

# **\*\*\*Proposed New Rule - November 9, 2020\*\*\***

## **5123-2-08 Provider certification - agency providers.**

### **(A) Purpose**

This rule establishes procedures and standards for certification of agency providers of supported living services, including home and community-based services, provided in accordance with section 5123.045 of the Revised Code.

### **(B) Definitions**

For the purposes of this rule, the following definitions apply:

- (1) "Abuser registry" has the same meaning as in rule 5123-17-03 of the Administrative Code.
- (2) "Accredited college or university" means a college or university accredited by a national or regional association recognized by the secretary of the United States department of education or a foreign college or university of comparable standing.
- (3) "Agency provider" means an entity that must be certified by the department to provide supported living services in accordance with section 5123.161 of the Revised Code.
- (4) "Certificate of high school equivalence" has the same meaning as in section 3301.80 of the Revised Code and includes the equivalent of a certificate of high school equivalence described in division (C) of that section.
- (5) "County board" means a county board of developmental disabilities.
- (6) "Department" means the Ohio department of developmental disabilities.
- (7) "Direct support professional" means a person who is employed in a "direct services position" as that term is defined in section 5123.081 of the Revised Code.
- (8) "Director of operations" means a person employed by an agency provider who is responsible for, and who shall be directly and actively involved in, the day-to-day operations of the agency provider. For the purposes of conducting background investigations pursuant to section 5123.081 of the Revised Code and rule 5123-2-02 of the Administrative Code, "director of operations" has the same meaning as "chief executive officer."
- (9) "Health-related activities" has the same meaning as in rule 5123:2-6-01 of the Administrative Code.
- (10) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.

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- (11) "Independent provider" has the same meaning as in rule 5123-2-09 of the Administrative Code.
  - (12) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
  - (13) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
  - (14) "Major unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.
  - (15) "Provider services management system" means the electronic portal, created and maintained by the department at its website (dodd.ohio.gov), used by providers of services to apply for certification and submit required information and documents.
  - (16) "Related party" has the same meaning as in section 5123.16 of the Revised Code.
  - (17) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration as set forth in section 5126.15 of the Revised Code and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.
  - (18) "Specialized services" means any program or service designed and operated to serve primarily individuals with developmental disabilities, including a program or service provided by an entity licensed or certified by the department. If there is a question as to whether an entity is providing specialized services, an agency provider may request that the director of the department make a determination. The director's determination is final. Programs or services available to the general public are not specialized services.
  - (19) "Supported living" has the same meaning as in section 5126.01 of the Revised Code.
  - (20) "Unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.
- (C) General requirements for agency providers
- An agency provider shall:
- (1) Be in good standing with the Ohio secretary of state as a for-profit corporation, nonprofit corporation, limited liability company, or limited liability partnership.
  - (2) Obtain and maintain a medicaid provider agreement with the Ohio department of

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medicaid when the agency provider intends to provide home and community-based services.

- (3) Comply with the requirements of this rule and other standards and assurances established in Chapter 5123. of the Revised Code and rules adopted pursuant to that chapter.
- (4) At the point of application for certification and upon request by the department, provide proof of a continuing line of credit in the agency provider's name in an amount of at least ten thousand dollars.
- (5) At the point of application for certification and upon request by the department, provide a certificate of a continuing policy of general liability insurance in an amount of at least one million dollars which includes coverage for individuals' losses due to theft or property damage.
- (6) Provide and maintain in the provider services management system, the agency provider's current physical address, telephone number, and electronic mail address.
- (7) Provide to the department via the provider services management system within fourteen calendar days of occurrence, the name, date of birth, and social security number for any person newly acquiring a financial interest of five per cent or more in the agency provider (including a direct, indirect, security, or mortgage financial interest).
- (8) Notify the department via the department's provider services management system within seven calendar days of any bankruptcy petition for which the agency provider is the subject and provide related documents to the department upon request.
- (9) Participate as requested by the department in service delivery system data collection initiatives.

### **(D) Management of the agency provider**

- (1) An agency provider shall have written policies and procedures that address the agency provider's management practices regarding:
  - (a) Person-centered planning and self-determination;
  - (b) Individuals' satisfaction with services delivered;
  - (c) Internal monitoring and evaluation procedures to improve services delivered;
  - (d) Supervision of staff;
  - (e) Written training plan described in paragraph (F)(1) of this rule;
  - (f) Service delivery;

