

Date: March 1, 2016

To: Licensees and Operators of Licensed Residential Facilities

From: Kathryn Haller, Deputy Director, Division of Legal and Oversight
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Subject: Forthcoming Changes to Chapter 5123:2-3 Rules

Over the past two years, system stakeholders and Department staff have been working together to comprehensively review and revise the Chapter 5123:2-3 rules governing licensed residential facilities, including Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs). We are very grateful to all who participated in this effort. As a result of this work, the rules have been streamlined and reorganized; 23 existing rules are being rescinded and replaced by 10 new rules. The [new rules](#) will go into effect October 1, 2016. This memo highlights some of the most significant changes to the rules. Each licensee and operator is responsible for reading, understanding, and complying with the rules in their entirety.

Elimination of Existing Requirements

Several existing requirements for residential facilities are being eliminated, including:

- Preparation of menus.
- Conducting a physical evacuation during a fire safety drill at least once per year.
- Tuberculosis testing for staff of residential facilities other than ICFs. (Federal regulations require staff of ICFs to be tested.)

Three-Year Renewal Licenses

The Department will issue three-year renewal licenses unless adverse action is being initiated. The complicated scheme set forth in existing rules for determining the term of a renewal license often resulted in protracted debate between a licensee and the Department based on the licensee's determination to secure the three-year license. To streamline the process and reduce unproductive use of system resources, new rule 5123:2-3-06 establishes a straightforward process for issuing three-year renewal licenses. Additionally, in response to feedback from providers, procedural details about the compliance review process were incorporated directly into the new rule.

Implementation of New Requirements

Compliance reviews scheduled prior to October 1, 2016 will be conducted in accordance with currently effective rules and the documents provided in advance by the Department's Office of Provider Standards and Review. Beginning October 1, 2016, residential facilities are expected to be in compliance with the timelines set forth below which allow additional time to fully implement some new requirements.

Forthcoming Changes to Chapter 5123:2-3 Rules

March 1, 2016

Page 2

New Requirement	Timeline for Implementation
5123:2-3-01 (B)(1): Ensure Administrator is directly and actively involved in day-to-day operation of the residential facility and oversees provision of services.	Beginning October 1, 2016
5123:2-3-01 (C)(6): Report in writing to Department within 14 days if Licensee, Operator, or Administrator is or becomes a related party of a person or entity for which certification has been denied or revoked.	Beginning October 1, 2016
5123:2-3-01 (C)(7): Provide to Department the name, country of birth, date of birth, and social security number for any person owning a financial interest of 5% or more in the residential facility.	Beginning October 1, 2016
5123:2-3-01 (C)(8): Ensure current United States mail and email addresses are on file with Department.	Beginning October 1, 2016
5123:2-3-01 (C)(9): Demonstrate an established internal system to ensure compliance with requirements for: <ul style="list-style-type: none"> • Residential facilities in accordance with Chapter 5123:2-3 of the Administrative Code; • Background investigations and appropriate actions in accordance with rule 5123:2-2-02 for its Administrator, Licensee, Operator, and each employee/contractor in a direct services position; and • Service delivery, service documentation, and billing for services for the specific Home and Community-Based Services provided. 	Beginning October 1, 2016
5123:2-3-01 (C)(10): Obtain and thereafter maintain general liability insurance in the amount of \$500,000.	Beginning October 1, 2016
5123:2-3-01 (C)(11): Participate as requested by the Department in service delivery system data collection initiatives.	Beginning October 1, 2016
5123:2-3-01 (D)(1): Licensee, Operator, and Administrator must consent to be enrolled in Rapback.	Beginning October 1, 2016
5123:2-3-01 (D)(2)(a): Enroll existing direct services staff in Rapback.	Beginning October 1, 2016 as existing staff are due for five-year background check in accordance with rule 5123:2-2-02
5123:2-3-01 (D)(2)(b): Enroll newly hired direct services staff in Rapback.	Beginning October 1, 2016
5123:2-3-01 (D)(4): Be current in payment of payroll taxes, workers' compensation premiums, and unemployment compensation premiums.	Beginning October 1, 2016

