

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

### **~~5123:2-3-06~~ 5123-3-06 Licensed residential facilities - compliance reviews, issuance of licenses, and adverse actions.**

#### (A) Purpose

This rule sets forth processes for reviews conducted by the department to ensure compliance by residential facilities licensed in accordance with section 5123.19 of the Revised Code, the issuance of licenses for residential facilities operating in accordance with Chapters 5123. and 5124. of the Revised Code, and adverse actions for residential facilities not operating in accordance with Chapters 5123. and 5124. of the Revised Code.

#### (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) "Business day" means a day of the week, excluding Saturday, Sunday, or a legal holiday as defined in section 1.14 of the Revised Code.
- (3) "Compliance review" means a review of a residential facility conducted by the department or its designee for the purpose of determining compliance with applicable requirements in order to ensure the health, safety, and welfare of individuals served. The department may, based upon a compliance review, issue a citation and require immediate corrective action when it determines that a violation poses an immediate and substantial risk to the health and safety of residents.
- (4) "County board" means a county board of developmental disabilities.
- (5) "Department" means the Ohio department of developmental disabilities.
- (6) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (7) "Individual" means a person with a developmental disability.
- (8) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (9) "License" means written approval by the department to a licensee to operate a residential facility. For purposes of this rule, "license" does not include an interim license issued in accordance with rule ~~5123:2-3-08~~ 5123-3-08 of the Administrative Code.
- (10) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.

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- (11) "Major unusual incident" has the same meaning as in rule ~~5123:2-17-02~~ [5123-17-02](#) of the Administrative Code.
- (12) "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.
- (13) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

### (C) Frequency and types of compliance reviews

- (1) The department shall conduct a compliance review of a residential facility at least once during the term of the license and may conduct additional compliance reviews as determined by the department.
- (2) There are three types of compliance reviews:
  - (a) Routine compliance reviews conducted so that each residential facility is reviewed once during the term of its license.
  - (b) Abbreviated compliance reviews conducted so that each residential facility is reviewed once during the term of its license for a residential facility that holds accreditation by a national accrediting entity as demonstration that the residential facility is meeting applicable requirements.
    - (i) A residential facility that is accredited by a national accrediting entity may be eligible for an abbreviated compliance review when the standards of the national accrediting entity:
      - (a) Meet or exceed the department's standards;
      - (b) Are compatible with the centers for medicare and medicaid services home and community-based services ~~quality framework~~ [core set of quality measures](#), when applicable;
      - (c) Focus on achievement of desired outcomes for individuals served; and
      - (d) Ensure the health and safety of individuals served.
    - (ii) An abbreviated compliance review shall examine the residential facility's compliance with applicable requirements regarding:
      - (a) Background investigations of the licensee and/or operator and the residential facility's administrator and employees;
      - (b) Behavioral support strategies;
      - (c) Medication administration;

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- (d) Major unusual incidents; and
  - (e) Community participation and integration.
- (iii) To be eligible for an abbreviated compliance review, the residential facility shall submit a written request to the department that includes a copy of the most recent survey/review of the residential facility by the national accrediting entity.
- (iv) The residential facility shall notify the department in writing within ten calendar days if the residential facility's accreditation by the national accrediting entity is amended, suspended, terminated, or not renewed and provide a copy of related correspondence from the national accrediting entity.
- (v) Abbreviated compliance reviews may not be available when:
  - (a) The residential facility has not yet received ~~a~~ an initial routine compliance review by the department;
  - (b) The residential facility has had multiple or significant substantiated major unusual incidents since the most recent compliance review by the department or survey/review by the national accrediting entity;
  - (c) The operator's ~~chief executive officer and/or~~ management team~~;~~ or the residential facility's administrator~~;~~ has changed since the most recent compliance review by the department or survey/review by the national accrediting entity; or
  - (d) The residential facility's accreditation by the national accrediting entity has been amended or suspended.
- (c) Special compliance reviews conducted in response to a complaint, a major unusual incident, or any situation where there is reason to believe that the residential facility is not being operated in compliance with Chapters 5123. and 5124. of the Revised Code or rules adopted under those chapters.
  - (i) Special compliance reviews may be announced or unannounced.
  - (ii) Upon receipt of a complaint, department staff shall:
    - (a) Take necessary measures to ensure that any conditions that pose a risk to the health or welfare of the individual have been corrected;
    - (b) Determine whether a special compliance review shall be conducted;
    - (c) Determine if the complaint should be referred to law enforcement, a county board, or another unit or entity internal or external to the department in accordance with rule 5123:2-17-01 of the Administrative Code; and

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- (d) ~~Send a written response~~ Respond to the complainant describing actions taken by the department to address the complaint.

