

CB/COG TRAINING FOR COMPLIANCE REVIEWS

January & February 2012

Handouts and Forms

List of DODD Links

List of DODD Rules

Ten Things We Care About

5123:2-1-051 Background Check Rule

Attestation Statement Example

5123:2-2-01 Provider Certification Rule

10/01/2009 Memo on Training Guidelines for 5123:2-2-01

Abuser Registry Annual Notice

5123.62 Rights of Persons with a Developmental Disability

Nursing Delegation Reference Grid

Unusual Incident Log Example

List of DODD Links for HCBS Waiver Providers

Public DODD Home Page / DODD.Ohio.gov

<http://dodd.ohio.gov/Pages/default.aspx>

DODD Gateway Portal (requires login)

<https://doddportal.dodd.ohio.gov/Pages/default.aspx>

Health and Safety Tool Kit

<http://dodd.ohio.gov/healthandsafety/Pages/For-Providers.aspx>

Abuser Registry Online Check

https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx

Information Notices

<http://test.mr.state.oh.us//publications/infonotices.htm#HSInfoNotices>

Health and Safety Alerts for MUI Training

<http://test.mr.state.oh.us//health/alerts.htm>

Nurse Aide Registry Online Check

https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx

Medication Administration Certification / Check certification status

https://ma.prodapps.dodd.ohio.gov/ma_oamrp.asp

Medication Administration Handbook (PDF) / Training materials

<http://test.mr.state.oh.us/health/documents/PrescribedMedicationHandbookandHealthRelatedActivitiesTrainingManual.pdf>

Delegated Nursing / What is delegated? What's not? (PDF)

<http://test.mr.state.oh.us/health/documents/MARGrid2009.pdf>

Online Ohio Driver's Abstracts (Free)

<https://ext.dps.state.oh.us/BMVOnlineServices.Public/DLVerification.aspx?ReturnUrl=%2fBMVOnlineServices.Public%2fSecure%2fDriverAbstract.aspx&CookieCheck=true>

DODD Training Registration (Requires Login to Gateway)

https://reg.prodapps.dodd.ohio.gov/REG_Main.asp

List of DODD Rules and Rules in Development that Apply to HCBS Waiver Providers

- 5123:2-1-05.1 Background investigations on applicants for employment in direct service positions by contracting entities of county boards
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- 5123:2-8-03 Level one waiver - informal respite – rescission anticipated 2/2012
- 5123:2-8-04 Level one waiver - institutional respite – rescission anticipated 2/2012
- 5123:2-8-06 Level one waiver - environmental accessibility adaptations – rescission anticipated 2/2012
- 5123:2-8-07 Level one waiver - transportation – rescission anticipated 2/2012
- 5123:2-8-08 Level one waiver - specialized medical equipment and supplies – rescission anticipated 2/2012
- 5123:2-8-09 Level one waiver - personal emergency response systems – rescission anticipated 2/2012
- 5123:2-8-10 Level one waiver - homemaker/personal care – plan to rescind 12/28/2011
- 5123:2-8-11 Level one waiver - emergency assistance – rescission anticipated 2/2012
- 5123:2-9-05 HCBS waivers - waiver service documentation requirements for services provided to individuals – plan to rescind 12/28/2011
- 5123:2-9-06 Home and community-based services waivers - payment for waiver services – plan to amend 12/28/2011
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Appendix C (PDF) - Ohio Developmental Disabilities Profile Funding Ranges by Cost-of-Doing-Business Categories – plan to rescind 12/28/2011
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- 5123:2-9-11 HCBS waivers - free choice of provider
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Ten Things We Care About!

The mission of the Ohio Department of Developmental Disabilities is continuous improvement of the quality of life for Ohio's citizens with developmental disabilities and their families.

The Office of Provider Standards and Review strives to ensure that Ohio Citizens with Disabilities experience outcomes that reflect that they are healthy, safe and satisfied with their waiver services from Ohio Providers

- 1) The provider assures that training/ certification requirements are met.
- 2) The provider assures that background check requirements are met.
- 3) The provider assures services are implemented in accordance with the ISP.
- 4) The provider meets waiver assurances
- 5) The provider assures physical environments meet the needs of individuals and federal, state and local requirements.
- 6) The provider assures that UI/MUI requirements are met.
- 7) The provider promotes dignity and protects the rights of individuals served.
- 8) Individuals are satisfied with the services they receive.
- 9) Individuals are able to access needed or desired services.
- 10) Individuals are able to resolve disputes with providers.

ACTION: FINAL
FILED

DATE: 09/12/2002
10:39 AM

5123:2-1-05.1 Background investigations on persons employed in direct service positions by contracting entities of county boards.

(A) The purpose of this rule is to establish standards for conducting background investigations on persons applying for employment in direct service positions with a contracting entity of a county board.

(B) Definitions

(1) "Contracting entity" means a person or a public or private entity under contract with a county board for the provision of specialized services to individuals with mental retardation or a developmental disability. "Contracting entity" includes families of individuals with mental retardation or a developmental disability that contract for the provision of specialized services with funds provided by a county board. "Contracting entity" also includes a subcontractor of a contracting entity.

(2) "County board" means a county board of mental retardation and developmental disabilities as established under Chapter 5126. of the Revised Code or a regional council of government formed under section 5126.13 of the Revised Code by two or more county boards.

(3) "Direct services position" means an employment position in which the employee has physical contact with, the opportunity to be alone with, or exercises supervision or control over one or more individuals with mental retardation or a developmental disability.

(4) "Family" and "families" have the same meaning as in rule 5123:2-1-09 of the Administrative Code.

(5) "Minor drug possession offense" means either of the following:

(a) A violation of section 2925.11 (drug abuse) of the Revised Code as it existed prior to July 1, 1996;

(b) A violation of section 2925.11 (possession of drugs) of the Revised Code as it exists on or after July 1, 1996, that is a misdemeanor or a felony of the fifth degree.

(6) "Repeat offender" means a person who has been convicted of or pleaded guilty to the commission of any of the offenses listed or described in paragraphs (J)(1) to (J)(4) of this rule in two or more separate criminal actions. Convictions or guilty pleas resulting from or connected with the same act, or

resulting from offenses committed at the same time, shall be counted as one conviction or guilty plea.

(7) "Sexually oriented offense" means any of the following offenses:

- (a) Regardless of the age of the victim of the offense, a violation of section 2907.02 (rape), 2907.03 (sexual battery), or 2907.05 (gross sexual imposition) of the Revised Code or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code;
- (b) A violation of section 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (child enticement), or 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor) of the Revised Code, or a violation of section 2905.04 (child stealing) of the Revised Code as it existed prior to July 1, 1996, or a violation of section 2919.23 (interference with custody) of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation occurred prior to that date when the victim of the offense is under eighteen years of age;
- (c) A violation of section 2907.21 (compelling prostitution) of the Revised Code when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;
- (d) A violation of division (A)(1) or (A)(3) of section 2907.321 (pandering obscenity involving a minor) or 2907.322 (pandering sexually oriented matter involving a minor) of the Revised Code;
- (e) A violation of division (A)(1) or (A)(2) of section 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code;
- (f) A violation of division (B)(5) of section 2919.22 (endangering children) of the Revised Code when the child who is involved in the offense is under eighteen years of age;
- (g) Regardless of the age of the victim of the offense, a violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), 2905.01 (kidnapping), or division (A) of section 2903.04 (involuntary manslaughter) of the Revised Code that is committed with a purpose to gratify the sexual needs or desires of the offender;
- (h) A sexually violent offense listed or described in paragraph (B)(8) of this rule; or

(i) Any violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraphs (B)(7)(a) to (B)(7)(h) of this rule.

