

# \*\*\*Proposed Revisions - February 14, 2022\*\*\*

## ~~5123:2-3-05~~ 5123-3-05 Licensed residential facilities - ~~admission, transfer and termination of services, and transfer.~~

### (A) Purpose

This rule establishes uniform policies for ~~admission, termination of services, and transfer of individuals applying for admission to, or~~ transfer and termination of services of individuals living in residential facilities licensed in accordance with section 5123.19 of the Revised Code.

### (B) Definitions

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

- (1) "County board" means a county board of developmental disabilities.
- (2) "Department" means the Ohio department of developmental disabilities.
- (3) "Director" means the director of the ~~Ohio~~ department ~~of developmental disabilities~~ or ~~his or her designee~~ a person designated by the director of the department.
- (4) "Emergency" means a situation in which either:
  - (a) Despite the operator's documented attempts to provide, obtain, and/or coordinate the services necessary to ensure the health and safety of the resident, other residents, and/or staff of the residential facility, there still exists a significant risk of substantial harm to the resident, other residents, or staff that cannot be met in the current environment such that action must be taken immediately; or
  - (b) Through a level of care determination in accordance with rule ~~5123:2-8-01~~ 5123-8-01 of the Administrative Code or a preadmission screening for developmental disabilities in accordance with rule ~~5123:2-14-01~~ 5123-14-01 of the Administrative Code, the individual is determined to require a level of services provided in another type of setting (e.g., a nursing facility).
- (5) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, ~~his or her~~ the person's guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
- (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 understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; the risks and benefits of the alternatives to the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual may ~~revoke~~ withdraw informed

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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.~~

(8) "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.

(9) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

(10) "Termination of services" means an action initiated by ~~the residential facility to permanently move a resident~~ an operator to cause a resident to move to another residence that is not under the jurisdiction of the operator. Termination of services does not include a temporary absence from an intermediate care facility for individuals with intellectual disabilities described in section 5124.34 of the Revised Code.

(11) "Transfer" means ~~a temporary or permanent movement of~~ an action initiated by an operator to cause a resident to move, on a temporary or permanent basis, between residential facilities under the jurisdiction of the operator.

### ~~(C)~~ Admission policies [Moved to rule 5123-3-04.]

~~(1) The operator shall only admit persons as residents whose service needs can be met.~~

~~(2) Admission to a residential facility is voluntary, requiring informed consent by the individual.~~

~~(3) When reviewing an application for services, the operator shall consider its ability to maintain an adequate level of services to all residents of the residential facility.~~

~~(4) The operator shall notify the individual, county board, and referring party in writing of the outcome of the admissions decision within thirty calendar days of receiving an application for services and referral information.~~

### ~~(D)~~ (C) Transfer and termination of services policies

(1) ~~The~~ An operator shall allow each resident to remain in the residential facility and shall not ~~transfer a resident from the facility or effect a~~ initiate a transfer or termination of services unless:

(a) The transfer or termination of services is necessary for the resident's welfare and the resident's needs can no longer be met without imposing an undue hardship on the operation of the residential facility;

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- (b) The resident no longer needs or wants the services provided by the residential facility or chooses to transfer;
  - (c) The resident is creating a significant risk of substantial harm to ~~himself or herself~~ self, other residents, or staff in the residential facility;
  - (d) Nonpayment for the stay in the residential facility, including nonpayment of medicaid or other third-party payer; or
  - (e) The residential facility ceases to operate.
- (2) An operator shall not unlawfully discriminate because of disability, race, color, religion, national origin or ancestry, sex, or age including but not limited to, failing to make reasonable accommodation to a person's physical, mental, or behavioral support needs to the extent required by law unless the operator can demonstrate that the accommodation would impose an undue hardship on the operation of the residential facility including an unreasonable risk of harm to residents or staff in the residential facility.
- (3) Before initiating a transfer or termination of services, the operator shall:
- (a) Notify in writing via certified mail, the individual and the county board of the transfer or termination of services. The notice must contain:
    - (i) The reason for the transfer or termination of services;
    - (ii) The effective date of the transfer or termination of services;
    - (iii) A summary of the action taken by the operator, including working with the county board, to try to meet the resident's needs;
    - (iv) The individual's right to appeal the transfer or termination of services and the process to do so; and
    - (v) The telephone number and address of disability rights Ohio.
  - (b) Explain the transfer or termination of services and appeal rights to the individual in a manner the individual understands; and
  - (c) Record the reasons for the transfer or termination of services in the resident's record.
- (4) The notice of transfer or termination of services must be made at least thirty calendar days before the transfer or termination of services, except when an emergency exists. If at any time prior to the expiration of the thirty-day period the operator determines that the conditions that constituted the emergency no longer exist, the subject of the transfer or termination of services may return to the residential facility.
- (5) If an individual requests a hearing regarding the transfer or termination of services,

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the residential facility must maintain services or the availability of services until a decision is rendered after the hearing unless an emergency exists.