(D) Compliance review procedures **[Aligned with rule 5123-2-04 (C)(3).]**

~~(1) The operator and all persons acting on behalf of, under the control of, or in connection with the operator shall cooperate with the department in conducting compliance reviews. The operator shall give the department access to the residential facility; all records, accounts, and any other documents related to operation of the residential facility; the operator; the individuals residing in the facility; and all persons acting on behalf of, under control of, or in connection with the operator.~~

~~(2) Compliance reviews shall be generally conducted at times when the individuals are present in the residential facility.~~

~~(3) Compliance reviews shall consist of a series of observations, interviews, and review of records to determine if the interactions, activities, practices, and conditions within the residential facility are consistent with Chapters 5123. and 5124. of the Revised Code and rules adopted under those chapters.~~

~~(4) Unless otherwise prohibited by law, at least forty-five calendar days in advance of a routine compliance review or an abbreviated compliance review, the department shall contact the operator to set the date and provide documents relevant to the compliance review.~~

(1) The department shall maintain a protocol for compliance reviews which includes, but is not limited to:

(a) The method for selecting residential facilities to be reviewed;

(b) The types and scope of reviews that may be conducted;

(c) The process and procedures for notifying residential facilities of upcoming reviews;

(d) The elements of compliance which shall be based on the applicable requirements;

(e) The elements of a written compliance review summary to a residential facility that shall include an explanation of any citations, the process to develop and implement a plan of correction, and an explanation of the due process afforded to a residential facility;

(f) The criteria for conducting announced and unannounced reviews; and

(g) Any forms or methods of documentation approved by the department.

(2) The department shall make the protocol available at its website (<http://dodd.ohio.gov>).

(E) Compliance review summary, appeal, and plan of correction when no adverse action is being initiated **[Aligned with rule 5123-2-04 (D).]**

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- ~~(1) Following the compliance review and prior to issuing the compliance review summary, the department shall conduct an exit interview with the administrator or his or her designee. During the exit interview, the administrator or his or her designee shall be provided an opportunity to respond and provide information relevant to any potential citations identified by the department. Information not made available to the department by the conclusion of the exit interview may result in the issuance of a citation.~~
- ~~(2) Within seven calendar days following the exit interview, the department shall issue a written compliance review summary to the licensee. The compliance review summary shall be objective in terms of observations and citations and include an explanation of any citations.~~
- ~~(3) Within fourteen calendar days of receipt of a compliance review summary that includes one or more citations, the licensee shall submit a written appeal or written plan of correction for each citation. If the licensee does not submit a written appeal within fourteen calendar days, the compliance review summary shall be final and not subject to appeal by the licensee.~~
  - ~~(a) An appeal for a citation shall include the licensee's basis with supporting documentation for challenging the citation. The department shall allow or disallow the appeal within ten calendar days of receipt. If the appeal is allowed, the department shall so notify the licensee. If the appeal is disallowed, the department shall so notify the licensee and advise that the licensee has fourteen calendar days to submit a plan of correction for the citation.~~
  - ~~(b) A plan of correction for a citation shall include action steps and timelines for remediation. The department shall approve or disapprove the plan of correction within twenty calendar days of receipt. If the plan of correction is approved, the department shall so notify the licensee and verify that the licensee has implemented the approved plan of correction. If the plan of correction is disapproved, the department shall so notify the licensee and may assist the licensee in submitting an acceptable plan of correction.~~
- (1) The department shall issue a written compliance review summary to the residential facility within seven calendar days of conclusion of the compliance review in accordance with the format described in the protocol for compliance reviews. The compliance review summary shall be objective in terms of observations and citations, relying upon documentation that clearly addresses the standards reviewed.
- (2) Within fourteen calendar days of receipt of a compliance review summary that includes one or more citations, the residential facility shall submit to the department, a written appeal or a written plan of correction for each citation. If the residential facility does not submit a written appeal within fourteen calendar days, the compliance review summary shall be final and not subject to appeal by the residential facility.
  - (a) The appeal for a citation shall include the residential facility's basis with