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- (g) Background investigations for employment in accordance with rule 5123-2-02 of the Administrative Code; and
  - (h) Volunteers (when the agency provider engages volunteers).
- (2) An agency provider shall demonstrate that it has an established internal compliance program to ensure compliance with requirements for:
- (a) Provider certification in accordance with this rule;
  - (b) Background investigations and appropriate actions in accordance with rule 5123-2-02 of the Administrative Code for its director of operations, supervisors of direct support professionals, direct support professionals, and when applicable, volunteers;
  - (c) Service delivery, service documentation, and billing for services in accordance with Chapter 5123. of the Revised Code and rules adopted pursuant to that chapter for supported living services and the specific home and community-based services provided; and
  - (d) Management of individuals' funds.
- (3) When an agency provider is governed by a board of directors, board members shall:
- (a) Ensure the fiscal integrity of the agency provider by reviewing and approving the agency provider's annual audit, if otherwise required, or annual financial statements and by monitoring the agency provider's financial status including trends and challenges;
  - (b) Review and evaluate all compliance review reports by the department or a county board and the agency provider's response, including the plan of correction;
  - (c) Monitor the effectiveness of the agency provider's internal compliance program described in paragraph (D)(2) of this rule; and
  - (d) Promote the delivery of high-quality services.
- (E) Employment of staff
- (1) In addition to employing a director of operations who meets the requirements set forth in paragraph (H) of this rule, an agency provider shall employ at least one other person for the purpose of providing services.
  - (2) An agency provider shall comply with applicable federal, state, and local regulations, statutes, rules, codes, and ordinances pertaining to employment of staff including, but

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not limited to, wage and hour, workers' compensation, unemployment compensation, and withholding taxes.

- (3) An agency provider shall be current in payment of payroll taxes, workers' compensation premiums, and unemployment compensation premiums.
- (4) An agency provider shall conduct background investigations and take appropriate actions in accordance with rule 5123-2-02 of the Administrative Code.
- (5) An agency provider shall annually notify in writing, each of its staff members explaining the conduct for which the staff member may be placed on the abuser registry and setting forth the requirement for each staff member who is a supervisor of direct support professionals or a direct support professional to report in writing to the agency provider, if he or she is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code within fourteen calendar days after the date of such charge, conviction, guilty plea, or finding.

### **(F) Staff training documentation**

- (1) An agency provider shall develop and implement a written training plan for its director of operations, supervisors of direct support professionals, direct support professionals, and when applicable, volunteers. The written training plan shall be consistent with the needs of individuals served, best practice, and the requirements set forth in appendices A and C to this rule. The written training plan shall describe the method (e.g., written test, skills demonstration, or documented observation by supervisor) that will be used to establish competency of supervisors of direct support professionals and direct support professionals in areas of training. The written training plan shall be updated at least once every twelve months and identify who is responsible for arranging or providing the training and projected timelines for completion of the training.
- (2) An agency provider shall maintain a written record of training completed by its director of operations, supervisors of direct support professionals, direct support professionals, and when applicable, volunteers. The written record shall include a description of the training completed, the date of training, the duration of training, and when applicable, the instructor's name.

### **(G) Standards of service provision**

- (1) An agency provider shall:
  - (a) Provide services only to individuals whose needs the agency provider can meet.
  - (b) Communicate effectively with each individual served by the agency provider.
  - (c) Ensure that direct support professionals are knowledgeable in the individual service

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plan for each individual served prior to providing services to the individual.

- (d) Implement services in accordance with the individual service plan and in a person-centered manner.
  - (e) Comply with the requirements of rule 5123:2-2-06 of the Administrative Code.
  - (f) Take all reasonable steps necessary to prevent the occurrence or recurrence of major unusual incidents and unusual incidents.
- (2) An agency provider, upon realization that it may be unable to continue to effectively provide services to an individual, shall immediately engage the individual and the individual's service and support administrator to consider alternative strategies for serving the individual that ensure the health and safety of the individual.
- (3) An agency provider shall notify, in writing, an individual and the individual's service and support administrator in the event that the agency provider intends to cease providing services to the individual no less than thirty calendar days prior to termination of services. The agency provider shall convey documents and records to the individual's service and support administrator as requested.
- (4) An agency provider shall ensure that a direct support professional does not:
- (a) Provide services to the direct support professional's minor child;
  - (b) Provide services to the direct support professional's spouse;
  - (c) Provide services to the minor child of the director of operations;
  - (d) Provide services to the spouse of the director of operations;
  - (e) Administer medication or perform health-related activities for individuals who receive services unless the direct support professional meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted pursuant to those chapters; or
  - (f) Use or be under the influence of the following while providing services:
    - (i) Alcohol;
    - (ii) Illegal drugs;
    - (iii) Illegal chemical substances; or
    - (iv) Controlled substances that may adversely affect the direct support professional's ability to furnish services.