(8) "Sexually violent offense" means any of the following:

(a) A "violent sex offense," which means a violation of section 2907.02 (rape) or 2907.03 (sexual battery) of the Revised Code, a violation of division (A)(4) of section 2907.05 (gross sexual imposition) of the Revised Code, or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code, or a felony violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in this paragraph; or

(b) A violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), or 2905.01 (kidnapping) of the Revised Code or a violation of division (A) of section 2903.04 (involuntary manslaughter) of the Revised Code for which the offender also was convicted of or pleaded guilty to a sexual motivation specification, as described in section 2941.147 of the Revised Code, that charges that a person charged with an offense designated in this paragraph committed the offense with a purpose to gratify the sexual needs or desires of the offender, or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in this paragraph.

(9) "Specialized services" mean any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by an entity licensed or certified by the department. A program or service available to the general public is not a specialized service. If there is a question as to whether a contracting entity is providing specialized services, the contracting entity may request that the director of the department make a determination. The director's determination is final.

(C) A contracting entity shall conduct background investigations in accordance with section 5126.281 of the Revised Code of all persons under final consideration for employment with the contracting entity in a direct services position, except that a contracting entity is not required to request a criminal records check for an employee who is in a direct services position and being considered for a different direct services position or is returning after a leave of absence or seasonal break in employment, as long as the contracting entity has no reason to believe that the

employee has committed any of the offenses listed or described in paragraphs (J)(1) to (J)(4) of this rule. A contracting entity may charge persons who are subject to background investigations under this rule a fee for the background investigation. The fee shall be subject to the same limits that apply to fees charged by county boards under section 5126.28 of the Revised Code.

(D) The county board shall conduct the background investigation if the contracting entity and the person providing the specialized services are the same person. The county board may charge the contracting entity a fee for the background investigation. The fee shall be subject to the same limits that apply to fees charged by county boards under section 5126.28 of the Revised Code.

(E) The county board shall conduct all background investigations on behalf of families of individuals with mental retardation or a developmental disability that contract for the provision of specialized services with funds provided by the board. The county board may charge the service provider a fee for the background investigation. The fee shall be subject to the same limits that apply to fees charged by county boards under section 5126.28 of the Revised Code. The county board shall not use funds allocated for family resource services provided under section 5126.11 of the Revised Code nor reduce the funds allocated for such services to pay for background investigations.

(F) When conducting background investigations under this rule, contracting entities and county boards shall:

(1) Obtain a report from the bureau of criminal identification and investigation (BCII) regarding a person's criminal record. If the person who is the subject of a background investigation does not present proof that he/she has been a resident of Ohio for the five-year period immediately prior to the date of the background investigation, contracting entities and county boards shall request that BCII obtain information regarding the person's criminal record from the federal bureau of investigation (FBI). If the person presents proof that he/she has been a resident of Ohio for that five-year period, contracting entities and county boards may request that BCII include information from the FBI in its report. For purposes of this paragraph, a person may provide proof of Ohio residency by presenting, with a notarized statement asserting that he/she has been a resident of Ohio for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the person's permanent residence, or any other document the contracting entity or county board considers acceptable.

(2) Contact the Ohio department of health to inquire whether the nurse aide registry established under section 3721.32 of the Revised Code reveals that its director has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the person.

- (3) Contact the Ohio department of mental retardation and developmental disabilities to inquire whether the person is included in the registry established pursuant to section 5123.52 of the Revised Code.
- (4) Contact the registrar of motor vehicles in order to determine and verify that the person has a valid motor vehicle operator's license and to request a certified abstract regarding the record of convictions for violations of motor vehicle laws, if the duties of the position for which the person has applied require the person to transport individuals with mental retardation or developmental disabilities or to operate the county board's or contracting entity's vehicles for any other purpose.
- (G) Neither a contracting entity nor a county board is required by this rule to conduct a background investigation of a person who will provide only respite care under a family support services program established under section 5126.11 of the Revised Code, if the person is selected by a family member of the individual with mental retardation or a developmental disability who is to receive the respite care.
- (H) Prior to employing a person in a direct services position, the contracting entity shall require the person to submit a statement with the person's signature attesting that the person has not been convicted of or pleaded guilty to any of the offenses listed or described in paragraphs (J)(1) to (J)(4) of this rule. The contracting entity also shall require the person to sign an agreement to notify the contracting entity within fourteen calendar days if, while employed by the entity, the person is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in paragraphs (J)(1) to (J)(4) of this rule. The agreement shall inform the person that failure to report formal charges, a conviction, or a guilty plea may result in being dismissed from employment.
- (I) Except as otherwise provided in a collective bargaining agreement entered into under Chapter 4117. of the Revised Code that was in effect on November 22, 2000, no contracting entity may employ an applicant who is included in the registry established pursuant to section 5123.52 of the Revised Code as an "ICF/MR worker" as defined in section 5123.193 of the Revised Code or as an individual who is employed in a position that includes providing specialized services to an individual with mental retardation or a developmental disability.
- (J) Except as provided in paragraphs (M) and (N) of this rule, no contracting entity may place a person in a direct services position if the person has been convicted of or pleaded guilty to any of the following:
- (1) A violation of the following sections of the Revised Code:
- (a) 2903.01 (aggravated murder),
 - (b) 2903.02 (murder),

- (c) 2903.03 (voluntary manslaughter).
- (d) 2903.04 (involuntary manslaughter).
- (e) 2903.11 (felonious assault).
- (f) 2903.12 (aggravated assault).
- (g) 2903.13 (assault).
- (h) 2903.16 (failing to provide for a functionally impaired person).
- (i) 2903.21 (aggravated menacing).
- (j) 2903.34 (patient abuse and neglect).
- (k) 2905.01 (kidnapping).
- (l) 2905.02 (abduction).
- (m) 2905.05 (criminal child enticement).
- (n) 2907.02 (rape).
- (o) 2907.03 (sexual battery).
- (p) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor).
- (q) 2907.05 (gross sexual imposition).
- (r) 2907.06 (sexual imposition).
- (s) 2907.07 (importuning).
- (t) 2907.08 (voyeurism).
- (u) 2907.09 (public indecency).
- (v) 2907.21 (compelling prostitution).
- (w) 2907.22 (promoting prostitution).
- (x) 2907.23 (procuring).
- (y) 2907.25 (prostitution).

