

5123:2-3-01

**Licensed residential facilities - administration and operation.**

(A) Purpose

This rule sets forth requirements for administration and operation of residential facilities licensed in accordance with section 5123.19 of the Revised Code.

(B) Definitions

- (1) "Administrator" means the person responsible for administration of the residential facility who shall be directly and actively involved in the day-to-day operation of the residential facility and oversee provision of services by the residential facility.
- (2) "Department" means the Ohio department of developmental disabilities.
- (3) "Direct services position" has the same meaning as in section 5123.081 of the Revised Code and includes staff who provide habilitation services.
- (4) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (5) "Individual" means a person with a developmental disability.
- (6) "Individual plan" or "individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (7) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (8) "License" means written approval by the department to a licensee to operate a residential facility.
- (9) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.
- (10) "Operator" means the licensee or an entity with which the licensee has established a contract for the management of and provision of services at the residential facility.
- (11) "Person-centered planning" has the same meaning as in rule 5123:2-3-03 of the Administrative Code.
- (12) "Professional staff" means employees of the residential facility who are licensed, certified, or registered by the state to provide professional services in the field in which they practice.
- (13) "Related party" has the same meaning as in section 5123.16 of the Revised Code.

- (14) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
- (15) "Supervisory staff" means employees of the residential facility who provide direction or exercise supervision over one or more employees in direct services positions.
- (16) "Support staff" means employees of the residential facility such as secretaries, clerks, housekeepers, maintenance workers, and laundry workers who are not in direct services positions, who are not supervisory staff, and who are not professional staff.

(C) General requirements

- (1) A residential facility shall be licensed by the department in accordance with section 5123.19 of the Revised Code. The license to operate a residential facility is not transferable and is valid only for the licensee, the premises named on the license, the number of individuals specified on the license, and the term specified on the license. The license shall be available at the residential facility and shown to anyone upon request. The licensee shall take all actions necessary to maintain the license.
- (2) A licensee providing home and community-based services under a medicaid waiver administered by the department shall submit an application for approval to provide home and community-based services in accordance with procedures established by the department and comply with rules in Chapter 5123:2-9 of the Administrative Code for the specific home and community-based services provided.
- (3) The operator shall comply with rules in Chapter 5123:2-3 of the Administrative Code, rules in other chapters of the Administrative Code adopted by the department to license or regulate the operation of residential facilities, and all applicable federal, state, and local regulations including but not limited to, the Americans with Disabilities Act, fire safety code, wage and hour, workers' compensation, unemployment compensation, and withholding taxes.
- (4) The operator shall annually obtain a fire inspection and if applicable, a water and sewer inspection, which shall be provided to the department upon request.
- (5) The operator shall disclose or report in writing to the department if the licensee, operator, or administrator has been or is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code within fourteen calendar days after the date of such charge, conviction, or guilty plea.

- (6) The operator shall disclose or report in writing to the department within fourteen calendar days if the licensee, operator, or administrator is or becomes a related party of a person or government entity for which the department refused to issue or renew or revoked a supported living certificate pursuant to section 5123.166 of the Revised Code.
- (7) The operator shall provide to the department the name, country of birth, date of birth, and social security number for any person owning a financial interest of five per cent or more in the residential facility (including a direct, indirect, security, or mortgage financial interest).
- (8) The operator shall provide and maintain on file with the department, current United States mail and electronic mail addresses.
- (9) The operator shall demonstrate that it has an established internal system to ensure compliance with requirements for:

  - (a) Residential facilities in accordance with rules in Chapter 5123:2-3 of the Administrative Code;
  - (b) Background investigations and appropriate actions in accordance with rule 5123:2-2-02 of the Administrative Code, for its administrator, licensee, operator, and each employee, contractor, and employee of a contractor who is engaged in a direct services position; and
  - (c) Service delivery, service documentation, and billing for services in accordance with rules in Chapter 5123:2-9 of the Administrative Code for the specific home and community-based services provided.
- (10) The operator shall maintain general liability insurance in the amount of at least five hundred thousand dollars.
- (11) The operator shall participate as requested by the department in service delivery system data collection initiatives such as the national core indicators staff stability survey.
- (12) The operator and its employees shall interact with individuals in a way to safeguard the rights of individuals enumerated in sections 5123.62 and 5123.65 of the Revised Code.
- (13) The licensee shall be responsible for meeting the requirements established under sections 5123.63 and 5123.64 of the Revised Code.
- (14) Swimming pools on the grounds of residential facilities including residential facilities in apartment complexes, shall be used by individuals only in the presence of a person who holds "American Red Cross" or equivalent

lifeguarding certificate or shallow water lifeguarding certificate if the pool is less than five feet deep, unless otherwise specified in the individual plan or individual service plan.