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### **(H) Requirements for director of operations**

- (1) An agency provider shall employ a director of operations who:
  - (a) Has a valid birth certificate.
  - (b) Is at least twenty-one years of age.
  - (c) Has a valid social security card and a valid government-issued photo identification.
  - (d) Has at least:
    - (i) One year of full-time (or equivalent part-time) paid work experience in the provision of specialized services; or
    - (ii) Four years of experience providing care to a family member (i.e., parent, child, or sibling) with a developmental disability.
  - (e) Has at least one year of full-time (or equivalent part-time) paid work experience in:
    - (i) Supervision of employees;
    - (ii) Development, oversight, and/or supervision of programs or services; and
    - (iii) Financial management of an organization.
  - (f) Holds either:
    - (i) A bachelor's degree from an accredited college or university; or
    - (ii) A high school diploma or certificate of high school equivalence and has at least:
      - (a) Four years of full-time (or equivalent part-time) paid work experience as a supervisor of specialized services; or
      - (b) Four years of experience providing care to a family member (i.e., parent, child, or sibling) with a developmental disability.
  - (g) Is able to read, write, and understand English at a level sufficient to comply with all requirements set forth in administrative rules governing the services provided by the agency provider.
- (2) Prior to the agency provider's application for initial certification, the director of operations shall successfully complete the training specified in appendix A to this rule.

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- (3) On an annual basis, the director of operations shall successfully complete the training specified in appendix A to this rule.
  - (4) The director of operations shall undergo a background investigation in accordance with rule 5123-2-02 of the Administrative Code and consent to be enrolled by the department in the Ohio attorney general's retained applicant fingerprint database (also known as "Rapback").
- (I) Required actions and notifications regarding director of operations
- (1) An agency provider shall notify the department via the provider services management system if the director of operations is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code within fourteen calendar days after the date of such charge, conviction, guilty plea, or finding.
  - (2) An agency provider shall notify the department via the provider services management system within fourteen calendar days of determining that the director of operations is or has become a related party of a person or government entity for which the department refused to issue or renew or revoked certification pursuant to section 5123.166 of the Revised Code.
  - (3) An agency provider shall notify the department via the provider services management system within fourteen calendar days of determining that the director of operations has had a professional registration, certification, or license (other than a driver's license) suspended or revoked.
  - (4) An agency provider shall update its record in the provider services management system within fourteen calendar days when a director of operations leaves or joins the agency provider's employ.
  - (5) When the director of operations leaves an agency provider's employ, the agency provider shall report within fourteen calendar days via the provider services management system, the agency provider's plan for identifying a new director of operations and to whom executive authority has been delegated in the interim period.
  - (6) A person newly appointed or employed as director of operations of an agency provider shall complete the department-provided web-based orientation for directors of operations and department-provided training in empathy-based care described in appendix A to this rule within thirty calendar days of appointment or hire.
  - (7) A director of operations shall inform the department via the provider services management system, if he or she serves as director of operations for more than one agency provider.



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- (8) A director of operations shall inform the department via the provider services management system, if he or she is or was the director of operations of an agency provider at a point in time within the last five years when the agency provider had its provider certification revoked or not renewed.
- (9) A director of operations shall designate in writing a staff member to whom executive authority has been delegated in the temporary absence of the director of operations.

### **(J) Requirements for direct support professionals**

- (1) An agency provider shall ensure that each direct support professional:
  - (a) Is at least eighteen years of age.
  - (b) Meets one of the following:
    - (i) Holds a high school diploma;
    - (ii) Holds a certificate of high school equivalence;
    - (iii) On September 30, 2009, held independent provider certification issued by the department; or
    - (iv) On September 30, 2009, was employed by or under contract with an agency provider certified by the department.
  - (c) Is able to read, write, and understand English at a level sufficient to comply with all requirements set forth in administrative rules governing the services provided by the direct support professional.
- (2) An agency provider shall ensure that each direct support professional, except for direct support professionals exempted as specified in appendix B to this rule, holds and maintains:
  - (a) Valid "American Red Cross" or equivalent certification in first aid which included an in-person skills assessment completed with an approved trainer; and
  - (b) Valid "American Red Cross" or equivalent certification in cardiopulmonary resuscitation which included an in-person skills assessment completed with an approved trainer.
- (3) An agency provider shall ensure that each direct support professional, except for direct support professionals exempted as specified in appendix B to this rule, successfully completes, prior to providing direct services the training specified in appendix C to this rule.

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### **(K) Requirements for supervisory staff**

An agency provider shall ensure that each staff member who supervises direct support professionals:

- (1) Meets the requirements set forth in paragraphs (J)(1) to (J)(3) of this rule; and
- (2) Has successfully completed training regarding all relevant duties and responsibilities of being a supervisor for the agency provider within ninety calendar days of becoming a supervisor.