- (z) 2907.31 (disseminating matter harmful to juveniles).
- (aa) 2907.32 (pandering obscenity).
- (bb) 2907.321 (pandering obscenity involving a minor).
- (cc) 2907.322 (pandering sexually oriented matter involving a minor).
- (dd) 2907.323 (illegal use of minor in nudity-oriented material or performance).
- (ee) 2911.01 (aggravated robbery).
- (ff) 2911.02 (robbery).
- (gg) 2911.11 (aggravated burglary).
- (hh) 2911.12 (burglary).
- (ii) 2919.12 (unlawful abortion).
- (ji) 2919.22 (endangering children).
- (kk) 2919.24 (contributing to unruliness or delinquency of child).
- (ll) 2919.25 (domestic violence).
- (mm) 2923.12 (carrying concealed weapon).
- (nn) 2923.13 (having weapons while under disability).
- (oo) 2923.161 (improperly discharging a firearm at or into a habitation or school).
- (pp) 2925.02 (corrupting another with drugs).
- (qq) 2925.03 (trafficking in drugs).
- (rr) 2925.04 (illegal manufacture of drugs or cultivation of marihuana).
- (ss) 2925.05 (funding of drug or marihuana trafficking).
- (tt) 2925.06 (illegal administration or distribution of anabolic steroids).
- (uu) 3716.11 (placing harmful objects in food or confection).
- (vv) 2905.04 (child stealing) as it existed prior to July 1, 1996.

(ww) 2919.23 (interference with custody) that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation occurred prior to that date.

(xx) 2925.11 (possession of drugs) that is not a minor drug possession offense as defined in this rule.

(yy) Felonious sexual penetration in violation of former section 2907.12 of the Revised Code:

(2) A felony contained in the Revised Code that is not listed in paragraph (J)(1) of this rule, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled:

(3) Any offense contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided:

(4) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraph (J)(1), (J)(2), or (J)(3) of this rule.

(K) The offenses listed or described in paragraph (J)(1) of this rule or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraph (J)(1) of this rule bear a direct and substantial relationship to the duties and responsibilities of any direct services position with a contracting entity.

(L) A contracting entity shall consider the following factors when determining whether an offense listed or described in paragraph (J)(2) or (J)(3) of this rule bears a direct and substantial relationship to the duties and responsibilities of the position being filled:

(1) The duties and responsibilities of the position:

(2) The nature and seriousness of the offense:

(3) The circumstances under which the offense was committed:

(4) The degree to which the person participated in the offense:

(5) The age and ability of the victim, including whether the victim is an individual with physical or mental disabilities:

- (6) The likelihood that the circumstances leading to the offense will recur;
 - (7) The extent to which the position being filled provides an opportunity for the commission of the same or similar offenses; and
 - (8) The time elapsed since the person was fully discharged from imprisonment, probation, and parole.
- (M) A contracting entity may place a person in a direct services position pending receipt of information concerning the person's background investigation from BCII, the registrar of motor vehicles, or any other state or federal agency if the person submits to the contracting entity a statement with the person's signature attesting that the person has not been convicted of or pleaded guilty to any of the offenses listed or described in paragraphs (J)(1) to (J)(4) of this rule. The contracting entity shall terminate the placement of such person if it is informed that he/she has been convicted of or pleaded guilty to any of the offenses listed or described in paragraphs (J)(1) to (J)(4) of this rule.
- (N) A contracting entity may place a person who has been convicted of or pleaded guilty to any of the offenses listed or described in paragraphs (J)(1) to (J)(4) of this rule in a direct services position only if each of the following standards in regard to rehabilitation are met:
- (1) The offense is not a sexually oriented offense as listed or described in paragraph (B)(7) of this rule;
 - (2) The offense is not a violation of section 2907.06 (sexual imposition), 2907.07 (importuning), 2907.08 (voyeurism), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity) of the Revised Code or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to the offenses listed or described in this paragraph;
 - (3) The offense is not a violation of section 2903.16 (failing to provide for a functionally impaired person) or 2903.34 (patient abuse and neglect) of the Revised Code or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to the offense listed or described in this paragraph;
 - (4) The victim of the offense was not a person for whom the person was responsible for providing care;
 - (5) The person is not a repeat offender as defined in paragraph (B)(6) of this rule;
 - (6) At least five years have elapsed since the person was fully discharged from imprisonment, probation, and parole;

- (7) The person has had the record of his or her conviction sealed pursuant to section 2953.32 of the Revised Code or any substantially equivalent provision under existing or former municipal ordinances or laws of this state, any other state, or the United States; and
- (8) The person's name does not appear on the registry established under section 5123.52 of the Revised Code.
- (O) If a person meets all the standards listed for rehabilitation in paragraph (N) of this rule with the exception of paragraph (N)(7) of this rule due to the nonexistence of a statute that would allow the person to petition the court to have his/her conviction record sealed, the person may petition the contracting entity to be considered rehabilitated under the provisions of this rule. The contracting entity shall not consider for rehabilitation a person for whom a court has denied the person's request to have the record of his/her conviction sealed. The contracting entity shall consider the following factors in determining if the person has been rehabilitated:
- (1) The duties and responsibilities of the position;
 - (2) The nature and seriousness of the offense;
 - (3) The time elapsed since the person was fully discharged from imprisonment, probation or parole;
 - (4) The person's efforts at rehabilitation and the results of those efforts;
 - (5) Whether any criminal proceedings are pending against the person;
 - (6) Any personal references;
 - (7) The person's employment history; and
 - (8) Any other relevant factors.
- (P) It is the duty of a person being considered for placement in a direct services position to provide proof that the standards in regard to rehabilitation specified in paragraph (N) of this rule are met. If the person fails to provide such proof or if the contracting entity determines that the proof offered by the person is inconclusive, the person shall not be placed in the position. Any doubt shall be resolved against the person being considered for the placement.
- (Q) A person applying for employment with a contracting entity shall disclose a conviction for any offense that has been sealed because the information bears a direct and substantial relationship to any direct services position with a contracting entity.

(R) A conviction of or a plea of guilty to an offense listed or described in paragraphs (J)(1) to (J)(4) of this rule shall not prevent a person's placement in a direct services position under the following circumstances:

(1) The person has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;

(2) The person has been granted an unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code; or

(3) The conviction or guilty plea has been set aside pursuant to law.

As used in this rule, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.

(S) A county board may take appropriate action against a contracting entity that violates this rule, including terminating the contracting entity's contract with the board. A county board shall specify in its contract with a contracting entity how the board will evaluate the contracting entity's compliance with this rule.

(T) Upon request, a contracting entity shall provide the department with a copy of any report or abstract obtained under section 5126.281 of the Revised Code.

(U) Upon request, a contracting entity shall provide a county board with a copy of any report or abstract obtained under section 5126.281 of the Revised Code, if the person who is the subject of the report or abstract consents in writing. If the person refuses to consent, the person shall not be placed in a direct services position unless the contracting entity submits to the county board the following:

(1) A statement attesting that the person has not been convicted of or pleaded guilty to any of the offenses listed or described in paragraphs (J)(1) to (J)(4) of this rule; or

(2) If the person has been convicted of or pleaded guilty to an offense listed or described in paragraphs (J)(1) to (J)(4) of this rule, a statement attesting that the standards in regard to rehabilitation in paragraph (N) of this rule have been met.

(V) A person being considered for placement in a direct services position shall cooperate fully with a contracting entity by providing any information and assistance the contracting entity needs to comply with section 5126.281 of the Revised Code and this rule. If the person fails to cooperate, the contracting entity shall not place the person in the position.

