

5123-2-09

Provider certification - independent providers.**(A) Purpose**

This rule establishes procedures and standards for certification of independent providers of supported living services, including home and community-based services provided in accordance with section 5123.045 of the Revised Code.

(B) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Abuser registry" has the same meaning as in rule 5123-17-03 of the Administrative Code.
- (2) "Agency provider" has the same meaning as in rule 5123-2-08 of the Administrative Code.
- (3) "Certificate of high school equivalence" has the same meaning as in section 3301.80 of the Revised Code and includes the equivalent of a certificate of high school equivalence described in division (C) of that section.
- (4) "County board" means a county board of developmental disabilities.
- (5) "Department" means the Ohio department of developmental disabilities.
- (6) "Health-related activities" has the same meaning as in rule 5123:2-6-01 of the Administrative Code.
- (7) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (8) "Independent provider" means a self-employed person who provides services for which he or she must be certified in accordance with this rule and who shall not employ, either directly or through contract, anyone else to provide the services.
- (9) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
- (10) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.

- (11) "Major unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.
- (12) "Provider network management module" means a component of the Ohio medicaid enterprise system platform, maintained by the Ohio department of medicaid at its website (medicaid.ohio.gov), used by providers of services to submit change requests online.
- (13) "Provider services management system" means the electronic portal, maintained by the department at its website (dodd.ohio.gov), used by providers of services to apply for certification and submit required information and documents.
- (14) "Related party" has the same meaning as in section 5123.16 of the Revised Code.
- (15) "Related to" means the independent provider is the individual's:
- (a) Parent or stepparent;
 - (b) Sibling or stepsibling;
 - (c) Grandparent;
 - (d) Aunt, uncle, nephew, or niece;
 - (e) Cousin; or
 - (f) Child or stepchild.
- (16) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration as set forth in section 5126.15 of the Revised Code and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.
- (17) "Supported living" has the same meaning as in section 5126.01 of the Revised Code.
- (18) "Unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.

(C) General requirements for independent providers

- (1) An independent provider shall:
- (a) Have a valid birth certificate.

- (b) Be at least eighteen years of age.
 - (c) Have a valid social security card and a valid government-issued photo identification.
 - (d) Meet one of the following:
 - (i) Hold a high school diploma;
 - (ii) Hold a certificate of high school equivalence;
 - (iii) On September 30, 2009, held independent provider certification issued by the department; or
 - (iv) On September 30, 2009, was employed by or under contract with an agency provider certified by the department.
 - (e) 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 by the independent provider.
 - (f) Undergo a background investigation in accordance with rule 5123-2-02 of the Administrative Code and consent to be enrolled by the department in the Ohio attorney general's retained applicant fingerprint database (also known as "Rapback").
 - (g) Comply with the requirements of this rule and other standards and assurances established in Chapter 5123. of the Revised Code and rules adopted pursuant to that chapter.
 - (h) Participate as requested by the department in service delivery system data collection initiatives.
- (2) An independent provider of home and community-based services shall obtain and maintain a medicaid provider agreement with the Ohio department of medicaid.

(D) Training requirements for independent providers

- (1) An independent provider shall successfully complete the training specified in appendix A, appendix B, or appendix C to this rule, as applicable.
- (2) An independent provider of home and community-based services shall comply with service-specific training required by rules in Chapters 5123-9 and 5123:2-9 of the Administrative Code for the specific services provided.

(3) After being selected by an individual to provide services and prior to providing services to that individual, an independent provider shall meet with a representative of the county board to discuss:

(a) The independent provider's responsibilities;

(b) Requirements set forth in the individual service plan regarding what is important to the individual and what is important for the individual (e.g., health and safety, community integration, employment goals, behavioral support strategy, management of the individual's funds, or medication administration/delegated nursing needs);

(c) Service documentation; and

(d) Billing for services.

(E) Standards of service provision

(1) An independent provider shall:

(a) Provide services only to individuals whose needs he or she can meet;

(b) Communicate effectively with each individual for whom he or she provides services;

(c) Be knowledgeable in the individual service plan for each individual served prior to providing services to the individual;

(d) Implement services in accordance with the individual service plan and in a person-centered manner;

(e) Comply with the requirements of rule 5123-2-06 of the Administrative Code; and

(f) Take all reasonable steps necessary to prevent the occurrence or recurrence of major unusual incidents and unusual incidents.

