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~~5123:2-3-08~~ 5123-3-08 Licensed residential facilities - development and renovation.

(A) Purpose

This rule establishes uniform standards and procedures governing the development and renovation of residential facilities subject to licensure in accordance with section 5123.19 of the Revised Code.

(B) Definitions

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

- (1) "Adult" means an individual age eighteen and older.
- (2) "Applicant" means a person, as defined in section 1.59 of the Revised Code, or government agency submitting a proposal and seeking approval from the department for development of licensed beds.
- (3) "Child" means an individual less than age eighteen.
- (4) "County board" means a county board of developmental disabilities.
- (5) "Department" means the Ohio department of developmental disabilities.
- (6) "Development" means an applicant's plan for the operation of a licensed residential facility including a plan for modification which is subject to approval of the department.
- (7) "Individual" means a person with a developmental disability.
- (8) "Initial license" means written approval by the department to a licensee to operate a residential facility for a period of one year.
- (9) "Interim license" means written approval by the department to a licensee to operate a residential facility for a period not to exceed one hundred eighty calendar days.
- (10) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (11) "Licensed bed" means a bed in a residential facility licensed by the department pursuant to section 5123.19 of the Revised Code.

(12) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.

~~(12) "Management contractor" means a person, as defined in section 1.59 of the Revised Code, or government agency that controls administrative or management services for a licensee.~~

(13) "Modification" means:

- (a) A change in the identity of the licensee or ~~management contractor of a licensed~~

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~~residential facility~~ operator;

- (b) A significant change in ownership of a licensed residential facility that occurs as the result of an acquisition, sale of a majority interest, merger, or when a family member is added to or removed from a license held by a family-owned business;
- (c) A change in the address of some or all of the licensed beds;
- (d) An increase or decrease in the number of licensed beds operated at a specific address;
- (e) The rebuilding of a licensed residential facility at the same address;
- (f) The rebuilding of a licensed residential facility at a different address; or
- (g) A change in the type or source of funding of a licensed residential facility.

(14) "Operator" means the entity responsible for management of and provision of services at the residential facility.

- (15) "Renovation" means a permanent change in the physical structure of a residential facility that results in a change in the use of the facility and/or a change in its floor plan since the most recent issuance of the facility's license.
- (16) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

(C) General principles

- (1) No person or government agency may apply for a license to operate a residential facility without first obtaining development approval in accordance with this rule.
- (2) The department shall not approve a proposal for the development of licensed beds or issue a license under section 5123.19 of the Revised Code if the approval or issuance will cause the number of licensed beds to exceed the number of licensed beds permitted by section 5123.196 of the Revised Code.
- (3) A residential facility may continue to operate at the capacity for which it is licensed as of the effective date of this rule.
- (4) An applicant who has obtained approval for a development proposal shall be permitted to proceed with development in accordance with the terms of the approval granted by the department.
- (5) The number of licensed beds in an intermediate care facility for individuals with intellectual disabilities shall not exceed six unless the department determines, based upon documentation provided by the operator, that the intermediate care facility for individuals with intellectual disabilities requires capacity greater than six to be financially viable, in which case the department may approve a capacity that is not greater than eight.

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- (6) The number of licensed beds in a residential facility that is not an intermediate care facility for individuals with intellectual disabilities shall not exceed four.
- (7) Licensed residential facilities shall not exist on adjoining property sites except that licensed residential facilities operating on adjoining property sites on the effective date of this rule may continue to so operate.
- (8) No more than one distinct and separate physical structure may be licensed on the same property site except that licensed residential facilities with more than one distinct and separate physical structure licensed on the same property site on the effective date of this rule may continue to so operate.
- (9) Notwithstanding paragraph (C)(7) or (C)(8) of this rule, multiple apartments within an apartment building or complex of apartment buildings on the same property site may be licensed individually when the apartments serve as the best alternative for maximizing community integration.
- (10) A county board may not assume ownership of a residential facility.