(W) For purposes of this rule, reports from BCII or any other state or federal agency

regarding a person's criminal record and abstracts supplied by the registrar of motor vehicles regarding a person's record of convictions for violations of motor vehicle laws are valid for a period of one year from the date of the report or abstract.

Effective: 9/22/2002

R.C. 119.032 review dates: 09/22/2007

CERTIFIED ELECTRONICALLY

Certification

09/12/2002 10:39 AM

Date

Promulgated Under: 119.03
Statutory Authority: 5126.281
Rule Amplifies: 5126.28, 5126.281
Prior Effective Dates: 5/12/95

Attestation Statement for Persons employed in a direct services position by contracting entities of county boards

Employee Name (please print): _____

I, _____ have reviewed and attest that I have not been convicted or plead guilty to any of the disqualifying offenses listed below from the Ohio Administrative Code 5123:2-1-05. 1 (J) (1) through (J)(4):

(J) No person may be placed in a direct services position if the person has been convicted of or plead guilty to any of the following:

1. A violation of the following sections of the Revised Code:

- 2903.01 Aggravated murder
- 2903.02 Murder
- 2903.03 Voluntary manslaughter
- 2903.04 Involuntary manslaughter
- 2903.11 Felonious assault
- 2903.12 Aggravated assault
- 2903.13 Assault
- 2903.16 Failing to provide for a functionally impaired person
- 2903.21 Aggravated menacing
- 2903.34 Patient abuse and neglect
- 2905.01 Kidnapping
- 2905.02 Abduction
- 2905.05 Criminal child enticement
- 2907.02 Rape
- 2907.03 Sexual battery
- 2907.04 Unlawful sexual conduct with a minor, formerly corruption of a minor
- 2907.05 Gross sexual imposition
- 2907.06 Sexual imposition
- 2907.07 Importuning
- 2907.08 Voyeurism
- 2907.09 Public indecency
- 2907.21 Compelling prostitution
- 2907.22 Promoting prostitution
- 2907.23 Procuring
- 2907.25 Prostitution
- 2907.31 Disseminating matter harmful to juveniles,
- 2907.32 Pandering obscenity
- 2907.321 Pandering obscenity involving a minor
- 2907.322 Pandering sexually oriented matter involving a minor
- 2907.323 Illegal use of minor in nudity-oriented material or performance
- 2911.01 Aggravated robbery
- 2911.02 Robbery
- 2911.11 Aggravated burglary
- 2911.12 Burglary
- 2919.12 Unlawful abortion
- 2919.22 Endangering children
- 2919.24 Contributing to unruliness or delinquency of child
- 2919.25 Domestic violence
- 2923.12 Carrying concealed weapon

2923.13 Having weapons while under disability
2923.161 Improperly discharging a firearm at or into a habitation or school
2925.02 Corrupting another with drugs
2925.03 Trafficking in drugs
2925.04 Illegal manufacture of drugs or cultivation of marihuana
2925.05 Funding of drug or marihuana trafficking
2925.06 Illegal administration or distribution of anabolic steroids
3716.11 Placing harmful objects in food or confection
2905.04 Child stealing) as it existed prior to July 1, 1996,
2919.23 Interference with custody that would have been a violation of
2905.04 of the ORC as it existed prior to July 1, 1996, had the violation occurred
prior to that date
2925.11 Possession of drugs that is not a minor drug possession offense as defined
in this rule
Felonious sexual penetration in violation of former section 2907.12 of the Revised
Code

2. A felony contained in the Revised that is not listed in paragraph (J)(1) of this rule, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filed;

3. Any offense contained in the Revised Code constituting a misdemeanor of the first degree and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filed and the nature of the services being provided;

4. A violation of an existing or former municipal ordinance or state law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraph (J)(1), (J)(2), or (J)(3) of this rule.

I also agree that I will notify my employer within 14 calendar days if, while employed with this agency, I am ever formally charged with, convicted of, or plead to any of the offenses listed or described in paragraph (J)(1), (J)(2), or (J)(3) of Ohio Administrative Code 5123:2-1-05. 1 as noted above. Failure to report formal charges, a conviction or guilty plea may result in being dismissed from employment.

Employee Signature

Date Signed

5123:2-2-01

Provider certification.(A) Purpose

The purpose of this rule is to establish the procedures and standards for certification of providers of supported living services and to comply with the requirements of section 5123.045 of the Revised Code. This rule does not apply to a person or government entity licensed as a residential facility under section 5123.19 of the Revised Code.

(B) Definitions

- (1) "Agency provider" means an entity, including a county board of mental retardation and developmental disabilities, that employs persons for the purpose of providing services for which the entity must be certified under this rule.
- (2) "Applicant" means a person, agency, or county board of mental retardation and developmental disabilities seeking to become a certified provider.
- (3) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (4) "Family consortium" means an association of family members related to two or more individuals who reside together, formed for the purpose of providing services for which the family consortium must be certified under this rule.
- (5) "GED" means general educational development, a diploma equivalent to a high school diploma issued by the Ohio department of education.
- (6) "Independent provider" or "individual provider" means a self-employed person who provides services for which he or she must be certified under this rule and does not employ, either directly or through contract, anyone else to provide the services.
- (7) "Individual" means a person with mental retardation or other developmental disability.
- (8) "Provider" means a person, family consortium, or agency that is required to be certified under this rule.

(C) Minimum standards for providers(1) Each provider shall:

- (a) Provide to the department written commitment to comply with the requirements of this rule and other standards and assurances established

under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the specific service(s) to be provided; and

(b) Maintain a current mailing address on file with the department.

(2) Each independent provider; each member of a family consortium; each chief executive officer or person responsible for administration of an agency provider; and each employee, contractor, and employee of a contractor of an agency provider who is engaged in a direct services position shall:

(a) Be at least eighteen years of age.

(b) Hold a high school diploma or GED, except for:

(i) Persons who, on the day immediately prior to the effective date of this rule, hold individual provider certification issued by the department; and

(ii) Persons who, on the day immediately prior to the effective date of this rule, are employed by or under contract with an agency provider certified by the department.

(c) Have a valid social security number and one of the following forms of identification:

(i) State of Ohio identification;

(ii) A valid driver's license; or

(iii) Other government-issued photo identification.

(d) Have, at the point of application for initial certification in the case of an agency provider and at the point of application for initial and renewal certification in the case of an independent provider, a current report from the bureau of criminal identification and investigation (BCII), which demonstrates that he/she has not been convicted of or pleaded guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code. If the subject of the background investigation cannot present proof that he/she has been a resident of Ohio for the five-year period immediately prior to the date of the background investigation, he/she shall request that BCII obtain information regarding his/her criminal record from the federal bureau of investigation. A BCII report shall be considered current if it is not more than one year old.

(e) Not be listed on the abuser registry established pursuant to sections 5123.50 to 5123.54 of the Revised Code.

