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~~5123:2-3-04~~ 5123-3-04 Licensed residential facilities - admission of residents, provision of services, and maintenance of service records.

(A) Purpose

This rule establishes standards to ensure that services provided in residential facilities licensed in accordance with section 5123.19 of the Revised Code focus on achievement of outcomes that are important to and important for individuals served, that individuals are involved in development and delivery of their services, that the confidentiality of individuals' records is maintained, and that individuals' records are readily accessible for service delivery and for review by the department.

(B) Definitions

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

- (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) "Community participation" means engagement of an individual in daytime and evening activities that:
 - (a) Are available to the general public (such as employment, clubs, meetings, and advocacy groups);
 - (b) Are important to the individual;
 - (c) Involve others with and without disabilities who are not paid to provide care to the individual; and
 - (d) Create opportunities for the individual to develop meaningful relationships in ~~his- or her~~ the local community as is typical of other citizens of that community.
- (3) "Direct support professional" means a person who is employed in a "direct services position" as that term is defined in section 5123.081 of the Revised Code.
- (4) "Individual" means a person with a developmental disability.
- (5) ~~"Individual plan" or "individual~~ "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
- (6) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner the individual or ~~his or her~~ the individual's guardian understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action,

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treatment, or service; the alternatives to the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual or ~~his or her~~ individual's guardian, as applicable, may ~~revoke~~ withdraw informed consent at any time.

- (7) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (8) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.
- (9) "Major unusual incident" has the same meaning as in rule ~~5123:2-17-02~~ 5123-17-02 of the Administrative Code.
- (10) "Modified texture or therapeutic diets" means diets that are altered in any way to enable the individual to eat (e.g., food is chopped or pureed) or diets that are intended to correct or prevent a nutritional deficiency or health problem.
- (11) "Operator" means ~~the licensee or an entity with which the licensee has established a contract for~~ the entity responsible for management of and provision of services at the residential facility.
- (12) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
- (13) "Team," as applicable, has the same meaning as in rule ~~5123:2-1-11~~ 5123-4-02 of the Administrative Code or means an interdisciplinary team as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
- (14) "Unusual incident" has the same meaning as in rule ~~5123:2-17-02~~ 5123-17-02 of the Administrative Code.

(C) Admission of residents [From rule 5123:2-3-05.]

(1) Admission to a residential facility is voluntary, requiring informed consent.

(2) An operator shall:

(a) Admit as residents only individuals whose service needs can be met by the residential facility.

(b) When reviewing an application for admission, consider its ability to maintain adequate services to all residents of the residential facility.

(c) Notify the individual and referring party in writing of the outcome of the admission decision within thirty calendar days of receiving an application for services and referral information.

(d) Notify the county board of developmental disabilities in writing within fourteen

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calendar days of admitting a new resident, after securing informed consent to provide the notification.

(D) Standards of service provision

(1) The operator, administrator, and staff of the residential facility shall:

~~(a) Provide services only to individuals whose needs he or she can meet.~~ [Addressed in paragraph (C) above.]

(a) Provide services in a person-centered manner.

(b) Be able to effectively communicate with each individual receiving services.

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

(d) Implement services in accordance with the ~~individual plan or~~ individual service plan.

(e) Take all reasonable steps necessary to prevent the occurrence or recurrence of ~~incidents adversely affecting health and safety of individuals served~~ major unusual incidents and unusual incidents.

(f) Comply with the requirements of rule ~~5123:2-2-06~~ 5123-2-06 of the Administrative Code regarding development and implementation of behavioral support strategies.

(2) The operator, ~~administrator, and staff of the residential facility shall not~~ shall ensure that a direct support professional does not:

~~(a) Provide services to his or her minor (under age eighteen) child or his or her spouse;~~

(a) Provide services to the direct support professional's minor child;

(b) Provide services to the direct support professional's spouse;

(c) Provide services to the minor child of the administrator;

(d) Provide services to the spouse of the administrator;

~~(b) Engage in sexual conduct or have sexual contact with an individual for whom he or she is providing care;~~ [Addressed in rule 5123-17-02.]

(e) Administer ~~any~~ medication ~~to~~ or perform ~~health care tasks~~ health-related activities for individuals who receive services unless ~~he or she~~ the direct support professional meets the applicable requirements of Chapters 4723., 5123., and

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5126. of the Revised Code and rules adopted under 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~~ the direct support professional's ability to furnish services.