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supporting documentation for challenging the citation. The department shall allow or disallow the appeal within ten calendar days of receipt.

(b) If the appeal is disallowed, the residential facility shall submit a written plan of correction for the citation to the department within fourteen calendar days.

(c) The written plan of correction for a citation shall include action steps and timelines for remediation. The department shall approve or disapprove the plan of correction within twenty calendar days of receipt. When the department disapproves a plan of correction, the residential facility shall work with the department to develop an acceptable plan of correction.

### (F) Issuance of license

(1) Following routine compliance reviews and abbreviated compliance reviews that do not result in adverse action, the department shall issue a three-year license to the licensee within twenty calendar days of determining that the residential facility is in compliance with all requirements, an approved plan of correction has been implemented, and/or compliance with specific requirements has been waived in accordance with rule ~~5123:2-3-10~~ 5123-3-10 of the Administrative Code; and collection of the licensure fee specified in paragraph (J) of this rule.

(2) Following routine compliance reviews and abbreviated compliance reviews that result in adverse action that requires a plan of correction, the department shall issue a one-year license to the licensee within twenty calendar days of determining that the residential facility is in compliance with all requirements, an approved plan of correction has been implemented, and/or compliance with specific requirements has been waived in accordance with rule 5123-3-10 of the Administrative Code; and collection of the licensure fee specified in paragraph (J) of this rule.

(3) A license shall remain valid until ~~its expiration date~~ the end of its term unless the license is revoked, extended, or terminated by the department or voluntarily surrendered by the licensee.

### (G) Adverse actions

(1) If the department determines that a residential facility is not being operated in accordance with Chapters 5123. and 5124. of the Revised Code or rules adopted under those chapters, the department may:

(a) Initiate a suspension of admissions

(i) The department may initiate a suspension of admissions when the department:

(a) Determines the residential facility has demonstrated a pattern of serious noncompliance or a violation poses a substantial risk to the health and safety of residents; or

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- (b) Is ordering placement of a monitor or initiating proceedings to refuse to renew or revoke the license in accordance with, as applicable, paragraph (G)(1)(b), (G)(1)(c), or (G)(1)(d) of this rule.
  - (ii) When a suspension of admissions is ordered before providing an opportunity for adjudication pursuant to Chapter 119. of the Revised Code, the process set forth in section 5123.19 of the Revised Code shall be followed.
  - (iii) The department shall send a copy of the order suspending admissions to the county board where the residential facility is located.
  - (iv) The licensee shall send written notice to each individual served at the residential facility, the individual's guardian if the individual is an adult for whom a guardian has been appointed, or the individual's parent or guardian if the individual is a minor, within three business days of notification from the department that a suspension of admissions has been imposed on the facility. The notice shall contain information regarding the reason for suspension of admissions and how the individual, parent, or guardian can obtain additional information regarding the suspension of admissions. The licensee shall send a copy of the notice to the department.
  - (v) Provided the suspension of admissions is not imposed in conjunction with proceedings to revoke the license, the licensee may submit a plan of correction in accordance with the process set forth in paragraph ~~(E)(3)~~ (E)(2) of this rule.
  - (vi) The department may lift the suspension of admissions when the department determines that the citation that formed the basis for the order has been corrected.
- (b) Order placement of a monitor
- (i) The department may order placement of a monitor in a residential facility (i.e., on-site monitoring provided or arranged by the department whenever an individual is in the residential facility and up to twenty-four hours per day) when the department determines the situation requires ongoing oversight to facilitate necessary corrective action.
  - (ii) The department shall send a copy of the order for placement of a monitor to the county board where the residential facility is located.
  - (iii) The licensee shall send written notice to each individual served at the residential facility, the individual's guardian if the individual is an adult for whom a guardian has been appointed, or the individual's parent or guardian if the individual is a minor, within three business days of notification from the department that a monitor has been placed in the facility. The notice shall contain information regarding the reason for placement of a monitor and how the individual, parent, or guardian can obtain additional

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information regarding the placement of a monitor. The licensee shall send a copy of the notice to the department.