- (f) Not be listed on the nurse aide registry established pursuant to section 3721.32 of the Revised Code indicating that the director of the Ohio department of health has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the person.
- (g) Be 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.
- (h) Be able to effectively communicate with the individual receiving services.
- (3) Except for providers of services specified in paragraph (C)(4) of this rule and members of a family consortium, each independent provider and each employee, contractor, and employee of a contractor of an agency provider who is engaged in a direct services position, shall meet the following requirements:

 - (a) Hold valid "American Red Cross" or equivalent certification in first aid.
 - (b) Hold valid "American Red Cross" or equivalent certification in cardiopulmonary resuscitation ("CPR").
 - (c) Have completed, prior to application for initial certification in the case of an independent provider and prior to providing services in the case of an employee, contractor, or employee of a contractor of an agency provider, eight hours of training in accordance with guidelines established by the department that addresses the following topics:

 - (i) Overview of serving individuals with developmental disabilities;
 - (ii) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
 - (iii) Overview of basic principles and requirements of providing home and community-based services (HCBS) waiver services;
 - (iv) The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety; and
 - (v) Universal precautions for infection control, including hand washing and the disposal of bodily waste.
- (4) Members of a family consortium and providers of the following HCBS waiver services are exempt from the requirements set forth in paragraph (C)(3) of this rule:

- (a) Adaptive and assistive equipment;
- (b) Environmental accessibility adaptations;
- (c) Home delivered meals;
- (d) Informal respite only if provided to the provider's own family member;
- (e) Interpreter;
- (f) Nutrition;
- (g) Personal emergency response systems;
- (h) Social work; and
- (i) Specialized medical equipment and supplies.

(D) Additional standards for agency providers

- (1) Agency providers shall provide evidence to the department to demonstrate that the applicant employs a chief executive officer or a person responsible for administration of the agency who has the following qualifications:
 - (a) At least one year of full-time, paid work experience in the provision of services to individuals with developmental disabilities which included responsibility for the following functions:
 - (i) Personnel matters;
 - (ii) Supervision of employees;
 - (iii) Program services; and
 - (iv) Financial management.
 - (b) A bachelor's degree from an accredited institution or at least four years of full-time, paid work experience as a supervisor of programs or services for individuals with developmental disabilities.
- (2) Agency providers shall ensure that, at a frequency of at least once every three years, the chief executive officer or person responsible for administration of the agency and each employee, contractor, and employee of a contractor who is engaged in a direct services position shall undergo a background check by BCII which demonstrates that he/she has not been convicted of or pleaded guilty to any of the offenses listed in division (E) of section 5126.28 of the

Revised Code.

(3) Agency providers shall provide to the department written policies and procedures that address the agency's management practices in the following areas:

(a) Principles of individuals' self-determination:

(b) Confidentiality of individuals' records:

(c) Safeguarding individuals' funds:

(d) Incident reporting and investigation:

(e) Individuals' satisfaction with services delivered:

(f) Internal monitoring and evaluating procedures to improve services delivered:

(g) Supervision of staff:

(h) Staff training plan; and

(i) Annual written notice to each of its employees and contractors explaining the conduct for which the employee or contractor or the contractor's employees may be placed on the abuser registry and setting forth the requirement for each employee, contractor, and employee of a contractor who is engaged in a direct services position to report in writing to the agency provider, if he/she is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code within fourteen calendar days after the date of such charge, conviction, or guilty plea.

(E) Reciprocity for certified providers under HCBS waivers administered by the Ohio department of aging and the Ohio department of job and family services

(1) The department may issue, to persons and entities certified to provide services under HCBS waivers administered by the Ohio department of aging or the Ohio department of job and family services, provider certification for similar services under HCBS waivers administered by the department.

(2) Applicants seeking certification under paragraph (E)(1) of this rule shall be required to:

(a) Maintain provider certification issued by the Ohio department of aging or the Ohio department of job and family services:

- (b) Meet the requirements set forth in paragraphs (C)(1) and (C)(2) of this rule;
- (c) Hold valid "American Red Cross" or equivalent certification in first aid;
- (d) Hold valid "American Red Cross" or equivalent certification in cardiopulmonary resuscitation ("CPR");
- (e) Have completed, prior to application for initial department certification in the case of an independent provider and prior to providing services in the case of an employee, contractor, or employee of a contractor of an agency provider, four hours of training in accordance with guidelines established by the department that addresses overview of serving individuals with developmental disabilities, the provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code, and the requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety; and
- (f) Submit an application to the department for supported living services and the HCBS waiver service(s) the applicant seeks to deliver on forms and in accordance with procedures prescribed by the department, including payment of the application fee specified in paragraph (K) of this rule.

(F) Duties regarding provision of services

- (1) The following prohibitions apply to each independent provider, to each member of a family consortium, and to each agency provider and its employees, contractors, and employees of contractors:
 - (a) Providing services to his/her minor child (under age eighteen) or his/her spouse;
 - (b) Engaging in sexual conduct or having sexual contact with an individual for whom he or she is providing care; and
 - (c) Administering any medication to or performing health care tasks for individuals who receive services unless he/she meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.
- (2) The following standards of practice apply to each independent provider, to each member of a family consortium, and to each agency provider and its employees, contractors, and employees of contractors:
 - (a) Providing services only to individuals whose needs he/she can meet.

- (b) Implementing services in accordance with the individual's service plan (ISP).
 - (c) Taking all reasonable steps necessary to prevent the occurrence or reoccurrence of incidents adversely affecting health and safety of individuals served.
 - (d) Complying with the requirements of behavior supports established under rules adopted by the department.
 - (e) Ensuring that anyone responsible for implementing behavior support plans receives training in the plan components prior to implementation of the plans.
 - (f) Arranging for substitute coverage, if necessary, only from a provider certified by the department and as identified in the ISP; notifying the individual or legally responsible person(s) in the event that substitute coverage is necessary; and notifying the person identified in the ISP when substitute coverage is not available to allow such person to make other arrangements.
 - (g) Notifying, in writing, the individual or the individual's guardian and the individual's service and support administrator in the event that the provider intends to cease providing services to the individual no less than thirty calendar days prior to termination of services. If, however, an independent provider intends to cease providing services to an individual because the health or safety of the independent provider is at serious and immediate risk, the provider shall immediately notify the county board of mental retardation and developmental disabilities by calling the county board's twenty-four hour emergency telephone number; once the board has been notified, the independent provider may cease providing services.
- (3) The following ongoing training requirements apply to each independent provider, to each member of a family consortium, and to each agency provider and its employees, contractors, and employees of contractors:
- (a) To annually complete training, in accordance with standards established by the department, in the provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and
 - (b) To annually complete training, in accordance with standards established by the department, in the requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety.

(G) Procedure for obtaining initial certification

- (1) The applicant shall submit an application to the department for supported living services and the HCBS waiver service(s) the applicant seeks to deliver on forms and in accordance with procedures prescribed by the department.
- (2) The department shall provide the applicant with all relevant application materials and service-specific standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the service(s) the applicant seeks to deliver.
- (3) The applicant shall submit the application with supporting documentation as evidence that standards are met as required by this rule and service-specific standards established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code.
- (4) An application is considered complete when the department has received from the applicant all completed components of the application, including applicable signatures and supporting documentation that demonstrates compliance with the certification standards for the service(s) the applicant is seeking to deliver, and the application fee specified in paragraph (K) of this rule.
- (5) If the application is complete, the department shall review the application and notify the applicant in writing of its decision to approve or deny certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved. The department shall obtain a medicaid provider number from the Ohio department of job and family services for certified providers of HCBS waiver services; the department shall notify the certified provider in writing within twenty calendar days of receipt of the medicaid provider number.
- (6) If the application is incomplete, the department shall, within forty-five calendar days of receipt of the application, notify the applicant in writing that the application is deficient and advise that the applicant has ninety calendar days to submit documentation needed to complete the application.
 - (a) When documentation is received by the department within the specified ninety calendar days that results in a complete application, the department shall review the application and notify the applicant in writing of its decision to approve or deny the certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved. The department shall obtain a medicaid provider number

from the Ohio department of job and family services for certified providers of HCBS waiver services; the department shall notify the certified provider in writing within twenty calendar days of receipt of the medicaid provider number.