### **(L) Requirements for volunteers**

- (1) An agency provider may engage volunteers to provide supplementary services. An agency provider shall not bill for services provided by volunteers.
- (2) An agency provider shall ensure that volunteers are at all times under supervision of paid supervisory staff of the agency provider.
- (3) An agency provider shall ensure that volunteers do not provide intimate personal care (such as dressing, showering, bathing, toileting, or changing undergarments), administer medication, or perform health-related activities.
- (4) The agency provider shall ensure that volunteers who provide more than forty hours of service working directly with individuals served by the agency provider during a calendar year:
  - (a) Receive training in:
    - (i) The role of a volunteer in supporting individuals served by the agency provider including the national alliance for direct support professionals code of ethics and the rights of individuals set forth in section 5123.62 of the Revised Code;
    - (ii) Recognizing and reporting major unusual incidents and unusual incidents; and
    - (iii) An overview of emergency procedures.
  - (b) Undergo background investigations.
    - (i) The background investigation for a volunteer shall include:
      - (a) Requiring the volunteer to submit a statement to the agency provider with the volunteer's signature attesting that he or she has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

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- (b) Requiring the volunteer to sign an agreement under which the volunteer agrees to notify the agency provider within fourteen calendar days if the volunteer is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code. The agreement shall provide that failure to make the notification may result in termination of the volunteer's services.
        - (c) Checking each of the databases described in paragraph (C)(2) of rule 5123-2-02 of the Administrative Code to determine if the volunteer is included.
        - (d) Obtaining a criminal records check conducted by the Ohio bureau of criminal identification and investigation. If the volunteer does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the criminal records check shall include information from the federal bureau of investigation.
      - (ii) The agency provider shall, at a frequency of no less than once every five years, conduct a background investigation in accordance with paragraph (L)(4)(b)(i) of this rule for each volunteer.
      - (iii) The agency provider shall not engage or continue to engage a volunteer who:
        - (a) Is included in one or more of the databases described in paragraphs (C)(2)(a) to (C)(2)(f) of rule 5123-2-02 of the Administrative Code; or
        - (b) Has a conviction for, pleads guilty to, or is found eligible for intervention in lieu of conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code if the corresponding exclusionary period as specified in paragraph (E) of rule 5123-2-02 of the Administrative Code has not elapsed.
- (M) Procedure for obtaining initial agency provider certification
  - (1) An applicant for initial agency provider certification shall submit an application via the provider services management system, for supported living services and the specific home and community-based services the applicant seeks to provide in accordance with procedures prescribed by the department. The application shall include required signatures and supporting documentation to demonstrate that standards are met as required by this rule and rules in Chapters 5123-9 and 5123:2-9 of the Administrative Code for the specific home and community-based services the applicant seeks to provide including, but not limited to:
    - (a) A certificate of good standing from the Ohio secretary of state demonstrating the

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agency provider's status as a for-profit corporation, nonprofit corporation, limited liability company, or limited liability partnership.

- (b) Proof of an unencumbered line of credit in the agency provider's name in an amount of at least ten thousand dollars.
  - (c) A certificate of general liability insurance in an amount of at least one million dollars which includes coverage for individuals' losses due to theft or property damage.
  - (d) Proof that the agency provider employs a director of operations who meets the requirements set forth in this rule.
  - (e) Proof that in addition to employing a director of operations, the agency provider employs at least one other person for the purpose of providing services.
  - (f) An employer identification number from the internal revenue service.
  - (g) A certificate of policy from the Ohio bureau of workers' compensation.
  - (h) The name, country of birth, date of birth, and social security number for any person having a financial interest of five per cent or more in the agency provider (including a direct, indirect, security, or mortgage financial interest).
  - (i) Written policies and procedures that address the agency provider's management practices in:
    - (i) Confidentiality of individuals' records;
    - (ii) Management of individuals' funds;
    - (iii) Reporting and investigation of major unusual incidents and unusual incidents; and
    - (iv) Documentation and billing for services.
  - (j) The application fee specified in paragraph (Q) of this rule except when, based on the specific home and community-based services to be provided, the applicant is exempted from paying an application fee in accordance with appendix D to this rule; and
  - (k) The criminal records check by the Ohio bureau of criminal identification and investigation, and when applicable by the federal bureau of investigation, for the director of operations.
- (2) The department will review an application within thirty calendar days of receipt of all

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required components to determine if the applicant meets the standards for the requested certification.