(D) Staffing

- (1) The operator shall conduct background investigations and take appropriate actions in accordance with rule 5123:2-2-02 of the Administrative Code for the administrator or operator serving as administrator, and each employee, contractor, and employee of a contractor who is engaged in a direct services position. The administrator shall consent to be enrolled in the Ohio attorney general's retained applicant fingerprint database ("Rapback"). When the licensee and/or operator is a natural person, he or she shall be subject to background investigations in accordance with the requirements for candidates set forth in rule 5123:2-2-02 of the Administrative Code and consent to be enrolled in the Ohio attorney general's retained applicant fingerprint database ("Rapback").
- (2) The operator shall enroll each employee, contractor, and employee of a contractor who is engaged in a direct services position in the Ohio attorney general's retained applicant fingerprint database ("Rapback").

  - (a) An employee, contractor, and employee of a contractor who is engaged in a direct services position employed by or under contract with the operator on the day immediately prior to the effective date of this rule shall be enrolled in "Rapback" at the point he or she is next subject to a criminal records check by the bureau of criminal identification and investigation in accordance with rule 5123:2-2-02 of the Administrative Code.
  - (b) An employee, contractor, and employee of a contractor who is engaged in a direct services position hired or engaged by the operator on or after the effective date of this rule shall be enrolled in "Rapback" at the point of his or her initial criminal records check by the bureau of criminal identification and investigation in accordance with rule 5123:2-2-02 of the Administrative Code.
- (3) The operator shall provide annual written notice to each employee, contractor, and employee of a contractor explaining the conduct for which the employee, contractor, or employee of a contractor 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 operator, if he or she is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code within fourteen calendar days after the date of such charge, conviction, or

guilty plea.

- (4) The operator shall be current in payment of payroll taxes, workers' compensation premiums, and unemployment compensation premiums.
- (5) The operator shall ensure that staff are on duty on the basis of the needs of individuals being served. Staff schedules shall be prepared in advance and available for review at each residential facility.
- (6) The operator shall provide sufficient support staff so that staff in direct services positions are not required to perform support services to the extent that these duties interfere with the exercise of their primary duties.
- (7) The operator shall maintain personnel records for each employee in accordance with the residential facility's personnel policies.
- (8) The operator shall maintain a written record, which may include an electronic record, of initial and continuing training completed by each staff member and volunteer. Documentation of training shall include the name of the person receiving the training, date of training, training topic, duration of training, instructor's name if applicable, and a brief description of the training. This information shall be made available upon request by the department and may be maintained at the residential facility or other accessible location.

(E) Requirements for administrator

- (1) The operator shall employ an administrator except where the operator serves as the administrator.
- (2) The administrator or operator serving as administrator shall:
  - (a) Be at least twenty-one years of age.
  - (b) Have a valid social security number and one of the following forms of identification:
    - (i) State of Ohio identification;
    - (ii) Valid driver's license; or
    - (iii) Other government-issued photo identification.
  - (c) 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.
  - (d) Except for a person who, on the day immediately prior to the effective

date of this rule, was employed by or under contract with a residential facility as the administrator, hold a high school diploma or general education development certificate.

(e) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, either:

(i) Hold a bachelor's degree from an accredited college or university; or

(ii) Have at least four years of full-time (or equivalent part-time) paid work experience as a supervisor of programs or services for individuals with developmental disabilities.

(f) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, have at least one year of full-time (or equivalent part-time) paid work experience in the provision of services to individuals with developmental disabilities which included responsibility for:

(i) Personnel matters;

(ii) Supervision of employees;

(iii) Program services; and

(iv) Financial management.

(g) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, successfully complete within thirty calendar days of hire as the administrator or operator serving as administrator, the department-provided web-based orientation for administrators of residential facilities.

(h) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, successfully complete within sixty calendar days of hire as the administrator or operator serving as administrator, training in accordance with standards established by the department in:

(i) Service documentation;

(ii) Fiscal administration and/or billing for services, as applicable;

(iii) Internal compliance programs;



- (iii) Other government-issued photo identification.
- (c) Holds a high school diploma or general education development certificate, except for persons who, on the day immediately prior to the effective date of this rule, were employed by or under contract with a residential facility in a direct services position.
- (d) Is 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.
- (e) Successfully completes prior to providing direct services, eight hours of training in accordance with standards established by the department in:

  - (i) Overview of serving individuals with developmental disabilities including implementation of individual plans or individual service plans;
  - (ii) The role and responsibilities of direct services staff with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;
  - (iii) Universal precautions for infection control, including hand washing and the disposal of bodily waste;
  - (iv) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
  - (v) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department; and
  - (vi) An overview of fire safety and emergency procedures.
- (f) Successfully completes prior to providing direct services, training specific to each individual he or she will support that includes:

  - (i) What is important to the individual and what is important for the individual; and
  - (ii) The individual's support needs including, as applicable, behavioral support strategy, management of the individual's funds, and medication administration/delegated nursing.
- (g) Successfully completes within thirty calendar days of hire, and specific to

each residential facility in which he or she works, training in fire safety, operation of fire safety equipment and warning systems, and emergency response plan. Until such time that a staff member completes the training required by this paragraph, he or she may provide direct services only when there is another staff member who has current training required by this paragraph present.

