Policy Director, Ohio Health Care Association</p>	<p>Representatives of OHCA, the Ohio Provider Resource Association, and the Values and Faith Alliance shared their perspectives with us in a meeting on April 8, 2022. We agree; the pandemic has presented unprecedented challenges and necessitated a variety of responses to ensure continuity of services. We are very aware of these challenges and the heroic efforts of service providers throughout the system to provide services under such demanding conditions.</p> <p>The requirements in currently effective rule 5123:2-3-08 reflect decades of effort to navigate toward smaller settings; we are not willing to permanently redirect the course. We are, however, committed to continuing, to provide regulatory relief. Currently effective rule 5123-3-10 (<i>Licensed Residential Facilities - Procedures to Waive Rule Requirements</i>) does not specify the duration of a rule waiver. While our long-standing practice has been to grant rule waivers for one year, we will consider making them effective for longer than one year based on specific circumstances of a facility requesting a waiver and the persons served at the facility.</p>

5123:2-3-11 (Room and Board)

Comment	By Whom	Department's Response
(B)(7) & (B)(11): I think it would be great if this at least referenced where ICFIID facility rules are addressed - like 5123-7-09 (<i>Intermediate Care Facilities for Individuals with Intellectual Disabilities - Personal Needs Allowance Accounts</i>) and 5123-7-11 (<i>Intermediate Care Facilities for Individuals with Intellectual Disabilities - Relationship of Other Covered Medicaid Services</i>), etc.	Dan Housepian, Director of ICF Services, Luther Home of Mercy	The concept of room and board (and therefore, this rule) do not apply to ICFIIDs as indicated in paragraph (A). We do not think it would be helpful in this rule to point to rules such as the two you mentioned, that are not related to room and board and govern only ICFIIDs.