- (a) If the department determines an applicant seeking to provide home and community-based services meets the standards for the requested certification, the department will initiate the process for the applicant to obtain a medicaid provider agreement from the Ohio department of medicaid. The applicant may be subject to an on-site visit by the Ohio department of medicaid or its designee in accordance with rule 5160-1-17.8 of the Administrative Code; successful completion of the on-site visit is required prior to issuance of the medicaid provider agreement by the Ohio department of medicaid and certification issued by the department.
- (b) If, upon review of the application, the department determines that supporting documentation does not demonstrate that the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail and advise that the applicant has thirty calendar days to submit components needed to demonstrate that the applicant meets the standards for the requested certification.
  - (i) When the department receives components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the application will be advanced for processing.
  - (ii) When an applicant fails to submit components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the department will take no further action with respect to the application.
- (3) When the department has determined the applicant meets the standards for the requested certification and, when applicable, after the Ohio department of medicaid has issued the medicaid provider agreement to an applicant seeking to provide home and community-based services, the department will notify the applicant by electronic mail that certification is approved. The notification will specify the effective date and expiration date of the certification and the specific services for which the applicant is certified.
- (4) The department's review of an application may extend beyond thirty calendar days when:
  - (a) One or more of the submitted documents requires verification; or
  - (b) The director of operations:
    - (i) Has a conviction or notation on his or her criminal records check by the Ohio bureau of criminal identification and investigation or the federal bureau of investigation;
    - (ii) Is included in one or more of the databases described in paragraph (C)(2) of

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rule 5123-2-02 of the Administrative Code;

- (iii) Is the primary person involved in a major unusual incident;
  - (iv) Is under consideration for placement on the abuser registry; or
  - (v) Is a related party to an agency provider or an independent provider whose certification has been suspended or revoked or is proposed for revocation.
- (5) When the department determines an applicant does not meet the standards for the requested certification, the department will notify the applicant in accordance with paragraph (S)(3) of this rule that the certification is denied. The notification will specify the reason for denial.
- (N) Procedure for obtaining certification to provide additional home and community-based services during the term of existing department-issued certification
- (1) A certified agency provider seeking to provide additional home and community-based services shall submit an application via the provider services management system, for the additional home and community-based services the agency provider seeks to provide. The application shall include:
- (a) Required signatures and supporting documentation to demonstrate that standards are met as required by this rule and rules in Chapters 5123-9 and 5123:2-9 of the Administrative Code for the specific home and community-based services the applicant seeks to provide.
  - (b) The application fee specified in paragraph (Q) of this rule except when, based on the specific home and community-based services to be provided, the applicant is exempted from paying an application fee in accordance with appendix D to this rule.
- (2) The department will review an application within thirty calendar days of receipt of all required components to determine if the applicant meets the standards for the requested certification. If, upon review of the application, the department determines that supporting documentation does not demonstrate that the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail and advise that the applicant has thirty calendar days to submit components needed to demonstrate that the applicant meets the standards for the requested certification.
- (a) When the department receives components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the application will be advanced for processing.
  - (b) When an applicant fails to submit components needed to demonstrate that the applicant meets the standards for the requested certification within the specified

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thirty calendar days, the department will take no further action with respect to the application.

- (3) When the department determines the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail that certification is approved. The notification will specify the effective date and expiration date of the certification and the specific services for which the applicant is certified.
- (4) When the department determines the applicant does not meet the standards for the requested certification, the department will notify the applicant in accordance with paragraph (S)(3) of this rule that the certification is denied. The notification will specify the reason for denial.

### **(O) Procedure for obtaining renewal agency provider certification**

- (1) The department will notify an agency provider by electronic mail to the address in the provider services management system of required certification renewal no later than ninety calendar days prior to the date the agency provider's certification expires. The notification will describe the procedures for submitting the certification renewal application in accordance with this rule.
- (2) The agency provider shall submit the certification renewal application via the provider services management system. The application shall include:
  - (a) Required signatures and supporting documentation to demonstrate that standards are met as required by this rule and rules in Chapters 5123-9 and 5123:2-9 of the Administrative Code for the specific home and community-based services the applicant seeks to provide;
  - (b) The application fee specified in paragraph (Q) of this rule except when, based on the specific home and community-based services to be provided, the applicant is exempted from paying an application fee in accordance with appendix D to this rule; and
  - (c) Criminal records checks by the Ohio bureau of criminal identification and investigation, and when applicable by the federal bureau of investigation, for the director of operations, unless the director of operations has been enrolled without interruption in the Ohio attorney general's retained applicant fingerprint database (also known as "Rapback") for the entire previous certification term and has been a resident of Ohio without interruption for the past five years.
- (3) The department will review an application within thirty calendar days of receipt of all required components to determine if the applicant meets the standards for the requested certification.
  - (a) If the department determines an applicant meets the standards for the requested

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certification, the department will notify the applicant by electronic mail that certification is approved. The notification will specify the effective date and expiration date of the certification and the specific services for which the applicant is certified.

