

**NOTICE OF PUBLIC HEARING**

DATE: May 16, 2025

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 amend, rescind, and enact rules of the Administrative Code on a permanent basis on or about July 1, 2025, 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. 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 must be made to Becky Phillips, Administrative Rules Coordinator, by email to becky.phillips@dodd.ohio.gov or by U.S. mail to 30 East Broad Street, 12th Floor, Columbus, Ohio 43215. Comments regarding rules are public records; persons submitting comments should refrain from

including confidential or personal information about themselves or any other person.

The Department is amending nine rules governing Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID). The rules are due for five-year review and are being amended based on a comprehensive review:

- Rule 5123-7-02 (ICFIID - provider agreement and other essential requirements) sets forth requirements for an ICFIID to be eligible for initial and continued participation in the Ohio Medicaid program and to receive payment for ICFIID services to eligible residents. The rule is being amended to align wording with newer rules, permit an ICFIID operator to submit a notice of bankruptcy or receivership to the Department by email or U.S. mail, and update a citation to the *Medicaid State Operations Manual*.
- Rule 5123-7-04 (ICFIID - payment during the Ohio department of medicaid administrative appeals process for termination of a provider agreement) clarifies conditions under which payment may be made to an ICFIID during proposed termination and upon termination of the ICFIID's provider agreement by the Ohio Department of Medicaid. The rule is being amended to align wording with newer rules.
- Rule 5123-7-05 (ICFIID - payment during the Ohio department of health administrative appeals process for termination or non-renewal of medicaid certification) clarifies conditions under which payment may be made to an ICFIID during proposed termination or non-renewal and upon termination or non-renewal of the ICFIID's Medicaid certification by the Ohio Department of Health. The rule is being amended to align wording with newer rules.
- Rule 5123-7-09 (ICFIID - personal needs allowance accounts) establishes requirements and procedures regarding personal needs allowance accounts of residents of an ICFIID. The rule is being amended to align wording with newer rules.

- Rule 5123-7-14 (ICFIID - debt estimation, debt summary report, and successor liability agreements for change of operator, facility closure, involuntary termination, or voluntary termination) sets forth procedures for estimating the debt an exiting operator of an ICFIID owes the Department and the federal Centers for Medicare and Medicaid Services at the time of a change of operator, facility closure, involuntary termination, or voluntary termination. The rule is being amended to align wording with newer rules, replace arcane wording regarding serving notices with a reference to Ohio Department of Medicaid rule 5160-70-03, and remove redundant wording regarding computation of timelines.
- Rule 5123-7-18 (ICFIID - capital assets and depreciation) establishes requirements for determining when an asset of an ICFIID is capitalized and depreciated. The rule is being amended to align wording with newer rules, update a citation to the Administrative Code, and update citations to several publications.
- Rule 5123-7-21 (ICFIID - compensation cost limits for owners and relatives of owners) establishes limits, applicable to the cost report of an ICFIID, for the amount of compensation that may be claimed for owners or relatives of owners of the ICFIID. The rule is being amended to align wording with newer rules and update references to State of Ohio position classifications.
- Rule 5123-7-22 (ICFIID - compensation cost limits for administrators who are not owners or relatives of owners) establishes limits, applicable to the cost report of an ICFIID, for the amount of compensation that may be claimed for administrators of the ICFIID who are not owners or relatives of owners. The rule is being amended to align wording with newer rules and update a citation to the *Provider Reimbursement Manual*.
- Rule 5123-7-23 (ICFIID - method for establishing the other protected costs component of the prospective rate) sets forth the method for establishing the other protected costs component of the prospective rate paid to an ICFIID. The rule is being amended to align wording with newer rules.

The Department is amending rule 5123-9-04 (Home and community-based services waivers - waiting list). The rule sets forth requirements for the waiting list established pursuant to Section 5126.042 of the Revised Code when a county board of developmental disabilities determines that available resources are insufficient to enroll individuals who are assessed to need and who choose Home and Community-Based Services in Department-administered waivers. As indicated when the rule was amended in 2024, a second phase of amendments is necessary to coincide with launch of the new Waiting List Management System, the web-based information technology platform being created for managing the waiting list. The second phase amendments include:

