

5123-7-02

**Intermediate care facilities for individuals with intellectual disabilities - provider agreement and other essential requirements.**

(A) Purpose

This rule sets forth requirements for an intermediate care facility for individuals with intellectual disabilities (ICFIID) to be eligible for initial and continued participation in the Ohio medicaid program and to receive payment for ICFIID services to eligible residents.

(B) Definitions

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

- (1) "Certification" means the process by which the Ohio department of health certifies its findings to the federal centers for medicare and medicaid services or the Ohio department of medicaid with respect to a facility's compliance with health and safety requirements of divisions (a), (b), (c), and (d) of section 1919 of the Social Security Act, 42 U.S.C. 1396r (1999).
- (2) "Certified beds" means beds that are counted in a facility that meets medicaid standards. A count of facility beds may differ depending on whether the count is used for certification, licensure, eligibility for medicaid payment formulas, eligibility for waivers, or other purposes.
- (3) "Change of operator" has the same meaning as in section 5124.01 of the Revised Code.
- (4) "Facility closure" has the same meaning as in section 5124.01 of the Revised Code.
- (5) "Operator" means the individual, partnership, association, trust, corporation, or other legal entity that operates an ICFIID.
- (6) "Residential respite" has the same meaning as in rule 5123-9-34 of the Administrative Code.
- (7) "Voluntary termination" has the same meaning as in section 5124.01 of the Revised Code.

(C) Eligibility for participation

- (1) To participate in the Ohio medicaid program an operator ~~shall~~ must:
  - (a) Operate a residential facility licensed by the department in accordance with section 5123.19 of the Revised Code and rules adopted to implement that section.
  - (b) Operate a facility certified by the Ohio department of health as being in compliance with applicable federal regulations for medicaid participation as an ICFIID with a minimum of four certified beds. A facility's certification as an ICFIID by the Ohio department of health governs the types of services the facility may provide.
  - (c) Hold a medicaid provider agreement with the Ohio department of medicaid to operate the ICFIID.
- (2) An operator ~~shall~~ will:
  - (a) Execute the provider agreement in the format provided by the Ohio department of medicaid.
  - (b) Apply for and maintain a valid license issued by the department.
  - (c) Comply with the provider agreement and all applicable federal, state, and local laws and rules.
  - (d) Open all records relating to the costs of its services for inspection and audit by the department and the Ohio department of medicaid.
  - (e) Supply to the department and the Ohio department of medicaid such information as the department or the Ohio department of medicaid ~~requires~~ requests concerning services to individuals who have applied for or been determined to be eligible for medicaid.
  - (f) Permit access to the ICFIID and its records for inspection by the department, the Ohio department of medicaid, the Ohio department of health, the county department of job and family services, and any other state or local government entity having authority to inspect, to the extent of that entity's authority.
  - (g) In the case of a change of operator, adhere to the following procedures:

- (i) The exiting operator or owner and entering operator must provide a written notice to the department and the Ohio department of medicaid, as provided in section 5124.51 of the Revised Code, at least forty-five calendar days prior to the effective date of any actions that constitute a change of operator, but at least ninety calendar days prior to the effective date if residents are to be relocated. An exiting operator that does not give proper notice is subject to the penalties specified in section 5124.42 of the Revised Code.
- (ii) The entering operator must submit documentation of any transaction (e.g., sales agreement, contract, or lease) as requested by the department or the Ohio department of medicaid to determine whether a change of operator has occurred.
- (iii) The entering operator ~~shall~~ will submit an application for participation in the medicaid program and a written statement of intent to abide by rules of the department and the Ohio department of medicaid, the provisions of the assigned provider agreement, and any centers for medicare and medicaid services "Statement of Deficiencies and Plan of Correction" forms (CMS-2567, ~~February 1999~~) submitted by the exiting operator.
- (iv) An entering operator is subject to the same survey findings as the exiting operator unless the entering operator does not accept assignment of the exiting operator's provider agreement. Refusal to accept assignment results in termination of certification on the last day of the exiting operator's participation in medicaid. An entering operator who refuses assignment may reapply for medicaid participation and must undergo a complete initial certification survey by the Ohio department of health. There may be gaps in medicaid coverage at the facility.
- (h) Comply with Title VI of the Civil Rights Act, 42 U.S.C. 2000d (1964), Title VII of the Civil Rights Act, 42 U.S.C. 2000e (1991), and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 (2008), and ~~shall~~ will not discriminate against any resident on the basis of race, color, age, sex, gender, sexual orientation, creed, national origin, ancestry, religion, or disability.
- (i) Provide written notice to the department within five calendar days of any bankruptcy or receivership pertaining to the provider. ~~All requests shall be in writing and shall be mailed to~~ The written notice will be sent by

electronic mail to [licensuredevelopmentapps@dodd.ohio.gov](mailto:licensuredevelopmentapps@dodd.ohio.gov) or by United States mail to "Ohio Department of Developmental Disabilities, Division of Medicaid ~~Development and~~ Administration, 30 East Broad Street, 13th Floor, Columbus, Ohio 43215-3414."