- (b) If, upon review of the application, the department determines that supporting documentation does not demonstrate that the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail and advise that the applicant has thirty calendar days to submit components needed to demonstrate that the applicant meets the standards for the requested certification.
  - (i) When the department receives components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the application will be advanced for processing.
  - (ii) When an applicant fails to submit components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the department will take no further action with respect to the application.
- (4) The department's review of an application may extend beyond thirty calendar days when:
  - (a) One or more of the submitted documents requires verification; or
  - (b) The director of operations:
    - (i) Has a conviction or notation on his or her criminal records check by the Ohio bureau of criminal identification and investigation or the federal bureau of investigation;
    - (ii) Is included in one or more of the databases described in paragraph (C)(2) of rule 5123-2-02 of the Administrative Code;
    - (iii) Is the primary person involved in a major unusual incident;
    - (iv) Is under consideration for placement on the abuser registry; or
    - (v) Is a related party to an agency provider or an independent provider whose certification has been suspended or revoked or is proposed for revocation.
- (5) When the department determines an applicant does not meet the standards for the requested certification, the department will notify the applicant in accordance with paragraph (S)(3) of this rule that the certification is denied. The notification will specify the reason for denial.
- (6) When an agency provider submits an application for renewal certification prior to



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certification expiration that demonstrates the applicant meets the standards for the requested renewal certification, the agency provider's certification will be renewed without lapse.

- (7) When an agency provider submits an application for renewal certification fewer than forty-five calendar days in advance of certification expiration that demonstrates the applicant meets the standards for the requested renewal certification, the agency provider may experience a gap in its ability to bill for services provided between the date of certification expiration and the date the renewal certification is approved. Once the renewal certification is approved, however, the agency provider may bill for services provided during that period.
- (8) When an agency provider submits an application for renewal certification after certification expiration, there shall be a lapse of certification from the date of certification expiration to the date the department receives an application for renewal certification that demonstrates the applicant meets the standards for the requested renewal certification. The agency provider shall not provide services nor be reimbursed for provision of services during the lapse.
- (9) An agency provider shall not provide services nor submit claims for reimbursement for services provided subsequent to expiration of the agency provider's certification.

### **(P) Application for certification subsequent to expiration**

- (1) An applicant whose certification has been expired for less than one year shall be required to apply for and meet the requirements for renewal certification.
- (2) An applicant whose certification has been expired for one year or more shall be required to apply for and meet the requirements for initial certification.

### **(Q) Application fees**

- (1) Applicants seeking certification to provide services, other than those exempted in accordance with appendix D to this rule, shall submit an application fee at the time of application for initial certification, application for certification to provide additional home and community-based services during the term of existing department-issued certification, and application for renewal certification.

#### **(a) Application fees for initial certification and renewal certification**

- (i) The application fee for a small agency provider (i.e., one that serves or plans to serve fifty or fewer individuals) seeking initial certification or renewal certification is eight hundred dollars.
- (ii) The application fee for a large agency provider (i.e., one that serves or plans to serve fifty-one or more individuals) seeking initial certification or renewal

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certification is one thousand six hundred dollars.

(b) Application fees for certification to provide additional home and community-based services during the term of existing certification

(i) The application fee for a small agency provider (i.e., one that serves or plans to serve fifty or fewer individuals) seeking certification to provide additional home and community-based services is seventy-five dollars.

(ii) The application fee for a large agency provider (i.e., one that serves or plans to serve fifty-one or more individuals) seeking certification to provide additional home and community-based services is one hundred fifty dollars.

(2) Applicants shall pay application fees by electronic check or credit card.

(3) Application fees are non-refundable.

(4) The department will invalidate a certification issued to an applicant whose application fees cannot be collected due to non-sufficient funds available or for any other reason. An agency provider whose certification is invalidated in accordance with this paragraph shall be required to initiate and submit an entirely new application via the provider services management system.

### **(R) Certification terms**

(1) Initial certification will be issued for a term of three years.

(2) Renewal certification will be issued for a term of three years.

(3) Certification to provide additional home and community-based services will be issued for the remainder of the term of the applicant's existing initial certification or renewal certification.

### **(S) Denial, suspension, or revocation of certification**

(1) Agency providers shall be subject to monitoring and compliance reviews as set forth in rules promulgated by the department. Failure to comply with this rule or other rules governing services provided by the agency provider may result in corrective action by the department, up to and including suspension, summary suspension, denial, or revocation of certification.

(2) The department may deny, suspend, or revoke an agency provider's certification for good cause pursuant to section 5123.166 of the Revised Code.

(3) When denying, suspending, or revoking certification under this rule, the department will comply with the notice and hearing requirements of Chapter 119. of the Revised Code

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and section 5123.166 of the Revised Code.

- (4) When the department denies an application for renewal certification, the agency provider shall comply with the department's adjudication order within thirty calendar days of the date of the mailing of the order.