(c) Initiate proceedings to refuse to renew the license

- (i) The department may initiate proceedings to refuse to renew the license of a residential facility upon expiration when the department determines the residential facility has demonstrated a pattern of serious noncompliance or a violation poses a substantial risk to the health and safety of residents.
- (ii) If such a determination is made, the department shall send a letter to the licensee by certified mail, return receipt requested. The letter shall list the citations identified during the compliance review that are the basis for refusal to renew the license and include as an attachment, the compliance review summary. The department shall send a copy of the letter to the county board where the residential facility is located and, if the residential facility is an intermediate care facility for individuals with intellectual disabilities, to the Ohio department of health and the Ohio department of medicaid.
- (iii) The licensee shall have fourteen calendar days from the date the letter is mailed to submit an appeal or plan of correction for each citation in accordance with the process set forth in paragraph ~~(E)(3)~~ (E)(2) of this rule.
- (iv) Within twenty calendar days following an on-site visit to verify that the licensee has implemented the approved plan of correction, the department shall either:
  - (a) Determine the plan of correction has been satisfactorily implemented and issue a one-year license to the licensee after collection of the licensure fee specified in paragraph (J) of this rule; or
  - (b) Determine the licensee remains in serious noncompliance or a citation continues to pose a substantial risk to the health and safety of residents and send a letter to the licensee by certified mail, return receipt requested, affirming the department's decision to refuse to renew the license upon expiration and advising that the licensee must cease operation within thirty calendar days of receipt of the letter or the license expiration date, whichever is later. The letter shall inform the licensee of ~~his or her~~ the licensee's right to request a hearing on the proposed refusal to renew the license pursuant to Chapter 119. of the Revised Code. The licensee shall have thirty calendar days from the date the letter is mailed to request a hearing which, if timely requested, shall be held in accordance with Chapter 119. of the Revised Code.
- (v) If the licensee does not request a hearing within thirty calendar days, an adjudication order will be rendered pursuant to Chapter 119. of the Revised Code. The department shall send a copy of the adjudication order to the



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county board where the residential facility is located and, if the residential facility is an intermediate care facility for individuals with intellectual disabilities, to the Ohio department of health and the Ohio department of medicaid. The department shall arrange for a letter or a copy of the adjudication order to be sent to each individual served at the residential facility, the individual's guardian if the individual is an adult for whom a guardian has been appointed, or the individual's parent or guardian if the individual is a minor.

- (vi) If the licensee requests a hearing and the hearing process extends beyond the expiration date of the residential facility's license, the license shall continue to be valid for thirty calendar days after the date the department's decision, pursuant to Chapter 119. of the Revised Code, is rendered.
- (d) Initiate proceedings to revoke the license
  - (i) The department may initiate proceedings to revoke the license of a residential facility when the department determines the residential facility has demonstrated a pattern of serious noncompliance or a violation poses a substantial risk to the health and safety of residents.
  - (ii) If such a determination is made, the department shall send a letter to the licensee by certified mail, return receipt requested. The letter shall list the citations identified during the compliance review that are the basis for revocation of the license and include as an attachment, the compliance review summary. The letter shall inform the licensee of ~~his or her~~ the licensee's right to request a hearing on the proposed revocation of the license pursuant to Chapter 119. of the Revised Code. The licensee shall have thirty calendar days from the date the letter is mailed to request a hearing which, if timely requested, shall be held in accordance with Chapter 119. of the Revised Code.
  - (iii) When the department initiates proceedings to revoke the license, the department shall arrange for notification in writing to each individual served at the residential facility, the individual's guardian if the individual is an adult for whom a guardian has been appointed, the individual's parent or guardian if the individual is a minor, the county board where the residential facility is located and, if the residential facility is an intermediate care facility for individuals with intellectual disabilities, to the Ohio department of health and the Ohio department of medicaid.
  - (iv) Once the department initiates proceedings to revoke the license, no opportunity for submitting a plan of correction shall be given.
  - (v) If the licensee does not request a hearing within thirty calendar days, an adjudication order will be rendered pursuant to Chapter 119. of the Revised Code. The department shall send a copy of the adjudication order to the county board where the residential facility is located and, if the residential