(E) Health care

- (1) Self-administration or assistance with self-administration of prescribed medication shall be conducted in accordance with rule 5123:2-6-02 of the Administrative Code.
- (2) Delegation of nursing tasks, excluding the provision of health-related activities, shall be conducted in accordance with rule ~~5123:2-6-06~~ 5123-6-06 of the Administrative Code and Chapter 4723-13 of the Administrative Code.
- (3) Administration of prescribed medication pursuant to sections 5123.42 to 5123.46 of the Revised Code shall be conducted in accordance with ~~Chapter~~ Chapters 5123-6 and 5123:2-6 of the Administrative Code.
- (4) The operator shall comply with the requirements for reporting medication/treatment errors in accordance with rules ~~5123:2-6-07~~ 5123-6-07 and ~~5123:2-17-02~~ 5123-17-02 of the Administrative Code.
- (5) The operator shall develop and implement written procedures for the disposal of prescribed medication. The procedures shall require that disposal of prescribed medication is verified and recorded by two staff members or by an independent external entity. Dangerous drugs shall be disposed in accordance with rule 4729-9-06 of the Administrative Code.
- (6) In the event of termination of services pursuant to rule ~~5123:2-3-05~~ 5123-3-05 of the Administrative Code, a written accounting of prescribed medication shall be completed no later than the last day of the individual's residency and verified by two staff members. The operator shall ensure a plan is developed for transfer of prescribed medications to the individual or ~~his or her~~ the individual's guardian, as applicable.
- (7) In the event of the death of an individual, a written accounting of prescribed medication shall be completed immediately and no later than twenty-four hours following the death and verified by two staff members. The operator shall cooperate

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with any investigation conducted by a legally authorized entity. Disposal of prescribed medication shall occur in a manner set forth in paragraph ~~(D)(5)~~ (E)(5) of this rule, unless an investigation calls for the disposal to be delayed.

(F) Transportation

- (1) The operator shall provide or arrange for transportation of individuals residing in the residential facility in accordance with each resident's ~~individual plan or~~ individual service plan, ~~as applicable~~.
- (2) The operator shall:
 - (a) Ensure that each employee providing transportation holds a valid driver's license as specified in Ohio law.
 - (b) Ensure that each employee providing transportation is covered by valid personal or corporate liability insurance as specified in Ohio law.
 - (c) Obtain, for each employee providing transportation, a driving record prepared by the bureau of motor vehicles no earlier than fourteen calendar days prior to the date of initial employment as a driver and at least once every three years thereafter. A person having six or more points on ~~his or her~~ the person's driving record is prohibited from providing transportation.
 - (d) Require each employee providing transportation to immediately notify the operator in writing if ~~he or she~~ the employee accumulates six or more points on ~~his or her~~ the employee's driving record or if ~~his or her~~ the employee's driver's license is suspended or revoked.
 - (e) Develop and implement written policies and procedures regarding vehicle accessibility, vehicle maintenance, and requirements for vehicle drivers.

(G) Food

- (1) The operator shall offer daily meals and snacks that meet the individuals' nutritional needs and preferences as identified by the individual.
- (2) Modified texture or therapeutic diets shall be prepared and served in accordance with the instructions of a physician or licensed dietitian. The operator shall maintain instructions regarding modified texture or therapeutic diets in accordance with paragraph ~~(H)~~ (J) of this rule.
- (3) Meals shall provide for variety, substitutions, and accommodation of individuals' personal preferences and religious beliefs. Individuals shall participate in meal planning and preparation to the extent of their interest and ability to do so.
- (4) Fresh food supplies sufficient for three calendar days and staple food supplies sufficient for at least five calendar days shall be available in the residential facility at

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all times.

- (5) Food shall be prepared and stored properly and in accordance with health codes to protect it against contamination and spoilage. Food products shall be stored separately from potentially harmful non-food items, particularly cleaning and laundry compounds.

(H) Clothing and personal belongings

- (1) The operator shall ensure that each individual has an adequate amount of personal clothing in good repair, well-fitting, and comparable in style to that worn by age peers in the community. The team shall ensure the clothing needs of an individual who does not have personal funds available to cover needed items are met. All clothing shall be clean and appropriate for the season and the activities in which the individual is engaged.
- (2) The operator shall encourage each individual to select, purchase, and maintain ~~his or her~~ the individual's own clothing and to dress as independently as possible.
- (3) For an individual who has been assessed to need assistance with management of personal possessions, the operator shall record the individual's clothing and personal items within fourteen calendar days of admission and update the record at least annually thereafter.
- (4) Any single item with a purchase price of fifty dollars or more purchased by or on behalf of an individual who has been assessed to need assistance with management of personal possessions, shall be added to the record when acquired and deleted from the record when discarded or lost.
- (5) The operator shall not discard clothing and personal items without the consent of the individual or the individual's guardian, as applicable.

(I) Community participation ~~and day activities~~ for individuals who reside in intermediate care facilities for individuals with intellectual disabilities

- (1) The operator shall ensure that each individual:

(a) Has opportunities to access age-appropriate activities, engage in meaningful employment and non-work activities, and pursue activities with persons of the individual's choosing.

