



Department of Developmental Disabilities
Division of Legal and Oversight

Mike DeWine, Governor
Kim Hauck, Director

NOTICE OF PUBLIC HEARING

DATE: August 19, 2022

TIME: 10:00 a.m.

PLACE: Lobby Hearing Room
Rhodes State Office Tower
30 East Broad Street
Columbus, Ohio 43215

Pursuant to Chapter 119. of the Revised Code, the Ohio Department of Developmental Disabilities hereby gives notice of its intent to rescind and adopt rules of the Administrative Code on a permanent basis on or about October 2, 2022, and to conduct a public hearing thereon. At this public hearing, the Department will accept verbal and/or written testimony regarding the proposed rule actions.

Persons unable to attend the public hearing may submit written comments regarding the proposed rule actions. Any written comments received on or before the public hearing date will be treated as testimony and made available for public review. Submittal of written comments may be made to Becky Phillips, Administrative Rules Coordinator, by email to becky.phillips@dodd.ohio.gov or by U.S. mail to 1810 Sullivant Avenue, Columbus, Ohio 43223-1239.

Based on five-year review, the Department is rescinding rule 5123:2-2-07 (Personal Funds of the Individual) and adopting replacement rule 5123-2-07 of the same title. The rule establishes standards of accountability for a provider when the individual service plan of an individual served by the provider indicates the provider is responsible for managing the individual's personal funds. New rule 5123-2-07 reflects revisions to:

- Simplify the definition of "personal funds,"
- Clarify provisions that have caused confusion,
- Incorporate additional paragraph headings,
- Align wording with newer rules, and
- Update citations to administrative rules.

Based on five-year review, the Department is rescinding rule 5123:2-3-01 (Licensed Residential Facilities - Administration and Operation) and adopting replacement rule 5123-3-01 of the same title. The rule sets forth requirements for administration and operation of residential facilities licensed in accordance with Section 5123.19 of the Revised Code. New rule 5123-3-01 reflects revisions to:

- Realign requirements for residential facilities with those for certified agency providers set forth in currently effective rule 5123-2-08 (Provider Certification - Agency Providers),
- Clarify the roles of licensees and operators,
- Eliminate provisions regarding swimming pools and annual facility inspections as the provisions are being relocated to new rule 5123-3-02,
- Eliminate provisions regarding enrollment of staff in the Ohio Attorney General's Retained Applicant Fingerprint Database which is addressed in currently effective rule 5123-2-02 (Background Investigations for Employment), and
- Update citations to the Administrative Code.

Based on five-year review, the Department is rescinding rule 5123:2-3-02 (Licensed Residential Facilities - Physical Environment Standards, Fire Safety, and Emergency Response Planning) and adopting replacement rule 5123-3-02 of the same title. The rule establishes minimum physical environment and safety standards to ensure that individuals living in residential facilities licensed in accordance with section 5123.19 of the Revised Code are provided a safe,

healthy, and homelike living environment that meets their specific needs. New rule 5123-3-02 reflects revisions to:

- Incorporate physical space and usage requirements currently set forth in rules 5123:2-3-01 and 5123:2-3-08,
- Align emergency reporting requirements with current practice, and
- Update citations to the Administrative Code.

Based on five-year review, the Department is rescinding rule 5123:2-3-04 (Licensed Residential Facilities - Provision of Services and Maintenance of Service Records) and adopting replacement rule 5123-3-04 (Licensed Residential Facilities - Admission of Residents, Provision of Services, and Maintenance of Service Records). The rule establishes standards to ensure that services provided in residential facilities licensed in accordance with Section 5123.19 of the Revised Code focus on achievement of outcomes that are important to and important for individuals served, that individuals are involved in development and delivery of their services, that the confidentiality of individuals' records is maintained, and that individuals' records are readily accessible for service delivery and for review by the Department. New rule 5123-3-04 reflects revisions to:

- Incorporate provisions related to admission of residents currently set forth in rule 5123:2-3-05,
- Clarify elements of a summary to be prepared when a resident leaves a residential facility,
- Align wording with newer rules, and
- Update citations to the Administrative Code.

Based on five-year review, the Department is rescinding rule 5123:2-3-05 (Licensed Residential Facilities - Admission, Termination of Services, and Transfer) and adopting replacement rule 5123-3-05 (Licensed Residential Facilities - Transfer and Termination of Services). Rule 5123:2-3-05 establishes uniform policies for admission, termination of services, and transfer of individuals applying for admission to, or living in, residential facilities licensed in accordance with Section 5123.19 of the Revised Code. New rule 5123-3-05 reflects revisions to:

- Eliminate provisions related to admission of residents as the provisions are being relocated to new rule 5123-3-04,
- Clarify that a "transfer" is an action initiated by the operator of a residential

facility,

- Include additional details regarding the process for a resident to appeal transfer or termination of services, and
- Update citations to the Administrative Code.

