



Department of
Developmental Disabilities

Division of Medicaid Development & Administration

Ted Strickland, Governor
John L. Martin, Director

December 23, 2009

To: County Boards of DD Superintendents Council of Governments Directors
Ohio Association of County Boards DD County Boards of DD SSA Directors
Ohio Provider Resource Association The ARC of Ohio
Certified HCBS Waiver Providers

From: Patrick Stephan: Deputy Director, Medicaid Development & Administration

Subject: Frequently Asked Questions: Provider Certification: Administrative Rule
5123:2-2-01 (effective October 1, 2009)

1. To which providers does rule 5123:2-2-01 apply?

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 waiver services as outlined in section 5126.01 of the Ohio Revised Code. This includes all services paid by Medicaid Individual Options and Level One waivers (such as Homemaker/Personal Care, Transportation, Adult Day Support, Supported Employment, and Adaptive and Assistive Equipment) whether provided by independent providers, private agencies, or county boards of developmental disabilities. The rule does not apply to residential facilities licensed under section 5123.19 of the Ohio Revised Code for services provided in the residential facility to residents of the facility.

2. Why are licensed providers exempted from rule 5123:2-2-01?

Residential facilities licensed under section 5123.19 of the Ohio Revised Code are exempted from the rule because they must comply with rule 5123:2-3-19 (*Licensed Providers of Waiver Services*). Licensed providers seeking to provide Home and Community-Based waiver services in the facility for residents of the facility shall submit an application to provide waiver services in accordance with procedures established by the Department and shall comply with those service-specific waiver requirements in Chapters 5123:2-8, 5123:2-9, and 5123:2-13 of the Ohio Administrative Code that are in addition to the other licensure requirements in Chapter 5123:2-3 of the Ohio Administrative Code.

3. What about a licensed provider that provides services in both licensed and unlicensed settings? Is the provider subject to the requirements in rule 5123:2-2-01?

A residential facility licensed under section 5123.19 of the Ohio Revised Code that provides services solely to residents of the licensed facility is not subject to the requirements of rule 5123:2-2-01. If, however, a licensed provider provides Home and Community-Based Services waiver services unrelated to the operation of the licensed facility, and/or to individuals who do not reside in the licensed facility, the provider is subject to the requirements of the rule, including payment of the application fee.

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4. **Rule 5123:2-2-01 sets forth requirements for employees, contractors, and employees of contractors of agency providers who are engaged in a direct services position. What is a "direct services position?"**

"Direct services position" is defined in section 5126.281 of the Ohio Revised Code as "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."

The prominent statement *is exercises supervision or control over one or more individuals*. The definition is not intended to cover staff that may infrequently come in contact with an individual served outside of their primary work function (IE: clerical staff who may visit a sheltered workshop floor during lunch break). The direct services position definition also does not include Service and Support Administrators.

5. **Paragraph (D)(2) of rule 5123:2-2-01 requires agency providers to ensure that the chief executive officer and each employee, contractor, and employee of a contractor in a direct services position undergoes a background check by the Bureau of Criminal Identification and Investigation (BCII) at least once every three years. By what date do agency providers holding certification prior to October 1, 2009, have to be in compliance with this requirement?**

Chief Executive Officers, Superintendents, employees and contractors (and employees of contractors) in direct service positions for agency providers (includes county boards of developmental disabilities) shall be in compliance with the requirement when they apply to renew their certification under the standards in rule 5123:2-2-01.

6. **Is an agency provider obligated to notify the Department if it discovers that one of its employees has a conviction for a disqualifying offense?**

No, however, the agency will need to decide whether or not the employee should remain in the position. Factors the agency should consider include: the nature and seriousness of the offense, length of time elapsed since the conviction, characteristics of victim, likelihood of reoccurrence, relationship of the conviction to the job, and previous job performance. The Department is willing to provide technical assistance if an employer has concerns about an employee's post-hire conviction. Ultimately, it is the decision of the agency whether or not to retain the employee.

7. **It appears that rule 5123:2-2-01 requires each direct services worker to have First Aid and CPR certification; is that correct?**

Yes, each person in a direct services position is required to hold valid First Aid and CPR certification.

8. **How long do agency providers holding certification prior to October 1, 2009, have to become compliant with the requirement that each person in a direct services position hold valid First Aid and CPR certification?**

Providers holding Department-issued certification on September 30, 2009 (the day prior to the effective date of rule 5123:2-2-01) will be deemed eligible for the certification they hold. Agency providers will, therefore, have to come into compliance with the requirement for First Aid and CPR by the time they need to apply to renew their certification under the standards in rule 5123:2-2-01. The Department will begin assigning renewal dates to existing providers in 2010 and will initially focus on providers that have never submitted claims for reimbursement. Providers will be given at least 90 days notice prior to their renewal date.

9. Do I have to send a copy of my high school diploma/GED with my application for independent provider certification?

Yes. However, applicants for *agency* provider certification do not need to submit a diploma/GED for each employee, contractor, and employee of a contractor upon application. They must maintain evidence that the requirement is met.

