

***** Proposed New Rule - May 11, 2012 *****

5123:2-3-26 **Development of licensed residential beds.**

(A) Purpose

The purpose of this rule is to establish uniform standards and procedures governing the development of residential facilities subject to licensure under section 5123.19 of the Revised Code. No person or government agency may apply for a license to operate a residential facility without obtaining development approval in accordance with this rule.

(B) Definitions

- (1) "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.
- (2) "Development" means an applicant's plan for the operation of a licensed residential facility including a plan for modification or replacement and which is subject to approval of the department.
- (3) "Downsizing" means the permanent decrease in the occupancy of a licensed residential facility.
- (4) "Intermediate care facility" means an intermediate care facility for the mentally retarded certified under Title XIX of the Social Security Act, 79 Stat. 286 (1965), 42 U.S.C. 1396, as amended.
- (5) "Licensed bed" means a bed in a residential facility licensed by the department pursuant to section 5123.19 of the Revised Code.
- (6) "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.
- (7) "Modification" means:
 - (a) A change in the identity of the licensee or management contractor of a licensed residential facility;
 - (b) A significant change in ownership of a licensed residential facility that occurs:
 - (i) As the result of an acquisition, sale of a majority interest, or merger; or

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- (ii) When a family member is added 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) A change in the type or source of funding of a licensed residential facility; and
 - (g) Transition of an intermediate care facility from licensure by the Ohio department of health to licensure by the department.
- (8) "Replacement" means assigning licensed beds to a different licensee when a license is revoked, terminated, or not renewed by the department or is voluntarily surrendered by a licensee and the department determines that the beds are needed to provide services to individuals who resided in the residential facility in which the beds were located.

(C) Moratorium on licensed beds

- (1) The department shall maintain a written record of the maximum number of licensed beds that are permitted in accordance with division (D) of section 5123.196 of the Revised Code.
- (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.

(D) General principles

- (1) A residential facility may continue to operate at the capacity and configuration for which it is licensed as of the effective date of this rule.
- (2) An applicant who has obtained approval for a development proposal shall be permitted to proceed with development at the capacity and configuration for which approval has been granted as of the effective date of this rule.
- (3) The number of licensed beds in an intermediate care facility shall not exceed eight.

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- (4) The number of licensed beds in a residential facility that is not an intermediate care facility shall not exceed four.
- (5) Licensed residential facilities shall not exist on adjoining property sites.
- (6) No more than one distinct and separate physical structure may be licensed on the same property site.
- (7) Notwithstanding paragraph (D)(6) of this rule, individual apartments within an apartment building or complex of apartment buildings on the same property site may be licensed individually provided the number of licensed beds within the apartment building or a complex of apartment buildings does not exceed twenty per cent of the total number of bedrooms in the building or complex.
- (8) The department shall not approve the development of licensed beds funded through a home and community-based services waiver program if the department determines that the development does not meet the definition of a home and community-based setting in accordance with guidelines established by the centers for medicare and medicaid services.
- (9) A county board may assume ownership of a residential facility only when no other person or government agency desiring to operate the residential facility is qualified.

(E) Standards for reviewing development proposals

In reviewing development proposals, the department shall consider:

- (1) The extent to which the development proposal supports integration into the community;
- (2) The objective of reducing the number of beds on a single site;
- (3) The objective of reducing the number of beds in a single building;
- (4) The outcome of prior licensure reviews;
- (5) The need for services in the local community;
- (6) The need for capital improvements at the residential facility;
- (7) The provider's ability to meet the financial requirements of the development proposal; and
- (8) The county board's recommendation regarding the development proposal.

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(F) Development proposal process

- (1) The applicant is responsible for submitting a development proposal to the department in accordance with procedures established by the department.
- (2) The department shall notify the applicant in writing of the approval or disapproval of the development proposal within sixty days of receipt of a complete application.
- (3) 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.
- (4) When a license is revoked, terminated, or not renewed by the department or is voluntarily surrendered by a licensee and the department determines that the 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 of the county where the replacement beds are 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 used by a county board.
 - (b) The county board shall solicit proposals from any interested applicants and shall 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 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 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.
- (5) A person or government agency desiring to operate a residential facility shall, upon obtaining development approval pursuant to this rule and establishing the

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facility, apply for a license in accordance with rule 5123:2-3-02 of the Administrative Code.

(6) 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 days from the date of approval of the development proposal to apply for a license for the residential facility in accordance with rule 5123:2-3-02 of the Administrative Code.

(7) 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) The provisions of this rule may be waived pursuant to rule 5123:2-3-15 of the Administrative Code.

Replaces: 5123:2-16-01

Effective: XX/XX/XXXX

R.C. 119.032 review dates: XX/XX/XXXX

Promulgated Under: 119.03

Statutory Authority: 5123.04, 5123.042, 5123.19

Rule Amplifies: 5123.04, 5123.042, 5123.19

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