- (j) Provide the department, the Ohio department of medicaid, the resident or guardian (as applicable), and anyone designated by the resident or guardian written notice at least ninety calendar days prior to a facility closure or voluntary termination from the medicaid program in accordance with section 5124.50 of the Revised Code. An operator that does not issue the proper notice is subject to the penalties specified in section 5124.42 of the Revised Code.
- (3) An operator ~~shall~~ will not:
  - (a) Charge, to an individual or applicant who is eligible for medicaid:
    - (i) A fee for the application process;
    - (ii) An admission fee; or
    - (iii) An advance deposit.
  - (b) Directly bill its residents for or directly pass through to its residents the franchise permit fee.
  - (c) Require a third party to accept personal responsibility for paying the ICFIID charges ~~out of his or her own funds~~. An operator, however, may require a representative who has legal access to an individual's income or resources available to pay for ICFIID services to sign a contract, without incurring personal financial liability, to provide payment from the individual's income or resources if the individual's medicaid application is denied and if the individual's cost of care is not being paid by medicare or another third-party payor. A third-party guarantee is not the same as a third-party payor (i.e., an insurance company), and this provision does not preclude the operator from obtaining information about medicare and medicaid eligibility or the availability of private insurance. The prohibition against third-party guarantees applies to all residents and prospective residents of an ICFIID regardless of payment source. This provision does not prohibit a third party from voluntarily making payment on behalf of an individual.

(D) Effective dates of provider agreements

- (1) Effective dates of initial provider agreements generally are assigned by the Ohio department of health on the basis of findings of compliance or substantial compliance with standards of certification.
- (2) If a provider agreement is involuntarily terminated by the centers for medicare and medicaid services as the result of a look behind survey, re-entry into the medicaid program requires satisfaction of the reasonable assurance period as set forth in the [centers for medicare and medicaid services](https://www.cms.gov/medicare/regulations-guidance/manuals/internet-only-manuals-ioms) "Medicaid State Operations Manual," chapter 2, section 2016F ~~(October 17, 2018)~~ [\(publication 100-07\)](https://www.cms.gov/medicare/regulations-guidance/manuals/internet-only-manuals-ioms) available at <https://www.cms.gov/medicare/regulations-guidance/manuals/internet-only-manuals-ioms>.

(E) Conditional provider agreements and cancellation clauses

- (1) If the Ohio department of health determines that an ICFIID is in substantial compliance with medicaid standards but has deficiencies that must be corrected, the Ohio department of medicaid may execute a conditional provider agreement for a term of up to twelve full calendar months, subject to an automatic cancellation clause.
- (2) The ICFIID must correct deficiencies within sixty calendar days following the scheduled date of correction as established by the Ohio department of health.
- (3) If deficiencies are corrected before the cancellation date, the Ohio department of health may rescind the cancellation notice, and ~~shall~~ [will](#) notify the department and the Ohio department of medicaid in writing of its decision.
- (4) If deficiencies are not corrected before the cancellation date, the Ohio department of health may propose termination of the provider agreement.
- (5) If deficiencies are not corrected, the Ohio department of medicaid may cancel the provider agreement in accordance with section 5164.38 of the Revised Code, unless the Ohio department of health:
  - (a) Finds that all required corrections have been made and notifies the department and the Ohio department of medicaid; or
  - (b) Determines that substantial progress has been made in carrying out a plan of correction that has been submitted to and accepted by the Ohio

department of health.

(F) Termination, suspension, denial, or non-renewal of provider agreement

- (1) At the request of the department or upon its own initiative, the Ohio department of medicaid may terminate, suspend, or not enter into the provider agreement upon thirty calendar days written notice to the provider for a violation of Chapter 5123., 5124., or 5160. of the Revised Code or rules adopted pursuant to those chapters and if applicable, subject to Chapter 119. of the Revised Code.
- (2) In accordance with section 5164.33 of the Revised Code, a provider agreement may be terminated, suspended, denied, or not revalidated if the Ohio department of medicaid determines such an agreement is not in the best interests of the state or medicaid recipients.
- (3) The Ohio department of medicaid ~~shall~~ will terminate, deny, or not revalidate a provider agreement when any of the situations set forth in division (E) of section 5164.38 of the Revised Code occur.

(G) Waiver of licensed capacity

- (1) To accommodate persons in emergency need of ICFIID services, the department may issue an operator a waiver of licensed capacity. A waiver of licensed capacity is time-limited and temporarily permits the operator to exceed the maximum number of licensed beds.
- (2) A waiver of licensed capacity may be made specifically in order to provide residential respite as a prior-authorized service to a person enrolled in a home and community-based services waiver. Beds designated for residential respite for persons enrolled in home and community-based services waivers ~~shall~~ will not be included in the provider agreement.

(H) Beds subject to certification survey

- (1) All beds in a medicaid-participating ICFIID that are not designated for residential respite for persons enrolled in home and community-based services waivers ~~shall~~ will be surveyed to determine compliance with the applicable certification standards.
- (2) If the beds are certifiable, they ~~shall~~ will be included in the provider agreement.

- (3) Beds authorized through a waiver of licensed capacity in accordance with paragraph (G)(1) of this rule that are used to provide ICFIID services ~~shall~~ will be included in the provider agreement.
- (4) The only other basis for allowing non-participation of a portion of an Ohio ICFIID is certification of noncompliance by the Ohio department of health.

(I) Requirements for out-of-state providers of ICFIID services

To participate in the Ohio medicaid program and receive payment for ICFIID services to eligible Ohio residents, an operator of a facility located outside Ohio ~~shall~~ must:

- (1) Hold a valid state-required license, registration, or equivalent from the respective state that specifies the level of care the facility is qualified to provide;
- (2) Hold a medicaid provider agreement from the respective state as an ICFIID provider type;
- (3) Hold a medicaid provider agreement with the Ohio department of medicaid; and
- (4) Obtain resident-specific and date-specific prior authorization in accordance with rules 5160-1-11 and 5160-1-31 of the Administrative Code.