Based on five-year review, the Department is rescinding rule 5123:2-3-06 (Licensed Residential Facilities - Compliance Reviews, Issuance of Licenses, and Adverse Actions) and adopting replacement rule 5123-3-06 of the same title. The rule sets forth processes for reviews conducted by the Department to ensure compliance by residential facilities licensed in accordance with Section 5123.19 of the Revised Code, the issuance of licenses for residential facilities operating in accordance with Chapters 5123. and 5124. of the Revised Code, and adverse actions for residential facilities not operating in accordance with Chapters 5123. and 5124. of the Revised Code. New rule 5123-3-06 reflects revisions to:

- Align the process for compliance reviews of residential facilities with the process for certified agency providers set forth in currently effective rule 5123-2-04 (Compliance Reviews of Certified Providers),
- Clarify that licensure fees are to be paid by electronic check or credit card to align with current practice, and
- Update citations to the Administrative Code.

Based on five-year review, the Department is rescinding rule 5123:2-3-07 (Licensed Residential Facilities - Immediate Removal of Residents) and adopting replacement rule 5123-3-07 of the same title. The rule establishes a process by which the Director of the Department may order the immediate removal of a resident of a residential facility licensed in accordance with Section 5123.19 of the Revised Code when conditions present an immediate danger of physical or psychological harm to the resident and all other available interventions have proved ineffective or infeasible. New rule 5123-3-07 reflects revisions to:

- Eliminate paragraph (F) which is redundant, and
- Update citations to the Administrative Code.

Based on five-year review, the Department is rescinding rule 5123:2-3-08 (Licensed Residential Facilities - Development and Renovation) and adopting replacement rule 5123-3-08 of the same title. The rule establishes uniform standards and procedures governing the development and renovation of

residential facilities subject to licensure in accordance with Section 5123.19 of the Revised Code. New rule 5123-3-08 reflects revisions to:

- Eliminate provisions related to physical space and usage requirements as the provisions are being relocated to new rule 5123-3-02,
- Incorporate details regarding the feasibility analysis conducted prior to issuance of an initial or modified license,
- Clarify that licensure fees are to be paid by electronic check or credit card and are non-refundable to align with current practice, and
- Update citations to the Administrative Code.

Based on five-year review, the Department is rescinding rule 5123:2-3-09 (Licensed Residential Facilities - Standards for Evaluating Potential Receivers) and adopting replacement rule 5123-3-09 of the same title. The rule establishes standards for evaluating potential receivers of residential facilities licensed in accordance with Section 5123.19 of the Revised Code. New rule 5123-3-09 reflects revisions to:

- Align wording with newer rules, and
- Update citations to the Administrative Code.

In order to renumber a rule, the Department is rescinding rule 5123:2-3-11 (Licensed Residential Facilities - Room and Board) and adopting replacement rule 5123-3-11 of the same title. The rule identifies components of room and board and establishes standards and procedures for determining the amount of earned income and unearned income retained by an individual as personal funds and the amount of room and board for which an individual is responsible when residing in a residential facility licensed in accordance with Section 5123.19 of the Revised Code other than an Intermediate Care Facility for Individuals with Intellectual Disabilities. New rule 5123-3-11 reflects revisions to:

- Align wording with newer rules,
- Update a citation to the Administrative Code, and
- Eliminate paragraph (H) that addressed implementation of rule 5123:2-3-11 when it went into effect in 2018.

No changes are being made to the substance of the rule.

Based on five-year review, the Department is rescinding rule 5123:2-9-02 (Home and Community-Based Services Waivers - Ensuring the Suitability of Services and

Service Settings) and adopting replacement rule 5123-9-02 of the same title. The rule establishes standards to ensure that Home and Community-Based Services waivers administered by the Department maximize opportunities for enrolled individuals to access the benefits of community living and receive services in the most integrated setting. New rule 5123-9-02 reflects revisions to:

- Better distinguish between a lease and a residency agreement,
- Clarify that a residency agreement is required when an individual receives Shared Living from an unrelated caregiver, and
- Update citations to administrative rules.

The rules are available for review at the [Register of Ohio](#) and at the [Department's website](#). The rules are also available for review at each county board of developmental disabilities.

The Department is committed to providing access and inclusion and reasonable accommodation in its services, activities, programs, and employment opportunities in accordance with the Americans with Disabilities Act and other applicable laws. To request a reasonable accommodation due to a disability, please contact Becky Phillips, Administrative Rules Coordinator, no later than **August 5, 2022** by email to becky.phillips@dodd.ohio.gov or by telephone (614-644-7393 / TTY 711).

Please note that visitors to the Rhodes State Office Tower must enter the building through the Broad Street lobby. Visitors may be required to register at the security desk by showing government-issued photo identification and/or pass through a magnetometer. Visitors' belongings, such as purses and backpacks, may be subject to inspection.