~~(D) Feasibility requirements~~ [Moved to rule 5123-3-02.]

- ~~(1) The licensee shall identify the ages, abilities, and needs of individuals to be served at the residential facility. The interior and exterior of the residential facility shall be configured in a manner so that the residential facility:
 - ~~(a) Is accessible to residents;~~
 - ~~(b) Can accommodate the assessed needs and degree of ability of residents; and~~
 - ~~(c) Provides for service delivery that is age appropriate for residents.~~~~
- ~~(2) The residential facility shall provide for two means of egress remote from each other for each floor level, except basements which are not used as activity or program areas and are limited to laundry use and storage.~~
- ~~(3) Each building or part of a building and all utilities, sanitary facilities, and appliances shall be designed, constructed, and installed in compliance with applicable rules of the Ohio building code, the Ohio sanitary code, the Ohio fire code, and any county or municipal building, safety, and fire regulations or codes.~~
- ~~(4) The residential facility shall provide for parking spaces, curb cuts, walkways, exit/entry ramps, toilets, showers, tubs, sinks, doorways, and other features that facilitate accessibility.~~
- ~~(5) The residential facility shall provide bathrooms and plumbing fixtures, including grab rails where needed, appropriate for the age and degree of ability of the individuals.~~
- ~~(6) All bathrooms and plumbing fixtures shall be in compliance with applicable state and local regulations, rules, codes, and ordinances.~~

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- ~~(7) Only lead free paints and finishes shall be used in the residential facility.~~
- ~~(8) If the residential facility has an outside play area and serves children six years of age and younger who are ambulatory, the outside play area shall be enclosed by a fence with a height sufficient to prevent egress from the area.~~
- ~~(9) Swimming pools shall meet local and state requirements regarding construction, operation, and sanitation.~~
- ~~(10) If the residential facility has a gas furnace and/or gas water heater, the licensee shall maintain a carbon monoxide detector in accordance with the manufacturer's specifications.~~
- ~~(11) The residential facility's address number shall be clearly visible from the street.~~
- ~~(12) The licensee shall have sufficient rooms, offices, and other space, including storage space, needed by the licensee, administrator, and staff to carry out the functions of the residential facility.~~
- ~~(13) The licensee shall not erect any sign which labels the functions of the residential facility or the individuals who reside therein.~~
- ~~(14) The names of residential facilities and descriptions of the individuals residing in those facilities shall not convey treatment, body parts, illness, disability, or inactivity. A residential facility may not be referred to or use the words "hospital," "nursing home," or "rest home" in its name or letterhead.~~
- ~~(E) Space requirements and usage [Moved to rule 5123-3-02.]~~
 - ~~(1) Living area~~
 - ~~(a) The residential facility shall have a minimum of eighty square feet of living area for each individual.~~
 - ~~(b) Living area includes, but is not limited to, living rooms, dining rooms, recreation or family rooms, and portion of kitchen floor space available for individual use.~~
 - ~~(c) Living area shall not include bedrooms, bathrooms, laundry rooms, closets, corridors, hallways, garages, and unfinished basements.~~
 - ~~(2) Bedrooms~~
 - ~~(a) Each bedroom occupied by one individual shall have a minimum of eighty square feet.~~
 - ~~(b) Each bedroom occupied by more than one individual shall have a minimum of sixty square feet for each individual.~~
 - ~~(c) No bedroom shall be occupied by more than two individuals.~~
 - ~~(d) If the bedroom is below the grade level of the residential facility, the room must~~

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~~have two means of egress, one of which may be a window provided the individual using the room can safely evacuate through the window.~~

~~(e) Living rooms, dining rooms, entryways, closets, corridors, hallways, outside porches, unfinished attics, and unfinished basements shall not be used as bedrooms.~~

~~(f) Each bedroom shall be adequately ventilated and have at least one outside window complete with a window treatment to provide adequate privacy for the individual.~~