Forthcoming Changes to Chapter 5123:2-3 Rules

March 1, 2016

Page 3

New Requirement	Timeline for Implementation
<p>5123:2-3-01 (E)(2): Ensure newly hired Administrators:</p> <ul style="list-style-type: none"> • Are at least 21 years age; • Have a valid Social Security Number and government-issued photo identification; • Are able to read, write, and understand English; • Hold a high school diploma or GED; • Hold a bachelor's degree <u>or</u> have at least four years of paid work experience as a supervisor of programs or services for individuals with developmental disabilities; • Have at least one year of paid work experience in provision of services to individuals with developmental disabilities which included responsibility for personnel matters, supervision of employees, program services, and financial management; • Within 30 days of hire, complete the Department-provided web-based orientation for Administrators; and • Within 60 days of hire, complete training in service documentation, fiscal administration (for Administrators at ICFs) or billing for services (for Administrators at non-ICFs), internal compliance programs, rights of individuals, and rule 5123:2-17-02 including a review of <i>Health and Welfare Alerts</i> issued by the Department. 	<p>Beginning October 1, 2016</p>
<p>5123:2-3-01 (E)(4): Report in writing to Department within 14 days when Administrator leaves residential facility's employ.</p>	<p>Beginning October 1, 2016</p>
<p>5123:2-3-01 (F)(1)(c): Ensure newly hired direct services staff hold a high school diploma or GED.</p>	<p>Beginning October 1, 2016</p>
<p>5123:2-3-01 (F)(1)(e): Ensure newly hired direct services staff, prior to providing services, complete 8 hours of training in:</p> <ul style="list-style-type: none"> • Overview of serving individuals with developmental disabilities including implementation of individual plans or individual service plans; • Role and responsibilities regarding services including person-centered planning, community participation and integration, self-determination, and self-advocacy; • Universal precautions for infection control; • Rights of individuals; and • Rule 5123:2-17-02 including a review of <i>Health and Welfare Alerts</i> issued by the Department. 	<p>Beginning October 1, 2016</p>

Forthcoming Changes to Chapter 5123:2-3 Rules

March 1, 2016

Page 4

New Requirement	Timeline for Implementation
<p>5123:2-3-01 (F)(1)(f): Ensure newly hired direct services staff, prior to providing services, complete training specific to each individual he or she will support that includes:</p> <ul style="list-style-type: none"> • What is important to the individual and what is important for the individual; and • The individual’s support needs including behavioral support strategy, management of the individual’s funds, and medication administration/delegated nursing. 	<p>Beginning October 1, 2016</p>
<p>5123:2-3-04 (C)(2)(d): Administrator, Operator, and staff shall not use or be under the influence of alcohol, illegal drugs, illegal chemical substances, or controlled substances that may affect ability while providing services.</p>	<p>Beginning October 1, 2016</p>
<p>5123:2-3-04 (E)(2): Implement requirements regarding transportation including written policies and procedures regarding vehicle accessibility, vehicle maintenance, and requirements for vehicle drivers.</p>	<p>Beginning October 1, 2016</p>
<p>5123:2-3-01 (F)(1)(h) & (F)(1)(i): Ensure direct services staff obtain within 60 days of hire, and thereafter maintain First Aid and Cardiopulmonary Resuscitation certification.</p> <p>* See note below</p>	<ul style="list-style-type: none"> • Within 60 days of hire for staff hired on or after October 1, 2016 • On or before January 1, 2017 for existing staff
<p>5123:2-3-01 (G): Ensure supervisory staff have completed training in:</p> <ul style="list-style-type: none"> • Service documentation; • Fiscal administration (for Supervisors at ICFs) or billing for services (for Supervisors at non-ICFs); and • Management of individuals' funds. 	<ul style="list-style-type: none"> • Within 90 days for supervisors newly hired or appointed on or after October 1, 2016 • On or before January 1, 2017 for existing Supervisors
<p>5123:2-3-01 (E)(2)(i): Ensure Administrator has completed annual training in:</p> <ul style="list-style-type: none"> • The residential facility's role and responsibilities with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy; • Rights of individuals; and • Rule 5123:2-17-02 including a review of <i>Health and Welfare Alerts</i> issued by the Department since previous year's training. 	<p>On or before January 1, 2017 and annually thereafter</p>