### **(T) Department's authority to waive provisions of this rule**

- (1) For good cause, the department may waive a provision of this rule. The department's decision to waive a provision of this rule will not be contrary to the rights, health, or safety of individuals served.
- (2) An agency provider or applicant may initiate a request for the department to waive a provision of this rule by submitting the request with justification in writing.
  - (a) The department may ask for input regarding the request from individuals served, individuals' guardians, or county boards.
  - (b) The department will grant or deny a request within fourteen calendar days of receipt of the request or within such longer period of time as the department deems necessary and may put whatever conditions on approval as determined to be necessary.
  - (c) The department's decision regarding a request to waive a provision of this rule is not subject to appeal.

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APPENDIX A

TRAINING REQUIREMENTS FOR DIRECTOR OF OPERATIONS

<b>Prior to the agency provider's application for initial certification, the director of operations shall successfully complete:</b>	<ul style="list-style-type: none"><li>(1) Department-provided web-based orientation for directors of operations including:<ul style="list-style-type: none"><li>(a) "National Alliance for Direct Support Professionals" code of ethics</li><li>(b) Rights of individuals set forth in section 5123.62 of the Revised Code and the agency provider's responsibilities set forth in sections 5123.63 and 5123.64 of the Revised Code</li><li>(c) Facilitating community participation and integration for individuals served</li><li>(d) Service documentation and billing for services</li><li>(e) Rule 5123-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department</li><li>(f) Internal compliance programs</li></ul></li><li>(2) Department-provided training in empathy-based care</li></ul>
<b>On an annual basis, the director of operations shall successfully complete:</b>	<ul style="list-style-type: none"><li>(1) Two hours of department-provided web-based training in:<ul style="list-style-type: none"><li>(a) Essential topics relevant to the agency provider's role and responsibilities</li><li>(b) Empathy-based care</li><li>(c) Rule 5123-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department since previous year's training</li></ul></li><li>(2) Four hours of training selected by the director of operations in topics relevant to services provided and individuals served by the agency provider and/or management of the agency provider</li></ul>

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## **APPENDIX B**

### **DIRECT SUPPORT PROFESSIONALS EXEMPTED FROM SOME REQUIREMENTS OF THIS RULE BASED ON SPECIFIC HOME AND COMMUNITY-BASED SERVICES PROVIDED**

- (1) Direct support professionals engaged in provision of remote support in accordance with rule 5123-9-35 of the Administrative Code are not required to hold first aid certification as specified in paragraph (J)(2)(a) of this rule or cardiopulmonary resuscitation certification as specified in paragraph (J)(2)(b) of this rule.
- (2) Direct support professionals engaged in provision of the following home and community-based services are not required to hold first aid certification as specified in paragraph (J)(2)(a) of this rule or cardiopulmonary resuscitation certification as specified in paragraph (J)(2)(b) of this rule or to complete the training described in appendix C to this rule:
  - (a) Assistive technology in accordance with rule 5123-9-12 of the Administrative Code;
  - (b) Clinical/therapeutic intervention in accordance with rule 5123-9-41 of the Administrative Code but only when the direct support professionals providing clinical/therapeutic intervention are "Senior Level Specialized Clinical/Therapeutic Interventionists" or "Specialized Clinical/Therapeutic Interventionists";
  - (c) Environmental accessibility adaptations in accordance with rule 5123-9-23 of the Administrative Code;
  - (d) Functional behavioral assessment in accordance with rule 5123-9-43 of the Administrative Code;
  - (e) Home-delivered meals in accordance with rule 5123-9-29 of the Administrative Code;
  - (f) Interpreter services in accordance with rule 5123:2-9-36 of the Administrative Code;
  - (g) Money management in accordance with rule 5123-9-20 of the Administrative Code;
  - (h) Non-medical transportation in accordance with rule 5123-9-18 of the Administrative Code but only when the applicant for agency provider certification is an operator of commercial vehicles;
  - (i) Nutrition services in accordance with rule 5123:2-9-28 of the Administrative Code;
  - (j) Participant/family stability assistance in accordance with rule 5123-9-46 of the Administrative Code;

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- (k) Social work in accordance with rule 5123-9-38 of the Administrative Code;
- (l) Specialized medical equipment and supplies in accordance with rule 5123-9-25 of the Administrative Code;
- (m) Support brokerage in accordance with rule 5123-9-47 of the Administrative Code;  
and/or
- (n) Transportation in accordance with rule 5123-9-24 of the Administrative Code but only when the applicant for agency provider certification is an operator of commercial vehicles.