(h) Obtains within sixty calendar days of hire and thereafter maintains valid "American Red Cross" or equivalent certification in first aid which includes an in-person skills assessment completed with an approved trainer. Until such time that a staff member obtains certification in first aid, he or she may provide direct services only when there is another staff member who holds valid certification in first aid present.

(i) Obtains within sixty calendar days of hire and thereafter maintains valid "American Red Cross" or equivalent certification in cardiopulmonary resuscitation which includes an in-person skills assessment completed with an approved trainer. Until such time that a staff member obtains certification in cardiopulmonary resuscitation, he or she may provide direct services only when there is another staff member who holds valid certification in cardiopulmonary resuscitation present. An intermediate care facility for individuals with intellectual disabilities that has nursing staff on site twenty-four hours per day, seven days per week may, in accordance with rule 5123:2-3-10 of the Administrative Code, request a waiver of the requirement for all direct services staff to hold certification in cardiopulmonary resuscitation.

(j) Successfully completes, commencing in the second year of employment or contract, annual training in accordance with standards established by the department in:

(i) The role and responsibilities of direct services staff with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;

(ii) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;

(iii) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department since the previous year's training;

(iv) Fire safety and operation of fire safety equipment and warning systems specific to each residential facility in which he or she works; and

(v) The emergency response plan specific to each residential facility in which he or she works.

(2) An employee, contractor, or employee of a contractor engaged in a direct services position shall be deemed to have met the annual training requirements set forth in paragraph (F)(1)(j) of this rule if he or she is scheduled for training and the training is completed within thirty calendar days of the deadline.

(G) Additional requirements for supervisory staff

The operator shall ensure that within ninety calendar days of becoming a supervisor, supervisory staff successfully complete training in accordance with the residential facility's policies and procedures regarding:

(1) Service documentation;

(2) Fiscal administration and/or billing for services, as applicable; and

(3) Management of individuals' funds.

(H) Requirements for support staff

(1) The operator shall ensure that prior to assuming their duties, support staff receive training in accordance with standards established by the department in:

(a) The role and responsibilities of the residential facility with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;

(b) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;

(c) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department; and

(d) An overview of fire safety and emergency procedures.

(2) The operator shall ensure that within thirty calendar days of hire and at least once annually thereafter, support staff receive training in:

(a) Fire safety and operation of the fire safety equipment and warning systems specific to each residential facility in which he or she works; and

(b) The emergency response plan specific to each residential facility in which he or she works.

(I) Volunteers

(1) A residential facility may engage volunteers to provide supplementary services.

(2) The operator shall ensure that volunteers are at all times under supervision of paid supervisory staff of the residential facility.

(3) The operator shall ensure that volunteers who provide more than forty hours of service working directly with residents during a calendar year receive training in:

(a) The role and responsibilities of the residential facility with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;

(b) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;

(c) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department; and

(d) An overview of fire safety and emergency procedures.

(4) The operator shall ensure that volunteers who provide more than forty hours of service working directly with residents during a calendar year undergo background investigations.

(a) The background investigation for a volunteer shall include:

(i) Requiring the volunteer to submit a statement to the operator with the volunteer's signature attesting that he or she has not been convicted of or pleaded guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

(ii) Requiring the volunteer to sign an agreement under which the volunteer agrees to notify the operator within fourteen calendar days if the volunteer is formally charged with, is convicted of, or pleads guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code. The agreement shall provide that failure to make the notification may result in termination of the volunteer's services.

(iii) Establishing the volunteer is not included in any of the databases described in paragraph (C)(2) of rule 5123:2-2-02 of the Administrative Code.

(iv) Obtaining a criminal records check conducted by the Ohio bureau of criminal identification and investigation. If the volunteer does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the criminal records check shall include information from the federal bureau of investigation.

(b) The operator shall, at a frequency of no less than once every five years, conduct a background investigation in accordance with paragraph (I)(4)(a) of this rule for each volunteer.

(c) The operator shall not engage or continue to engage a volunteer who:

(i) Is included in one or more of the databases described in paragraph (C)(2) of rule 5123:2-2-02 of the Administrative Code; or

(ii) Has a conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code if the corresponding exclusionary period as specified in paragraph (E) of rule 5123:2-2-02 of the Administrative Code has not elapsed.

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CERTIFIED ELECTRONICALLY

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Certification

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