New Requirement	Timeline for Implementation
5123:2-3-01 (F)(1)(j): Ensure direct services staff have completed annual training in: <ul style="list-style-type: none"> • Role and responsibilities regarding services including person-centered planning, community participation and integration, self-determination, and self-advocacy; • Rights of individuals; and • Rule 5123:2-17-02 including a review of <i>Health and Welfare Alerts</i> issued by the Department since previous year's training. 	On or before January 1, 2017 and annually thereafter
5123:2-3-01 (I)(3): Ensure volunteers who work directly with residents for more than 40 hours during a calendar year receive training in: <ul style="list-style-type: none"> • The residential facility's role and responsibilities with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy; • Rights of individuals; • Rule 5123:2-17-02 including a review of <i>Health and Welfare Alerts</i> issued by the Department; and • Overview of fire safety and emergency procedures. 	On or before January 1, 2017
5123:2-3-01 (I)(4): Ensure volunteers who work directly with residents for more than 40 hours during a calendar year undergo background investigations.	On or before January 1, 2017
5123:2-3-02 (C)(9) & 5123:2-3-08 (E)(2)(c): Ensure no bedroom is occupied by more than two individuals.	** See note below
5123:2-3-08 (E)(4)(a): Provide toilet and bathing facilities at a minimum ratio of one to four.	*** See note below
5123:2-3-03 (E): Requirements for development of individual plans for residents of ICFs.	**** See note below
5123:2-3-04 (H): ICFs shall ensure individuals: <ul style="list-style-type: none"> • Have information about day activities offered by other providers and opportunities to explore community participation; • Participate in day activities that foster community participation unless his/her individual plan indicates such participation is medically contraindicated; and • Have access to a variety of day activities. 	***** See note below

Notes

* **Circumstances for Which the Department will Consider Waiving Cardiopulmonary Resuscitation (CPR) Certification for Staff of ICFs**

An ICF may, in accordance with proposed new rule 5123:2-3-10 (*Procedures to Waive Rule Requirements*), request a waiver of the requirement for all direct services staff to hold CPR certification. The Department would expect the ICF making such a request to:

1. Have nursing staff onsite 24 hours per day, seven days per week;
2. Provide the number of non-nursing staff who will hold CPR certification and explain how the ICF determined this number based on resident needs and facility staffing patterns;
3. Establish a policy and demonstrate that sufficient staff hold CPR certification to ensure residents have opportunities to explore and experience community participation in accordance with proposed new rule 5123:2-3-04 (*Provision of Services and Maintenance of Service Records*); and
4. Show that the ICF has processes in place to ensure that 2 and 3 (above) are met.

** **Two Individuals Per Bedroom**

- ICFs are governed by Section 5124.70 of the Revised Code. In accordance with Section 5124.70, each ICF with more than two residents in the same bedroom must have submitted a plan (by December 31, 2015) to achieve the two residents per bedroom requirement by June 30, 2025.
- By October 1, 2016, residential facilities that are not ICFs must develop and provide to the Department upon request, a written plan explaining how they will come into compliance by October 1, 2017.

*** **Toilet and Bathing Facilities**

By October 1, 2016, residential facilities must develop and provide to the Department upon request, a written plan explaining how they will come into compliance by October 1, 2017.

**** **Person-Centered Planning for Residents of ICFs**

ICFs should begin complying with the requirements for development of individual plans as plans are due for review so that all plans are in compliance with the new requirements by October 1, 2017. The Department is providing training to support efforts to develop and enhance person-centered planning practices at ICFs. A list of scheduled training is available at <http://bit.ly/1PMkcyA>.

***** **Community Participation for Residents of ICFs**

By October 1, 2016, ICFs must develop and provide to the Department upon request, a written plan explaining how they will come into compliance by October 1, 2017.

Questions

Please direct questions to the Department's Office of Provider Standards and Review:

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