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## APPENDIX C

### TRAINING REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS

<p><b>Prior to providing direct services, each direct support professional shall successfully complete:</b></p>	<ul style="list-style-type: none"> <li>(1) Training provided or arranged by the agency provider in: <ul style="list-style-type: none"> <li>(a) Mission, vision, values, and organizational structure of the agency provider</li> <li>(b) Policies, procedures, and work rules of the agency provider</li> <li>(c) Overview of specific services provided by the agency provider</li> <li>(d) Service documentation that supports billing for services provided</li> </ul> </li> <li>(2) Training provided by the department or by an entity using department-provided curriculum in: <ul style="list-style-type: none"> <li>(a) Empathy-based care</li> <li>(b) Role of a direct support professional including "National Alliance for Direct Support Professionals" code of ethics</li> <li>(c) Rights of individuals set forth in section 5123.62 of the Revised Code</li> <li>(d) Implementation of individual service plans and service outcomes</li> <li>(e) Recognizing and reporting major unusual incidents and unusual incidents</li> <li>(f) Universal precautions for infection control</li> </ul> </li> <li>(3) Training provided or arranged by the agency provider specific to the individual service plan of each individual the direct support professional will support regarding what is important to the individual and what is important for the individual (e.g., health and safety, community integration, employment goals, behavioral support strategy, management of the individual's funds, or medication administration/delegated nursing needs)</li> </ul>
<p><b>Within thirty days of hire, each direct support professional shall successfully complete:</b></p>	<ul style="list-style-type: none"> <li>(1) Training provided by the department or by an entity using department-provided curriculum in: <ul style="list-style-type: none"> <li>(a) Person-centered planning and provision of services</li> <li>(b) Facilitating community participation and integration for individuals served</li> <li>(c) Provisions of rule 5123-17-02 of the Administrative Code relevant to the direct support professional's duties including a review of health and welfare alerts issued by the department</li> </ul> </li> <li>(2) Department-provided training in empathy-based care</li> </ul>

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<b>On an annual basis, each direct support professional shall successfully complete:</b>	<ul style="list-style-type: none"><li>(1) Two hours of training provided by the department or by an entity using department-provided curriculum in topics relevant to the direct support professional's duties including:<ul style="list-style-type: none"><li>(a) "National Alliance for Direct Support Professionals" code of ethics</li><li>(b) Rights of individuals set forth in section 5123.62 of the Revised Code</li><li>(c) Empathy-based care</li></ul></li><li>(2) Six hours of training provided or arranged by the agency provider in:<ul style="list-style-type: none"><li>(a) Agency-specific data regarding major unusual incidents and strategies for preventing major unusual incidents</li><li>(b) Review of health and welfare alerts issued by the department since previous year's training</li><li>(c) Topics selected from the following list that are relevant to services provided and people served by the agency provider:<ul style="list-style-type: none"><li>(i) Components of quality care (e.g., interpersonal relationships and trust; cultural competency; effective communication; person-centered philosophy, planning, and practice; implementing individual service plans; trauma-informed care; empathy-based care)</li><li>(ii) Health and safety (e.g., signs and symptoms of illness or injury and procedure for response; transportation safety)</li><li>(iii) Positive behavioral support (e.g., creating positive culture; general requirements for intervention and behavioral support strategies and role of the direct support professional including documentation; crisis intervention techniques)</li></ul></li></ul></li></ul>
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## **APPENDIX D**

### **AGENCY PROVIDERS EXEMPTED FROM REQUIREMENT TO PAY APPLICATION FEE BASED ON SPECIFIC HOME AND COMMUNITY-BASED SERVICES PROVIDED**

Applicants for agency provider certification to provide exclusively one or more of the following home and community-based services will not be required to pay an application fee as specified in paragraph (Q) of this rule:

- (1) Assistive technology in accordance with rule 5123-9-12 of the Administrative Code;
- (2) Environmental accessibility adaptations in accordance with rule 5123-9-23 of the Administrative Code;
- (3) Functional behavioral assessment in accordance with rule 5123-9-43 of the Administrative Code;
- (4) Home-delivered meals in accordance with rule 5123-9-29 of the Administrative Code;
- (5) Interpreter services in accordance with rule 5123:2-9-36 of the Administrative Code;
- (6) Non-medical transportation in accordance with rule 5123-9-18 of the Administrative Code but only when the applicant for agency provider certification is an operator of commercial vehicles;
- (7) Nutrition services in accordance with rule 5123:2-9-28 of the Administrative Code;
- (8) Participant-directed homemaker/personal care in accordance with rule 5123-9-32 of the Administrative Code;
- (9) Participant/family stability assistance in accordance with rule 5123-9-46 of the Administrative Code;
- (10) Social work in accordance with rule 5123:2-9-38 of the Administrative Code;
- (11) Specialized medical equipment and supplies in accordance with rule 5123-9-25 of the Administrative Code;
- (12) Support brokerage in accordance with rule 5123-9-47 of the Administrative Code; and/or
- (13) Transportation in accordance with rule 5123-9-24 of the Administrative Code but only when the applicant for agency provider certification is an operator of commercial vehicles.