(b) If after ninety calendar days, the applicant fails to submit documentation that results in a complete application, the department shall take no further action with respect to the application.

(H) Procedure for obtaining certification to provide additional HCBS waiver service(s) during the term of existing department-issued certification

(1) A department-certified provider seeking to deliver additional HCBS waiver service(s) shall request application materials from the department.

(2) The department shall provide the applicant with all relevant application materials and service-specific standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the additional HCBS waiver service(s) the applicant seeks to deliver.

(3) The applicant shall submit the application with supporting documentation as evidence that standards are met as required by this rule and service-specific standards established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code.

(4) An application is considered complete when the department has received from the applicant all completed components of the application, including applicable signatures and supporting documentation that demonstrates compliance with the certification standards for the service(s) the applicant is seeking to deliver, and the application fee specified in paragraph (K) of this rule.

(5) If the application is complete, the department shall review the application and notify the applicant in writing of its decision to approve or deny certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved.

(6) If the application is incomplete, the department shall, within forty-five calendar days of receipt of the application, notify the applicant in writing that the application is deficient and advise that the applicant has ninety calendar days to submit documentation needed to complete the application.

(a) When documentation is received by the department within the specified ninety calendar days that results in a complete application, the department shall review the application and notify the applicant in

writing of its decision to approve or deny the additional certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved.

(b) If after ninety calendar days, the applicant fails to submit documentation that results in a complete application, the department shall take no further action with respect to the application.

(I) Procedure for obtaining renewal certification

- (1) The department shall notify providers by regular mail to the address on file of required certification renewal no later than sixty calendar days prior to the date the provider's certification expires. The notification shall include the procedures for submitting the certification renewal application and application fee in accordance with this rule.
- (2) The provider shall submit the certification renewal application with supporting documentation as evidence that standards are met as required by this rule and service-specific standards established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code.
- (3) An application is considered complete when the department has received from the applicant all completed components of the application, including applicable signatures and supporting documentation that demonstrates compliance with the certification standards for the service(s) the applicant is seeking to deliver, and the application fee specified in paragraph (K) of this rule.
- (4) If the application is complete, the department shall review the application and notify the applicant in writing of its decision to approve or deny certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of the certification and the specific service(s) for which the applicant is approved.
- (5) If the application is incomplete, the department shall, within forty-five calendar days of receipt of the application, notify the applicant in writing that the application is deficient and advise that the applicant has ninety calendar days to submit documentation needed to complete the application.
 - (a) When documentation is received by the department within the specified ninety calendar days that results in a complete application, the department shall review the application and notify the applicant in writing of its decision to approve or deny the renewal certification within forty-five calendar days of receipt of the complete application. The notification shall specify the effective date and expiration date of

the certification and the specific service(s) for which the applicant is approved.

(b) If after ninety calendar days, the applicant fails to submit documentation that results in a complete application, the department shall take no further action with respect to the application.

(6) A provider shall not provide services or submit claims for reimbursement for services delivered subsequent to expiration of the provider's certification.

(J) Time-limited certification

(1) The department shall implement time-limited certification for providers certified prior to the effective date of this rule in a manner and for a term determined by the department not to exceed three years. The department shall notify providers by regular mail to the address on file that the providers' certification is being converted to a time-limited certification in accordance with this rule.

(2) Initial certifications issued subsequent to the effective date of this rule shall be for a term of one year.

(3) Renewal certifications issued subsequent to the effective date of this rule shall be for a term of three years.

(K) Application fees

(1) Applicants seeking certification to provide the following HCBS waiver services shall not be subject to an application fee:

(a) Adaptive and assistive equipment;

(b) Environmental accessibility adaptations;

(c) Home delivered meals;

(d) Interpreter;

(e) Nutrition;

(f) Personal emergency response systems;

(g) Social work; and

(h) Specialized medical equipment and supplies.

(2) Applicants seeking certification to provide services other than those specified in

paragraph (K)(1) of this rule shall submit an application fee at the time of application for initial certification, application for certification to provide additional HCBS waiver service(s) during the term of existing department-issued certification, and application to renew certification.

(a) Application fee for initial certification

(i) The application fee for an independent provider or a family consortium seeking initial certification shall be fifty dollars.

(ii) The application fee for a small agency provider (i.e., one that serves or plans to serve fifty or fewer individuals) seeking initial certification shall be three hundred dollars.

(iii) 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 shall be seven hundred dollars.

(b) Application fee for certification to provide additional HCBS waiver service(s) during the term of existing department-issued certification

(i) The application fee for an independent provider or a family consortium seeking certification to provide additional HCBS waiver service(s) shall be fifteen dollars.

(ii) 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 HCBS waiver service(s) shall be fifty dollars.

(iii) 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 HCBS waiver service(s) shall be one hundred dollars.

(c) Application fee for renewal certification

(i) The application fee for an independent provider or a family consortium seeking renewal certification shall be one hundred dollars.

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

(iii) The application fee for a large agency provider (i.e., one that serves or plans to serve fifty-one or more individuals) seeking renewal

certification shall be one thousand six hundred dollars.

(3) Applicants shall pay application fees in the form of a cashier's check, corporate check, or money order, payable to the Ohio department of mental retardation and developmental disabilities or, once the department has established the capability to accept fees electronically, by electronic funds transfer in accordance with procedures established by the department.

(4) Application fees are non-refundable.

(L) Continuing certification standards

(1) Certified providers shall comply with the requirements of this rule and other standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the specific service(s) provided.

(2) Certified providers shall report in writing to the department, if the independent provider, a member of the family consortium, or the chief executive officer or person responsible for administration of the agency provider is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed in division (E) of section 5126.28 of the Revised Code within fourteen calendar days after the date of such charge, conviction, or guilty plea.

(M) Expired certifications

(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.

(N) Denial, suspension, or revocation of certification

(1) The department may deny an application for certification based on the applicant's failure to comply with the requirements of this rule or other standards and assurances established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code for the specific service(s) to be provided.

(2) Certified providers shall comply with the continuing certification standards set forth in this rule. Certified providers shall be subject to monitoring and compliance reviews as set forth in rules promulgated by the department. Failure to comply with the requirements set forth in this rule or service-specific standards established under Chapter 5123. of the Revised Code and division 5123:2 of the Administrative Code may result in corrective action by the department, up to and including suspension or revocation of

certification.