~~(g) Each bedroom occupied by individuals who are non-ambulatory shall be located on the first floor unless the residential facility has an automatic fire-extinguishing system.~~

~~(h) Bedrooms shall not be used as throughways to and from other areas of the residential facility.~~

~~(3) Kitchen and dining~~

~~(a) The residential facility shall have at least one area accessible to individuals used for the preparation and serving of food under sanitary conditions.~~

~~(b) Each area used for dining shall have a minimum of fifteen square feet for each individual in the residential facility, not including the area generally recognized as counter and appliance space necessary for the normal preparation of meals.~~

~~(4) Bathroom and laundry~~

~~(a) The residential facility shall provide for toilet and bathing facilities at a minimum ratio of one to four, appropriate in size and design to meet the needs of the individuals. Toilet and bathing facilities shall be provided on each floor with bedrooms.~~

~~(b) The residential facility shall provide for individual privacy in toilets, bathtubs, and showers.~~

~~(c) Lavatories and bathing facilities shall be supplied with hot and cold running water maintained at a comfortable level for each individual to prevent injury.~~

~~(d) Laundry services shall be accessible to the individuals and adequate to meet their needs.~~

~~(F) Standards for reviewing development proposals~~ **[Moved to paragraph (D)(2) below.]**

~~In reviewing development proposals, the department shall consider:~~

~~(1) The extent to which the development proposal supports integration into the community;~~

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- ~~(2) The objective of reducing the number of beds at a single site;~~
 - ~~(3) The objective of reducing the number of beds in a single building;~~
 - ~~(4) The outcome of prior compliance reviews;~~
 - ~~(5) The need for services in the local community;~~
 - ~~(6) The need for capital improvements at the residential facility;~~
 - ~~(7) For licensed beds in a residential facility that is not an intermediate care facility for individuals with intellectual disabilities, compatibility with home and community-based character set forth by the centers for medicare and medicaid services;~~
 - ~~(8) The provider's ability to meet the financial requirements of the development proposal; and~~
 - ~~(9) The county board's recommendation regarding the development proposal.~~
- ~~(G)~~ (D) Development proposal process
- (1) ~~The~~ An applicant shall electronically submit a development proposal to the department ~~in writing~~ prior to the date of the proposed modification. The proposal shall:
 - (a) Identify the owner of the license to operate the facility, the operator of the facility if different from the owner, the lessor of the facility if any, and any related party as defined in section 5165.01 of the Revised Code to the owner or operator of the facility.
 - (b) Describe the modification accurately and completely.
 - (c) Include an explanation when the licensee proposes to make a modification involving:
 - (i) A change in the address of some or all of the licensed beds;
 - (ii) An increase or decrease in the number of licensed beds operated at a specific address;
 - (iii) The rebuilding of a licensed residential facility at the same address;
 - (iv) The rebuilding of a licensed residential facility at a different address; or
 - (v) A change in the type or source of funding.
 - (d) Be submitted no less than sixty calendar days in advance when the licensee proposes to make a modification involving:
 - (i) A change in the address of some or all of the licensed beds;

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- (ii) The rebuilding of a licensed residential facility at the same address; or
- (iii) The rebuilding of a licensed residential facility at a different address.

(2) In reviewing a development proposal, the department will consider:

- (a) The extent to which the development proposal supports integration into the community;
 - (b) The objective of reducing the number of beds at a single site;
 - (c) The objective of reducing the number of beds in a single building;
 - (d) The outcome of prior compliance reviews;
 - (e) The need for services in the local community;
 - (f) The need for capital improvements at the residential facility;
 - (g) For licensed beds in a residential facility that is not an intermediate care facility for individuals with intellectual disabilities, compatibility with home and community-based character set forth by the centers for medicare and medicaid services;
 - (h) The provider's ability to meet the financial requirements of the development proposal; and
 - (i) The county board's recommendation regarding the development proposal.
- (3) The department shall electronically notify the applicant ~~in writing~~ of the approval or disapproval of the development proposal together with a statement of reason within sixty calendar days of receipt of a complete application. The department shall maintain on its website a list of development proposals and action taken thereon.
- (4) The department shall establish specific timelines for implementation of a development proposal at the time of development approval.
- (a) Failure to meet established timelines may result in withdrawal of development approval.
 - (b) Revisions or extensions to established timelines require prior written approval by the department.