- (6) If after receiving notice of the transfer or termination of services, the individual waives in writing his or her rights to appeal, the operator is not required to maintain services or the availability of services.

### ~~(E)~~ (D) Administrative review process

- (1) ~~The~~ An individual who wishes to appeal a transfer or termination of services shall first appeal in writing to the governing board or administrator of the residential facility within seven calendar days of the receipt of the notice of transfer or termination of services.
- (2) The governing board or administrator shall review the decision and notify the individual in writing of the outcome of the review within five calendar days of the request for the review. The notice to the individual shall be sent by certified mail and, if the appeal is denied, include the contact information for the director and an explanation in a manner the individual understands that the individual has five calendar days from receipt of the notice ~~of denial of the appeal~~ to appeal to the director.
- (3) ~~The individual has five calendar days from receipt of the decision of the governing board or administrator to appeal to the director. The appeal shall be in writing.~~ An individual who wishes to appeal to the director shall submit the appeal in writing to the director within five calendar days from receipt of the notice from the governing board or administrator. Upon request, department staff shall assist the individual to understand the appeal process and find resources to help the individual with preparation of the appeal.

### ~~(F)~~ (E) Mediation process

- (1) The individual and the operator shall attend a mediation meeting to try to ~~attain~~ achieve resolution ~~prior to the scheduled hearing~~ regarding the transfer or termination of services prior to initiation of the hearing process described in paragraph (F) of this rule. Legal representation is not permitted in the mediation meeting.
- (2) The department will provide the mediator.
- (3) The mediation meeting shall be conducted within fifteen calendar days of receipt of the appeal. ~~The hearing shall be conducted within fifteen calendar days of the mediation meeting.~~ Timelines may be extended if mutually agreed upon in writing by all parties.

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(4) The mediator may hold the mediation open when the parties do not dispute the proposed transfer or termination of services and need additional time for the individual to transition to another residence.

(5) Unless all parties agree in writing to abide by the recommendations of the mediator, the mediation shall be nonbinding.

(6) Statements made during the mediation process cannot be used as evidence in any subsequent hearings or court proceedings.

### ~~(G)~~ (F) Hearing process

(1) The department shall grant an opportunity for a hearing to any individual who has received a transfer or termination of services notice, has attended a mediation meeting in accordance with paragraph (E) of this rule, and requests a hearing in accordance with this rule.

(2) The department shall deny or dismiss a request if:

(a) The request is not ~~filed~~ submitted in a timely manner;

(b) The individual fails to attend a scheduled hearing unless there is good cause for the absence; or

(c) The individual withdraws the request in writing.

(3) The department shall appoint a hearing officer to hear the appeal. The hearing officer shall not be the same person as the mediator in any given case.

(4) The ~~department shall~~ hearing officer will select a time and place for the hearing. ~~The department shall and attempt to select a time for the hearing that is mutually agreeable to all parties. If this is not possible, the department reserves the right to schedule the hearing to meet the timelines in accordance with this rule.~~ The hearing shall be conducted within fifteen calendar days of conclusion of the mediation process described in paragraph (E) of this rule. The hearing officer has discretion to determine whether a court reporter or transcript of the hearing will be required.

(5) The individual and the operator shall have the opportunity to present evidence at the hearing. ~~Both the individual and the~~ The operator may have legal representation. The individual may have legal representation and/or an authorized representative.

(6) The burden of proof shall be on the operator to show that the transfer or termination of services was in accordance with this rule.

(7) The hearing officer shall review the evidence presented and ~~shall~~ determine if the requirements of this rule have been followed.

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- (8) The hearing officer shall issue a written recommendation to the director within ten calendar days of conclusion of the hearing or when applicable, receipt of the transcript of the hearing, whichever is later.
- (9) The ~~department~~ director shall issue a written decision to the parties within five calendar days of receipt of the hearing officer's recommendation, ~~and no later than forty five calendar days from receiving the request for the hearing.~~ The director may impose conditions on the transfer or termination of services.
- (10) Timelines in paragraphs (F)(1), (F)(4), (F)(8), or (F)(9) of this rule may be extended if mutually agreed upon in writing by ~~both~~ all parties.

### ~~(H)~~ (G) Adverse actions

If an operator fails to follow the requirements of this rule or fails to follow the decision of the ~~department~~ director, the operator may be subject to adverse actions in accordance with rule ~~5123:2-3-06~~ 5123-3-06 of the Administrative Code.

~~(I) This rule is not intended to abridge any right of appeal that a party aggrieved by the decision of the department may have independent of this rule.~~