(3) The department may deny, suspend, or revoke a provider's certification for good cause, including the following:

(a) Mifeasance;

(b) Malfeasance;

(c) Nonfeasance;

(d) Substantiated abuse or neglect;

(e) Financial irresponsibility;

(f) Failure to meet the requirements of this rule;

(g) Other conduct the department determines is injurious to individuals being served;

(h) Failure to comply with other applicable rules;

(i) Failure to submit claims for reimbursement for twelve consecutive months; or

(j) The conviction or guilty plea of the independent provider, a member of a family consortium, or the chief executive officer or person responsible for administration of the agency provider to any of the offenses listed in division (E) of section 5126.28 of the Revised Code.

(4) When denying, suspending, or revoking certification under this rule, the department shall comply with the notice and hearing requirements of Chapter 119, of the Revised Code and section 5123.166 of the Revised Code.

(O) Department's authority to waive provisions of this rule

(1) When requested in writing with sufficient justification that demonstrates that the health and safety of individuals will not be adversely affected, the department may grant written, time-limited permission to applicants and certified providers to waive specific provisions of this rule.

(2) The department's decision regarding the request to have a provision of this rule waived shall not be subject to appeal.

(P) HCBS waiver services

HCBS waiver services shall not be subject to sections 5126.40 to 5126.47 of the

Revised Code.

Replaces: 5123:2-9-09, 5123:2-12-02, 5123:2-12-06
 Effective: 10/01/2009
 R.C. 119.032 review dates: 10/01/2014

CERTIFIED ELECTRONICALLY

Certification

08/18/2009

Date

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 5123.169, 5126.28, 5126.281, 5111.871
 Rule Amplifies: 5123.04, 5123.045, 5123.16, 5123.161, 5123.162,
 5123.163, 5123.164, 5123.165, 5123.166, 5123.168,
 5123.169, 5126.28, 5126.281, 5111.871
 Prior Effective Dates: 07/03/1989 (Emer.), 09/29/1989, 04/30/1990,
 07/01/1991, 07/24/1995, 04/28/2003, 07/01/2005



Ohio Department of Mental Retardation and Developmental Disabilities

Ted Strickland, Governor

John L. Martin, Director

Date: October 1, 2009

To: Providers
Individuals and Families Receiving Services
County Boards of Developmental Disabilities
Councils of Governments

From: Patrick Stephan, Deputy Director
Division of Medicaid Development and Administration

Subject: New Provider Certification Rule, Training Requirements and Forms Update

The Ohio Department of MRDD implemented Ohio Administrative Code rule 5123:2-2-01 (*Provider Certification*) effective **October 1, 2009**. A copy of the rule is available at the Department's website (<http://mrdd.ohio.gov/rules/development.htm>). The purpose of this memo is to clarify the application of this rule, to provide training guidelines and to introduce the revised provider certification forms and website.

Applying the New Provider Certification Rule

OAC rule 5123:2-2-01, Provider Certification, establishes the procedures and standards for certification of all providers of supported living and all providers of Home and Community Based Services (HCBS) as outlined in Ohio Revised Code 5126.01. Services include but are not limited to Medicaid IO and Level One waiver services such as homemaker personal care, transportation, adult day services, adaptive and assistive equipment and respite. The rule does not apply to a person or government entity licensed as a residential facility under section 5123.19 of the Revised Code.

Criminal Identification and Investigation (Background Check) Requirement

The new provider certification rule implements application fees, time-limited certification, new provider qualifications and requirements for Bureau of Criminal Identification and Investigation (BCII) reports. Independent providers must submit a BCII report at initial application and renewal. Agency providers must have a BCII report at initial application for the chief executive officer, each employee, contractor, and employee of a contractor who is engaged in a direct services position. All agency providers are required to ensure, at a frequency of at least once every three years, a BCII report is obtained for the chief executive officer, each employee, contractor, and employee of a contractor who is engaged in a direct services position.

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Training Requirements

The new provider certification rule requires that applicants have completed eight hours of training in accordance with guidelines established by the department that addresses the five topics listed below. This requirement must be completed prior to application for initial certification in the case of an independent provider, and prior to providing services in the case of an employee, contractor, or employee of a contractor of an agency provider. Agency providers must maintain records to verify that prior to providing services each direct services employee completed the required training. Independent providers must submit documentation that they have met the training requirements prior to initial certification.

The Five Required Training Topics

1. Overview of serving individuals with developmental disabilities
 - Characteristics of individuals with developmental disabilities
 - Service Planning/Team Process/Communication
 - Best Practices
 - Resources for additional information and assistance
2. The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code
 - Review of each right as written in statute
 - Examples that demonstrate how the rights are exercised in the everyday life of a person with a development disability, with emphasis on the following:
 - Dignity and Respect – Principles of the Positive Culture Initiative
 - Privacy
 - Decision Making – Principles of Self-Determination, consent for services and treatment
 - Advocacy – relationship to guardians and personal representatives
 - Financial Management – relationship to payees
 - Confidentiality
3. Overview of basic principles and requirements of providing Home and Community-Based Services (HCBS) waiver services
 - Responsibilities of a Provider
 - Medicaid and Waivers
 - Monitoring and Oversight of Services
 - Submission and payment of claims (Billing)
 - Resources for additional information and assistance
4. The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety
 - Categories of major unusual incidents (MUI's) with emphasis on the most common – Unplanned hospitalizations, Misappropriation, Physical Abuse, Neglect, Medical Emergencies, and Known Injury
 - Reporting responsibilities – MUI, Unusual Incident (UI), Trends and patterns
 - Immediate Response
 - Prevention Plans
 - Role of Investigative Agent
 - Abuser Registry
 - ODMRDD Alerts

5. Universal Precautions for infection control, including hand washing and the disposal of bodily waste
 - Infection control
 - Prevention of contact with blood and body fluids
 - Blood born pathogens

Trainer Criteria

Trainers must meet either criteria one or two by verifying how they meet the requirements listed below, providing an outline of the training course they conduct, and verifying attendance of trainees.

1. A current employee or contractor of an entity engaged in the service delivery system for individuals with developmental disabilities with a minimum of two years experience. Such entities include but are not limited to provider agencies, county boards of developmental disabilities, and professional or trade associations.
2. An independent trainer with a minimum of five years of experience working with individuals with developmental disabilities, with at least two years in a supervisory or administrative capacity.

Verification of Training

A provider applicant's verification of training must include the following elements:

- The applicant's name
- The topic of the training session
- The date of the session
- The length of the session
- The name, address, and phone number of the entity or person who provided the training
- College course description and corresponding transcript if applicable
- A manual or electronic signature of the trainer or designee of the training organization or certificate to verify the person's completion of the session(s). A transcript may be substituted for a signature to verify college coursework.

Training Resources

- Coming Soon: Free training will be available at ODMRDD Developmental Centers on a limited basis. Our website will be updated as more information on this opportunity becomes available: <http://mrdd.ohio.gov/providers/new.htm>
- The Ohio Association of County Boards of MRDD offers eight hours of training on the required topics through their online training center. <http://www.oacbmRDD.org>
- Clearwater Council of Government (COG) provides regular training opportunities (twice monthly) on Individual Rights and MUL. For more details, visit their website: www.clearwatercog.org
- Northwest Ohio Waiver Administration Council (NOWAC) is in the process of developing an eight hour training tract for providers. Some training is currently available through correspondence (e-mail or U.S. Postal mailing). For more information, go to the "newsletter" link on the NOWAC website: <http://www.nowac.com/>
- Additional training options may exist with your local County Board, Council of Government, or the Arc of Ohio.