(2) An independent provider shall not:

(a) Provide services to his or her minor child;

(b) Provide services to his or her spouse;

(c) Provide services to an individual for whom the independent provider serves as guardian unless the independent provider is related to the individual;

- (d) Engage in sexual conduct or have sexual contact with an individual for whom he or she is providing services;
- (e) Administer medication or perform health-related activities for individuals who receive services unless he or she meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted pursuant to those chapters; or
- (f) Use or be under the influence of the following while providing services:
 - (i) Alcohol;
 - (ii) Illegal drugs;
 - (iii) Illegal chemical substances; or
 - (iv) Controlled substances that may adversely affect his or her ability to furnish services.

(F) Required notifications to be made by independent providers

(1) An independent provider shall:

- (a) Provide and maintain in the provider services management system or provider network management module, as applicable, his or her current physical address, telephone number, and electronic mail address.
- (b) Notify the department via the provider services management system or provider network management module, as applicable, if he or she is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of 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 within fourteen calendar days after the date of such charge, conviction, guilty plea, or finding.
- (c) Notify the department via the provider services management system or provider network management module, as applicable, within fourteen calendar days of determining that he or she is or has become a related party of a person or government entity for which the department has refused to issue or renew or revoked certification pursuant to section 5123.166 of the Revised Code.
- (d) Notify the department via the provider services management system or provider network management module, as applicable, within fourteen

calendar days if he or she has had a professional registration, certification, or license (other than a driver's license) suspended or revoked.

- (2) An independent provider, upon realization that he or she may be unable to continue to effectively provide services to an individual, shall immediately engage the individual and the individual's service and support administrator to consider alternative strategies for serving the individual that ensure the health and safety of the individual.
- (3) An independent provider shall notify, in writing, an individual and the individual's service and support administrator in the event that the independent 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 immediate risk of serious harm, the independent provider shall immediately notify the individual's service and support administrator or if after business hours, the county board's twenty-four hour emergency telephone number, and other appropriate authorities (e.g., law enforcement). An independent provider shall convey documents and records to the individual's service and support administrator as requested.

(G) Procedure for obtaining initial independent provider certification

- (1) An applicant for initial independent provider certification shall submit an application via the provider services management system, for supported living services and the specific home and community-based services the applicant seeks to provide in accordance with procedures prescribed by the department including:

 - (a) Required signatures and supporting documentation to demonstrate that standards are met as required by this rule and rules in Chapters 5123-9 and 5123:2-9 of the Administrative Code for the specific home and community-based services the applicant seeks to provide;
 - (b) The application fee specified in paragraph (K) of this rule except when, based on the specific home and community-based services to be provided, the applicant is exempted from paying an application fee in accordance with appendix D to this rule; and
 - (c) The applicant's criminal records check by the Ohio bureau of criminal identification and investigation and when applicable, by the federal bureau of investigation.

- (2) The department will review an application within thirty calendar days of receipt of all required components to determine if the applicant meets the standards for the requested certification.
- (a) When the department determines an applicant seeking to provide home and community-based services meets the standards for the requested certification, the department will initiate the process for the applicant to obtain a medicaid provider agreement from the Ohio department of medicaid.
- (b) If, upon review of the application, the department determines that supporting documentation does not demonstrate that the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail and advise that the applicant has thirty calendar days to submit components needed to demonstrate that the applicant meets the standards for the requested certification.
- (i) When the department receives components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the application will be advanced for processing.
- (ii) When the applicant fails to submit components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the department will take no further action with respect to the application.
- (3) When the department determines the applicant meets the standards for the requested certification and, when applicable, after the Ohio department of medicaid has issued a medicaid provider agreement to an applicant seeking to provide home and community-based services, the department will notify the applicant by electronic mail that certification is approved. The notification will specify the effective date and expiration date of the certification and the specific services for which the applicant is certified.
- (4) The department's review of an application may extend beyond thirty calendar days when:
- (a) One or more of the submitted documents requires verification; or
- (b) The applicant:

(i) Has a conviction or notation on his or her criminal records check by the Ohio bureau of criminal identification and investigation or the federal bureau of investigation;

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

(iii) Is the primary person involved in a major unusual incident;

(iv) Is under consideration for placement on the abuser registry; or

(v) Is a related party to an agency provider or an independent provider whose certification has been suspended or revoked or is proposed for revocation.