(b) routinely has information in formats the individual understands about day activities and programs related to community employment in accordance with rule 5123:2-2-05 of the Administrative Code offered by other providers and as well as opportunities to explore and experience community participation in accordance with ~~his or her~~ the individual service plan and the individual's desired outcomes ~~as they relate to community employment in accordance with~~

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~~rule 5123:2-2-05 of the Administrative Code.~~

- (c) ~~The operator shall ensure that each individual~~ participates in ~~day~~ activities that foster community participation unless ~~his or her~~ the individual service plan indicates why, based on evaluations and assessments, such participation is medically contraindicated.
- (d) ~~The operator shall ensure that individuals have~~ Has access to a variety of ~~day~~ activities that reflect what is important to the individual and what is important for the individual.
- (2) ~~Day activities~~ The activities and programs described in paragraph (D)(1) of this rule shall not be provided in an intermediate care facility for individuals with intellectual disabilities or within two hundred feet of the intermediate care facility for individuals with intellectual disabilities except that:
 - (a) an intermediate care facility for individuals with intellectual disabilities that was providing day activities in or on the grounds of the intermediate care facility for individuals with intellectual disabilities prior to July 1, 2005 in accordance with paragraph (H)(4) of rule 5123:2-3-04 of the Administrative Code in effect on the day immediately prior to the effective date of this rule, may continue to provide day activities at that same location.
 - (b) An individual may choose to participate in activities and programs through virtual support under the following conditions:
 - (i) Virtual support does not have the effect of isolating the individual from the community or preventing the individual from interacting with people with or without disabilities;
 - (ii) The use of virtual support has been agreed to by the individual and the individual's team and is specified in the individual service plan; and
 - (iii) The use of virtual support complies with applicable laws governing the individual's right to privacy and the individual's protected health information.

(J) Individuals' service records

- (1) The following current records for each individual shall be maintained at the residential facility:
 - (a) A photograph of the individual.
 - (b) Legal status of the individual.
 - (c) Individual ~~plan or individual~~ service plan, ~~as applicable~~, including documentation of informed consent for services, supports, and activities provided.

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- (d) A signed authorization to seek medical treatment or documentation to demonstrate that attempts to secure such authorization were unsuccessful.
 - (e) Medication and/or treatment records which indicate the person who prescribed the medication and/or treatment and the date, time, and person who administered the medication and/or treatment.
- (2) The following records for each individual shall be maintained by the operator in an accessible location and shall be provided upon request to the department for review at the residential facility or at another location mutually agreed upon by the operator and the department.
- (a) Former versions of records specified in paragraphs ~~(I)(1)(a) to (I)(1)(e)~~ (J)(1)(a) to (J)(1)(e) of this rule.
 - (b) Admission and referral records.
 - (c) All service documentation including notations of progress.
 - (d) Records of all medical and dental examinations and immunization records as appropriate based upon the individual's age.
 - (e) Records of major unusual incidents and unusual incidents.
 - (f) Major unusual incident investigation files.
 - (g) Reconciliations of the individual's account transaction record as described in rule 5123:2-2-07 of the Administrative Code.
 - (h) Records of negotiable items owned by the individual which can be transferred or converted to cash (such as bonds or promissory notes).
 - (i) Records of clothing and personal items for individuals who have been assessed to need assistance with management of personal possessions.
 - ~~(j) Termination of services summary which shall be prepared within seven calendar days following termination of services pursuant to rule 5123:2-3-05 of the Administrative Code. The termination of services summary shall include the individual's progress during residence and new address of residence.~~
 - ~~(k) In the event of an individual's death, a termination of services summary shall be completed within thirty calendar days of death and include the disposition of the individual's personal items.~~
 - (j) A written accounting prepared within thirty calendar days following termination of an individual's residency at the residential facility that documents:
 - (i) Circumstances of termination of residency (e.g., the individual moved to

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another residential setting, the individual died, or the operator terminated services in accordance with rule 5123-3-05 of the Administrative Code).

(ii) The individual's new address.

(iii) Conveyance of the individual's records, identification documents, prescriptions, and prescribed medications.

(iv) Disposition of the individual's personal items.

(v) Release or disposition of the individual's personal funds in accordance with rule 5123:2-2-07 of the Administrative Code.

- (3) If operation of a residential facility is transferred from one operator to another, the outgoing operator shall convey the records specified in paragraphs ~~(I)(1) and (I)(2)~~ (J)(1) and (J)(2) of this rule as well as personal items belonging to residents of the residential facility to the incoming operator.
- (4) All information contained in an individual's record shall be considered ~~privileged and~~ confidential. Records shall be maintained in accordance with state and federal regulations in such a manner to ensure their confidentiality and protect them from unauthorized disclosure.
- (5) The operator shall develop a records retention schedule for all records in accordance with applicable state and federal requirements.