(E) Feasibility analysis

- (1) The department will conduct a feasibility analysis prior to issuance of an initial or modified license for:
- (a) A change in the address of some or all of the licensed beds;
 - (b) An increase in the number of licensed beds operated at a specific address;

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- (c) The rebuilding of a residential facility at the same address; or
 - (d) The rebuilding of a residential facility at a different address.
 - (2) A person or government agency shall, after obtaining development approval in accordance with paragraph (D)(3) of this rule, electronically notify the department to initiate scheduling of the feasibility analysis.
 - (3) The department will confirm the date for the feasibility analysis which may be conducted in-person or remotely using technology.
 - (4) The feasibility analysis will include a review of the physical environment and configuration of the facility to ensure the facility is in compliance with requirements set forth in rule 5123-3-02 of the Administrative Code.
 - (5) Any findings of non-compliance identified during the feasibility analysis will be corrected by the licensee prior to issuance of an initial or modified license.
- (F) Issuance of license
- (1) A person or government agency shall, after obtaining development approval in accordance with paragraph (D)(3) of this rule, completion of the feasibility analysis in accordance with paragraph (E) of this rule as applicable, and establishing the facility, electronically submit to the department a request for issuance of the initial license no less than thirty calendar days prior to the date of the planned opening of the facility.
 - ~~(2) A person or government agency desiring to operate a residential facility shall, after obtaining development approval pursuant to this rule and establishing the facility, notify the department in writing to request issuance of the initial license no less than thirty calendar days prior to the date of the planned opening of the facility.~~ The department shall issue the initial license to the licensee within twenty calendar days of determining the residential facility is in compliance with all requirements and collection of the licensure fee which ~~shall be based on the number of licensed beds at the residential facility, that is:~~
 - (a) Is based on the number of licensed beds at the residential facility, that is:
 - (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.
 - (b) Shall be paid by electronic check or credit card; and
 - (c) Is non-refundable.
 - (3) The department may issue an interim license when it determines initiation or continuation of services at the residential facility is appropriate pending completion

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of the development process (e.g., while a licensee is awaiting certification by the Ohio department of health as an intermediate care facility for individuals with intellectual disabilities).

- (4) A person or government agency submitting a development proposal to place a licensed bed on hold for future development shall have three hundred sixty-five calendar days from the date of approval of the development proposal to apply for a license for the residential facility. The application for a license shall be submitted to the department no less than sixty calendar days prior to the date of the planned opening of the facility.
- (5) The applicant may appeal the decision of the department regarding a development proposal in accordance with rule 5123:2-17-01 of the Administrative Code.

(G) Renovation proposal process

- (1) When the licensee proposes to make a renovation to a residential facility, the licensee shall electronically notify the department ~~in writing~~ no less than thirty calendar days in advance of beginning such renovation.
- (2) The licensee shall provide any information required by the department in order for the department to determine whether new inspections and/or a compliance review is required following the renovation.
- (3) The department shall ~~provide a written response to~~ electronically notify the licensee of the approval or disapproval of the licensee's renovation proposal within fourteen calendar days after receiving all the information it needs to determine whether new inspections and/or a licensure compliance review is required following the renovation.

~~(H) Waiving provisions of this rule~~

~~The provisions of this rule may be waived pursuant to rule 5123:2-3-10 of the Administrative Code.~~ [Not necessary as existing rule 5123-3-10 permits the Department to waive provisions of all rules in this chapter.]