If you'd like to have your training program listed on our website, please send a detailed course description and contact information to provider.certification@dmr.state.oh.us.

Provider Certification Forms and the Application Process

The Department has revised, consolidated and updated all of the provider certification forms in an effort to simplify the process and to comply with the new rule requirements. The revised Provider Certification Forms are available in a fillable format on the website:
<http://mrdd.ohio.gov/providers/new.htm>

The provider certification web page has been improved significantly to give applicants clear step-by-step instructions on how to apply to become a provider. The forms and required documents may be submitted to the Department by e-mail, fax or mail. The previous provider certification forms will be accepted through November 30, 2009.

Please note that since all the forms are now available on the website, the department will no longer be mailing out blank application forms.

If you have questions about the new provider certification rule or the application process, please send an e-mail to provider.certification@dmr.state.oh.us.

To learn more about the other new standards and requirements see the Department's Memo titled, "Implementation of New Provider Certification Rule," which was distributed on August 19, 2009.

ABUSER REGISTRY ANNUAL NOTICE

The Ohio Department of Developmental Disabilities (“Department”) maintains an Abuser Registry which is a list of employees who the Department has determined have abused, neglected, had prohibited sexual relations with, stolen property from, or did not report the abuse or neglect of an individual with developmental disabilities. If your name is placed on the Abuser Registry you are barred from employment as a DD employee in this state for a minimum of 1 year.

- **Employees whose names may be placed on the Abuser Registry.** The name of any “Developmental Disabilities (DD) employee” may be placed on the Abuser Registry. DD employee includes any Department employee, any employee of a county board of DD and any employee providing specialized services to an individual with developmental disabilities. A specialized service is a program or service designed to primarily serve individuals with developmental disabilities including services by an entity licensed or certified by the Department.
- **Abuser Registry Offenses.** The Department may place the name of a DD employee on the Abuser Registry if it determines that the employee has committed any of the below offenses against an individual with developmental disabilities.
 - **Abuse**
 - Abuse includes the use of any physical force that could reasonably be expected to result in physical harm.
 - Abuse includes unlawful sexual conduct (unprivileged intercourse or other sexual penetration) and unlawful sexual contact (unprivileged touching of another’s erogenous zone).
 - Abuse includes verbal abuse. Verbal abuse means purposely using words to threaten, coerce, intimidate, harass or humiliate an individual.
 - **Prohibited Sexual Relations.** This means the consensual touching of an erogenous zone for sexual gratification by a DD employee of an individual in the employee’s care who is not the employee’s spouse.
 - **Neglect.** Neglect means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods or services necessary to maintain the health or safety of the individual.
 - **Misappropriation (theft).** This means obtaining the property of an individual or individuals, without consent, with an aggregate (combined) value of at least \$100. Theft of any check, credit card, ATM card and the like are also Abuser Registry offenses.
 - **Failure to Report Abuse, Neglect or Misappropriation.** A DD employee may be placed on the Abuser Registry if the employee unreasonably does not report abuse, neglect or misappropriation of the property of an individual with developmental disabilities, or the substantial risk to such an individual of abuse, neglect or misappropriation, when the employee should know that his/her non-reporting will result in a substantial risk of harm to such individual.

ORC 5123.542 requires the Department, each county DD board, each entity providing specialized services under contract with a DD board, and each owner, operator or administrator of a residential facility as defined in ORC 5123.19 or of a program certified by the Department to provide supported living services to annually provide written notice to each of its DD employees explaining the conduct for which a DD employee may be placed on the Abuser Registry. More information about the Abuser Registry is on the Department’s website under the Health and Safety Tab or may be obtained by calling (614) 995-3810.

5123.62 Rights of persons with a developmental disability.

The rights of persons with mental retardation or a developmental disability include, but are not limited to, the following:

- (A) The right to be treated at all times with courtesy and respect and with full recognition of their dignity and individuality;
- (B) The right to an appropriate, safe, and sanitary living environment that complies with local, state, and federal standards and recognizes the persons' need for privacy and independence;
- (C) The right to food adequate to meet accepted standards of nutrition;
- (D) The right to practice the religion of their choice or to abstain from the practice of religion;
- (E) The right of timely access to appropriate medical or dental treatment;
- (F) The right of access to necessary ancillary services, including, but not limited to, occupational therapy, physical therapy, speech therapy, and behavior modification and other psychological services;
- (G) The right to receive appropriate care and treatment in the least intrusive manner;
- (H) The right to privacy, including both periods of privacy and places of privacy;
- (I) The right to communicate freely with persons of their choice in any reasonable manner they choose;
- (J) The right to ownership and use of personal possessions so as to maintain individuality and personal dignity;
- (K) The right to social interaction with members of either sex;
- (L) The right of access to opportunities that enable individuals to develop their full human potential;
- (M) The right to pursue vocational opportunities that will promote and enhance economic independence;
- (N) The right to be treated equally as citizens under the law;
- (O) The right to be free from emotional, psychological, and physical abuse;
- (P) The right to participate in appropriate programs of education, training, social development, and habilitation and in programs of reasonable recreation;
- (Q) The right to participate in decisions that affect their lives;
- (R) The right to select a parent or advocate to act on their behalf;
- (S) The right to manage their personal financial affairs, based on individual ability to do so;
- (T) The right to confidential treatment of all information in their personal and medical records, except to the extent that disclosure or release of records is permitted under sections 5123.89 and 5126.044 of the Revised Code;
- (U) The right to voice grievances and recommend changes in policies and services without restraint, interference, coercion, discrimination, or reprisal;
- (V) The right to be free from unnecessary chemical or physical restraints;
- (W) The right to participate in the political process;
- (X) The right to refuse to participate in medical, psychological, or other research or experiments.

Effective Date: 09-22-2000

Authority of DD Personnel to Perform Services by Type – Reference Grid

(Refer to OAC 5123:2-6-01 through 5123: 2-6-07)



Applicable Settings

County Board (CB) responsibility for Quality Assessment (QA) by RN. See outlined boxes

	(Certification 1) HRA[□] (Health-Related Activities)	(Certification 1) MA (Prescribed Oral and Topical Med Admin)	(Certification 2) G / J Tube Prescribed Med Admin	(Cert 2) Tube[□] Feedings	(Cert 3) Insulin Admin
Elementary, Pre-School, School age Services	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation	Prohibited
Adult Services	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation	Prohibited
Family Support Services	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Certified Supported Living Services (1-4 individuals per living arrangement)	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Certified Home and Community-Based Services (1-4 individuals per living arrangement)	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Other Services by DD Boards or by Ohio Dept of DD	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation	Prohibited
Residential Facilities: 1-5 beds	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Residential Facilities : 6-16 beds	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation	Prohibited
Field Trip participants from residential facilities: 17 or more beds	With nursing delegation – not more than 5 participants on trip.	With nursing delegation – not more than 5 participants on trip.	With nursing delegation – one staff may not serve > than 2 participants	With nursing delegation – one staff may not serve > than 2 participants	Prohibited

□ As per OBN Chapter 4723-13, a RN may delegate specified tasks after first assessing both the client's stability and the personnel's ability to perform the task. Certification may not be required for any task that can be delegated per OBN rule.