- Adjusting the definitions of "current need" and "immediate need."
- Eliminating the definitions of "date of request," "transitional list of individuals waiting for home and community-based services," and "waiting list date," as the terms are no longer used.
- Adding a definition of "waiting list management system."
- Adjusting a criterion for placement on the waiting list from "Has been determined to have a condition" to "Has been diagnosed with a severe, chronic disability" to align with rule 5123-8-01 (Developmental disabilities level of care).
- Adding a requirement for a county board of developmental disabilities to provide information to the Department regarding an individual on the waiting list who was passed over for enrollment in a locally-funded Home and Community-Based Services waiver and collaborate with the Department to address any impediments to meeting the individual's needs.
- Adding two circumstances for removing an individual from the waiting list (i.e., when the individual/guardian refuses to secure Medicaid eligibility or when the individual/guardian refuses Service and Support Administration).
- Eliminating the Appendix because the *Ohio Assessment for Immediate Need and Current Need* form is being replaced by the new web-based Waiting List Management System.

The Department is seeking approval from the federal Centers for Medicare and Medicaid Services to amend its Home and Community-Based Services waivers. This work impacts multiple administrative rules.

The Department is amending three rules:

- Rule 5123-9-12 (Home and community-based services waivers - assistive technology under the individual options, level one, and self-empowered life funding waivers) defines Assistive Technology and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to:
 - Add a new component of Assistive Technology that covers training of a service animal and an annual examination and routine vaccinations of a fully-trained service animal whose training was funded by an individual's waiver.
 - Align wording with newer rules.

- Rule 5123-9-25 (Home and community-based services waivers - specialized medical equipment and supplies under the individual options and level one waivers) defines Specialized Medical Equipment and Supplies and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to:
 - Clarify that Specialized Medical Equipment and Supplies does not include vehicle modifications (which will be covered under proposed new rule 5123-9-44).
 - Align wording with newer rules.

- Rule 5123-9-45 (Home and community-based services waivers - participant-directed goods and services under the level one and self-empowered life funding waivers) defines Participant-Directed Goods and Services and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to:
 - Clarify that Participant-Directed Goods and Services does not include vehicle modifications (which will be covered under proposed new rule 5123-9-44).
 - Align wording with newer rules.

The Department is enacting two new rules:

- Rule 5123-9-08 (Home and community-based services waivers - responsibilities and procedures related to extended travel) establishes responsibilities and procedures that apply when an individual who is enrolled in a Home and Community-Based Services waiver administered by the Department is receiving paid Home and Community-Based Services while engaged in extended travel (i.e., travel outside of Ohio that includes seven or more consecutive overnights). The rule was developed in response to numerous questions raised by individuals who receive services and their families, county boards of developmental disabilities, and providers of services.
- Rule 5123-9-44 (Home and community-based services waivers - vehicle modifications under the individual options, level one, and self-empowered life funding waivers) defines Vehicle Modifications and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule implements the new Vehicle Modifications service.

The Department is rescinding one rule and enacting a replacement rule of the same number:

- Rule 5123-9-39 (Home and community-based services waivers - waiver nursing services under the individual options waiver) defines Waiver Nursing Services and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is due for five-year review. Based on a comprehensive review, the rule is being revised to:
 - Rename the service from "Waiver Nursing Services" to "Waiver Nursing."
 - Replace references to "advanced practice nurse" with "advanced practice registered nurse."

- Replace references to "physician's assistant" with "physician assistant."
- Add definitions of "advanced practice registered nurse," "nursing task inventory," "physician," "physician assistant," and "waiver eligibility span."
- Adjust the definition of "plan of care" to reflect federal Centers for Medicare and Medicaid Services requirements and for clarity.
- Reorder provisions (e.g., move the explanation of what is not covered from the service definition to a new paragraph of service exclusions).
- Update the provider qualifications and clarify that an Independent Provider may not provide the service to his or her spouse or minor child to align with the Ohio Department Medicaid.
- Update the service authorization process.
- Require providers of the service to use electronic visit verification in accordance with Chapter 5160-32 of the Administrative Code.
- Specify that same-day visits must be separated by a lapse of at least two hours.
- Address the billing modification codes in the rule and add the codes to the Appendix.
- Align wording with newer rules.

Due to the volume of revisions, the existing rule is being rescinded and replaced by a new rule of the same number.

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 May 2, 2025, 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 will be required to register at the security desk by showing government-issued photo identification and pass through a magnetometer. Visitors' belongings, such as purses and backpacks, are subject to inspection.