(5) When the department determines an applicant does not meet the standards for the requested certification, the department will notify the applicant in accordance with paragraph (M)(3) of this rule that certification is denied. The notification will specify the reason for denial.

(H) Procedure for obtaining certification to provide additional home and community-based services during the term of existing department-issued certification

(1) A certified independent provider seeking to provide additional home and community-based services shall submit an application via the provider services management system, for the additional home and community-based services the independent provider seeks to provide including:

(a) Required signatures and supporting documentation to demonstrate that standards are met as required by this rule and rules in Chapters 5123-9 and 5123:2-9 of the Administrative Code for the specific home and community-based services the applicant seeks to provide; and

(b) The application fee specified in paragraph (K) of this rule except when, based on the specific home and community-based services to be provided, the applicant is exempted from paying an application fee in accordance with appendix D to this rule.

(2) The department will review an application within thirty calendar days of receipt of all required components to determine if the applicant meets the standards for the requested certification. If, upon review of the application, the department determines that supporting documentation does not demonstrate that the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail and advise that the applicant has thirty

calendar days to submit components needed to demonstrate that the applicant meets the standards for the requested certification.

- (a) When the department receives components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the application will be advanced for processing.
- (b) When the applicant fails to submit components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the department will take no further action with respect to the application.
- (3) When the department determines the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail that certification is approved. The notification will specify the effective date and expiration date of the certification and the specific services for which the applicant is certified.
- (4) When the department determines an applicant does not meet the standards for the requested certification, the department will notify the applicant in accordance with paragraph (M)(3) of this rule that certification is denied. The notification will specify the reason for denial.

(I) Procedure for obtaining renewal independent provider certification

- (1) The department will notify an independent provider by electronic mail to the address in the provider services management system of required certification renewal no later than ninety calendar days prior to the date the independent provider's certification expires. The notification will describe the procedures for submitting the certification renewal application in accordance with this rule.
- (2) An independent provider shall submit the certification renewal application via the provider services management system including:
 - (a) Required signatures and supporting documentation to demonstrate that standards are met as required by this rule and rules in Chapters 5123-9 and 5123:2-9 of the Administrative Code for the specific home and community-based services the applicant seeks to provide;
 - (b) The application fee specified in paragraph (K) of this rule except when, based on the specific home and community-based services to be provided, the applicant is exempted from paying an application fee in accordance with appendix D to this rule; and

- (c) The applicant's criminal records check by the Ohio bureau of criminal identification and investigation and when applicable, by the federal bureau of investigation, unless the applicant has been enrolled without interruption in the Ohio attorney general's retained applicant fingerprint database (also known as "Rapback") for the entire previous certification term and has been a resident of Ohio without interruption for the past five years.
- (3) The department will review an application within thirty calendar days of receipt of all required components to determine if the applicant meets the standards for the requested certification.

 - (a) When the department determines the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail that certification is approved. The notification will specify the effective date and expiration date of the certification and the specific services for which the applicant is certified.
 - (b) If, upon review of the application, the department determines that supporting documentation does not demonstrate that the applicant meets the standards for the requested certification, the department will notify the applicant by electronic mail and advise that the applicant has thirty calendar days to submit components needed to demonstrate that the applicant meets the standards for the requested certification.

 - (i) When the department receives components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the application will be advanced for processing.
 - (ii) When the applicant fails to submit components needed to demonstrate that the applicant meets the standards for the requested certification within the specified thirty calendar days, the department will take no further action with respect to the application.
- (4) The department's review of an application may extend beyond thirty calendar days when:

 - (a) One or more of the submitted documents requires verification; or
 - (b) The applicant:

- (i) Has a conviction or notation on his or her criminal records check by the Ohio bureau of criminal identification and investigation or the federal bureau of investigation;
 - (ii) Is included in one or more of the databases described in paragraph (C)(2) of rule 5123-2-02 of the Administrative Code;
 - (iii) Is the primary person involved in a major unusual incident;
 - (iv) Is under consideration for placement on the abuser registry; or
 - (v) Is a related party to an agency provider or an independent provider whose certification has been suspended or revoked or is proposed for revocation.
- (5) When the department determines an applicant does not meet the standards for the requested certification, the department will notify the applicant in accordance with paragraph (M)(3) of this rule that certification is denied. The notification will specify the reason for denial.
- (6) When an independent provider submits an application for renewal certification prior to certification expiration that demonstrates the applicant meets the standards for the requested renewal certification, the independent provider's certification will be renewed without lapse.
- (7) When an independent provider submits an application for renewal certification fewer than forty-five calendar days in advance of certification expiration that demonstrates the applicant meets the standards for the requested renewal certification, the independent provider may experience a gap in his or her ability to bill for services provided between the date of certification expiration and the date the renewal certification is approved. Once the renewal certification is approved, however, the independent provider may bill for services provided during that period.
- (8) When an independent provider submits an application for renewal certification after certification expiration, there will be a lapse of certification from the date of certification expiration to the date the department receives an application for renewal certification that demonstrates the applicant meets the standards for the requested renewal certification. The independent provider shall not provide services nor be reimbursed for provision of services during the lapse.
- (9) An independent provider shall not provide services nor submit claims for reimbursement for services provided subsequent to expiration of the independent provider's certification.

(J) Application for certification subsequent to expiration

- (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.

(K) Application fees

- (1) Applicants seeking certification to provide services, other than those exempted in accordance with appendix D to this rule, shall submit an application fee at the time of application for initial certification, application for certification to provide additional home and community-based services during the term of existing department-issued certification, and application for renewal certification.
 - (a) The application fee for an independent provider seeking initial certification or renewal certification is one hundred twenty-five dollars.
 - (b) The application fee for an independent provider seeking certification to provide additional home and community-based services during the term of existing certification is twenty-five dollars.
- (2) Applicants shall pay application fees by electronic check or credit card.
- (3) Application fees are non-refundable.
- (4) The department will invalidate a certification issued to an applicant whose application fees cannot be collected due to non-sufficient funds available or for any other reason. An independent provider whose certification is invalidated in accordance with this paragraph shall be required to initiate and submit an entirely new application via the provider services management system.

(L) Certification terms

- (1) Initial certification will be issued for a term of three years.
- (2) Renewal certification will be issued for a term of three years.
- (3) Certification to provide additional home and community-based services will be issued for the remainder of the term of the applicant's existing certification.

(M) Denial, suspension, or revocation of certification

- (1) Independent providers shall be subject to monitoring and compliance reviews as set forth in rules promulgated by the department. Failure to comply with this rule or other rules governing services provided by the independent provider may result in corrective action by the department, up to and including suspension, summary suspension, denial, or revocation of certification.
- (2) The department may deny, suspend, or revoke an independent provider's certification for good cause pursuant to section 5123.166 of the Revised Code.
- (3) When denying, suspending, or revoking certification pursuant to this rule, the department will comply with the notice and hearing requirements of Chapter 119. of the Revised Code and section 5123.166 of the Revised Code.
- (4) When the department denies an application for renewal certification, the independent provider shall comply with the department's adjudication order within thirty calendar days of the date of the mailing of the order.

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

- (1) For good cause, the department may waive a provision of this rule. The department's decision to waive a provision of this rule will not be contrary to the rights, health, or safety of individuals served.
- (2) An independent provider or applicant for independent provider certification may initiate a request for the department to waive a provision of this rule by submitting the request with justification in writing.
 - (a) The department may ask for input regarding the request from individuals served, individuals' guardians, or county boards.
 - (b) The department will grant or deny a request within fourteen calendar days of receipt of the request or within such longer period of time as the department deems necessary and may put whatever conditions on approval as determined to be necessary.
 - (c) The department's decision regarding a request to waive a provision of this rule is not subject to appeal.

Replaces: Part of 5123:2-2-01
Effective: 9/1/2021
Five Year Review (FYR) Dates: 09/01/2026

CERTIFIED ELECTRONICALLY

Certification

05/10/2021

Date

Promulgated Under: 119.03
Statutory Authority: 5123.04, 5123.1611
Rule Amplifies: 5123.04, 5123.045, 5123.16, 5123.161, 5123.162,
5123.163, 5123.164, 5123.165, 5123.166, 5123.168,
5123.169, 5123.1610, 5123.1611
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,
10/01/2009, 10/01/2015, 06/11/2020 (Emer.)