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facility is an intermediate care facility for individuals with intellectual disabilities, to the Ohio department of health and the Ohio department of medicaid. The department shall arrange for a letter or a copy of the adjudication order to be sent to each individual served at the residential facility, the individual's guardian if the individual is an adult for whom a guardian has been appointed, or the individual's parent or guardian if the individual is a minor.

(vi) If the licensee requests a hearing and the hearing process extends beyond the expiration date of the residential facility's license, the license shall continue to be valid for thirty calendar days after the date the department's decision, pursuant Chapter 119. of the Revised Code, is rendered.

(2) In proceedings initiated to refuse to renew or revoke a license, the department may refuse to renew or revoke the license regardless of whether some or all of the citations that prompted the proceedings have been corrected at the time of the hearing.

### (H) Termination of license

(1) The department may terminate a license if more than twelve consecutive months have elapsed since the residential facility was last occupied by an individual or when the licensee failed to provide notice of modification in accordance with rule ~~5123:2-3-08~~ 5123-3-08 of the Administrative Code.

(2) If such a determination is made, the department shall send a letter to the licensee by certified mail, return receipt requested. The letter shall explain the basis for termination of the license and inform the licensee of ~~his or her~~ the licensee's right to request a hearing on the proposed termination of the license pursuant to Chapter 119. of the Revised Code. The licensee shall have thirty calendar days from the date the letter is mailed to request a hearing which, if timely requested, shall be held in accordance with Chapter 119. of the Revised Code.

### (I) Effect of refusal to renew, revocation, termination, or voluntary surrender of license

(1) When the department refuses to renew, revokes, or terminates a license or when a licensee voluntarily surrenders a licensee, the licensed beds shall revert to the department.

(2) When the department refuses to renew, revokes, or terminates a license or when a licensee voluntarily surrenders a license and the department determines that the licensed beds are needed to provide services to individuals who resided in the residential facility in which the beds were located, the department may authorize the county board in the county where the residential facility is located to develop a request for proposal for the purpose of recommending a licensee.

(a) The department shall establish and make available the format, procedure, timelines, and criteria for evaluation for the request for proposal process to be

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used by a county board.

- (b) The county board shall solicit proposals from any interested applicants and ensure all interested applicants are afforded an equal opportunity to respond to the request for proposal. Written notice shall be provided to the general public and to all interested licensees as prescribed by the department.
- (c) The county board shall submit all proposals and its recommendation to the department within ten calendar days after completing its review of the proposals.
- (d) The department shall consider the county board's recommendation and shall notify in writing, the county board and all applicants of its decision within thirty calendar days after receiving the county board's recommendation. The department shall provide each applicant its rationale in selecting or choosing not to select a particular licensee.

#### (J) Licensure fees

- (1) Licensure fees shall be paid [by electronic check or credit card](#) in advance of issuance of a license by the department.
- (2) Licensure fees are non-refundable.
- (3) Licensure fees shall be based on the term of the license and the number of licensed beds at the residential facility.
  - (a) The licensure fee for a three-year license shall be:
    - (i) Three hundred dollars for a residential facility with fifteen or fewer beds; and
    - (ii) One thousand five hundred dollars for a residential facility with sixteen or more beds.
  - (b) The licensure fee for a one-year license ~~issued in accordance with paragraph (G)(1)(e)(iv)(a) of this rule~~ shall be:
    - (i) One hundred dollars for a residential facility with fifteen or fewer beds; and
    - (ii) Five hundred dollars for a residential facility with sixteen or more beds.