

Temporary Approval of Direct Support Assistants

Since 2021, the Department has issued a series of temporary one-year waivers of the requirement that all direct support professionals be at least 18 years of age, as required by administrative rules. The current temporary waiver expires September 30, 2023. The waivers were instituted in response to the unprecedented workforce crisis that employers throughout Ohio were facing. Agency providers and residential facilities certified or licensed by the Ohio Department of Developmental Disabilities were no exception to the crisis and continue to struggle finding sufficient willing and qualified employees. The Department's goal is to supplement the workforce with talented individuals who may not meet the age requirement in rule but are otherwise well-qualified to provide services, under supervision, to individuals with developmental disabilities. The Department recently conducted a provider survey on the use and success of the waiver. The responses from those providers who took advantage of the waiver demonstrated it's benefit as one solution to the workforce crisis. The Department is therefore renewing the temporary waiver for an additional year.

The agency provider certification rule, Ohio Adm. Code 5123-2-08, and the licensed residential facility rule, Ohio Adm. Code 5123-3-01, require that all direct support professionals be at least 18 years of age. However, the Department can waive provisions of both rules for good cause. See Ohio Adm. Code 5123-2-08(T) and 5123-3-10(C).

For good cause shown, Ohio Adm. Code 5123-2-08(J)(1)(a) and Ohio Adm. Code 5123-3-01(F)(1) are waived **effective September 30, 2023, through September 30, 2024**. Under this waiver, agency providers and licensed residential facilities can employ persons who are sixteen or seventeen years of age only to perform limited duties as direct support assistants. Direct support assistants shall:

- (1) Undergo a background investigation for employment in accordance with Ohio Adm. Code 5123-2-02.
- (2) Meet the training requirements for direct support professionals set forth in Appendix C of Ohio Adm. Code 5123-2-08 or Ohio Adm. Code 5123-3-01 Appendix B.
- (3) A person employed as a direct support assistant shall, at all times, work in the company of an employee of the agency provider who is at least eighteen years of age and:
 - (a) Meets the requirements set forth in Ohio Adm. Code 5123-2-08 or Ohio Adm. Code 5123-3-01; and
 - (b) Is physically present at the location where services are being provided.
- (4) A person employed as a direct support assistant shall not, under any circumstances:

(a) Provide intimate personal care such as dressing, showering, bathing, toileting, or changing undergarments;

(b) Operate a vehicle to transport an individual receiving services;

(c) Administer medication or perform health-related activities;

(d) Provide any care or perform any task for an individual expressly forbidden by the individual (e.g., provide assistance with eating); or

(e) implement any behavioral supports or restrictive measures.

(5) An agency provider shall not assign a direct support assistant to provide services to an individual who does not consent to having services provided by a direct support assistant.

The agency or licensed facility must continue to ensure individuals with developmental disabilities receive quality services provided by capable staff. If the Department determines that any agency or licensed facility has failed to comply with any of the terms of this waiver, the waiver is subject to immediate termination for that agency or licensed facility.

Rendered this 17 day of August 2023.

A handwritten signature in black ink, appearing to read "Kim Hauck".

Kim Hauck, Director