10. Where can I get the required eight hours of training specified in paragraph (C)(3)(c) of the rule?

Please visit our website at <http://mrdd.ohio.gov/providers/training-info.htm> for information regarding this training. Select the tab *available training resources*.

11. Can the 30 hours of new staff orientation training count towards the 8 hours of Provider Certification Training?

Yes, if the subject matter is consistent with the training requirements of the 5123:2-2-01

12. I have been approved by the Department to provide initial and continuing professional development training for employees of county boards of developmental disabilities. I want to develop a curriculum to meet the requirement for eight hours of training specified in paragraph (C)(3)(c) of rule 5123:2-2-01; what do I have to do to be approved?

Trainers are not required to apply to the Department to be "approved" to provide the training. However, trainers must be:

- 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 of experience. Such entities include, but are not limited to, provider agencies, county boards of developmental disabilities, and professional or trade associations; or
- 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.

Upon request, trainers must provide to the Department documentation that they meet the requirements set forth above, an outline of the course they conduct, and records to verify attendance of trainees. For more information on the required content of the training, visit our website at: <http://mrdd.ohio.gov/providers/training-info.htm>

13. Can training completed by an applicant for independent provider certification prior to October 1, 2009 be used to meet the training requirements in rule 5123:2-2-01?

Yes, as long as the applicant can provide documentation to verify that the training meets the standards in terms of appropriate content, sufficient duration, and delivery by a qualified trainer.

14. Can training completed by an employee of an agency provider prior to employment by the agency be used to meet the training requirements in rule 5123:2-2-01?

Yes, as long as the employee can provide documentation to verify that the training meets the standards in terms of appropriate content, sufficient duration, and delivery by a qualified trainer.

15. Do incumbent employees of agency providers that were certified prior to October 1, 2009 have to complete the eight hours of training specified in paragraph (C)(3)(c) of rule 5123:2-2-01?

No; persons employed by certified agency providers as of September 30, 2009 do not have to complete the eight hours of training specified in paragraph (C)(3)(c). The eight hours of training is a requirement for employees hired on or after October 1, 2009.

16. Are county boards of developmental disabilities required to pay the application fees?

Yes; county boards of developmental disabilities are subject to the application fees for agency providers set forth in paragraph (K) of the rule.

17. When providers apply for renewal certification at the three-year renewal certification application fee rates, do they also need to pay the \$15, \$50, and \$100 for each additional service recertification they seek?

No; the application fees specified in paragraph (K)(2)(b) of the rule apply when a certified provider seeks approval to provide additional Home and Community-Based Services waiver services during the remaining term of an existing Department-issued certification. The application fees for renewal of an existing certification are based on the nature of the provider (i.e., independent, small agency, or large agency) regardless of how many services the provider delivers. For example, the application fee for three-year renewal of an independent provider's certification is \$100, regardless of whether s/he provides only Homemaker/Personal Care or provides Homemaker/Personal Care and Transportation.

18. Do currently certified providers need to apply at the initial or renewal application fee rates?

Currently certified providers will be applying to renew existing certification and therefore will be subject to the application fee for three-year renewal specified in paragraph (K)(2)(c) of the rule.

19. For the purpose of designating an agency as "small" or "large" for the application fee, who will determine how many individuals the agency serves?

The agency will self-report on the provider certification application form.

20. For the purpose of determining how many individuals an agency serves, should the agency count all of the individuals it serves or only the individuals on Home and Community-Based Services waivers? What if the agency serves people who do not have a developmental disability?

The agency should count each individual (which is defined as a person with mental retardation or other developmental disability) it serves, with the exception of those whose are served in licensed facilities.

21. Can I pay the application fee by electronic funds transfer?

The Department does not have the capability to accept electronic payment at this time but is exploring the start-up and ongoing costs associated with accepting electronic payments.

22. Do employees of agency providers also have to hold Adult Services registration or certification under existing rule 5123:2-5-01 (*Adult Services Registration and Certification Standards*)?

Yes, if the agency is a county board of developmental disabilities or under contract with a county board of developmental disabilities to provide Adult Services.

23. How will county boards of developmental disabilities know that a provider's certification has lapsed; will the Department notify the boards?

The Department plans to enhance and improve its provider database system and establish a tracking and reporting mechanism to help ensure that county boards have access to this information.

24. When should providers expect more information about the time-limited certification? How will that notification process look?

The Department's initial focus will be on addressing providers who remain in the state database but have been inactive for more than two years. We intend to begin these efforts during 2010.

The department has not yet established recertification dates for existing providers. Existing providers can expect to be notified of their assigned recertification date prior to the end of calendar year 2011. Providers will be notified 90 days in advance of their recertification.

25. How will the Department determine compliance with the Provider Certification rule?

Generally, at the time of certification renewal, and through the existing provider compliance process.

For more detailed information regarding the Provider Certification process and related guidelines, please visit our website at <http://mrdd.ohio.gov/providers/new.htm>