

5123:2-16-01

Development of licensed residential beds.**(A) Purpose**

The purpose of this rule is to establish uniform standards and procedures governing the development of residential beds licensed pursuant to section 5123.19 of the Revised Code and any ICF/MR certified beds licensed by ODH that have received development approval as of July 1, 2003 to convert from an ODH license to a license issued by the department in accordance with section 5123.19 of the Revised Code.

(B) Definitions

- (1) "Applicant" means a person, as defined in section 1.59 of the Revised Code, or government agency submitting a proposal for the development approval of licensed residential beds.
- (2) "County board" means a county board of mental retardation and developmental disabilities established under Chapter 5126. of the Revised Code.
- (3) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
- (4) "Development approval" means department authorization for a specific licensee to apply for a new license. Development approval is required for any modification or replacement of an existing licensed bed.
- (5) "Emergency" means any situation that creates for an individual a risk of substantial self-harm or substantial harm to others if action is not taken within thirty days. An "emergency" may include one or more of the following situations:
 - (a) Loss of present residence for any reason, including legal action;
 - (b) Loss of present caretaker for any reason, including serious illness of the caretaker, change in the caretaker's status, or inability of the caretaker to perform effectively for the individual;
 - (c) Abuse, neglect, or exploitation of the individual;
 - (d) Health and safety conditions that pose a serious risk of immediate harm or death to the individual or others;
 - (e) Change in the emotional or physical conditions of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.

- (6) "Existing licensed bed" means a licensed bed in a residential facility licensed by the department pursuant to section 5123.19 of the Revised Code. It includes a bed licensed by the ODH pursuant to Chapter 3721. of the Revised Code and certified as an ICF/MR bed that has received development approval as of July 1, 2003 to be converted from an ODH license to a license issued by the department in accordance with section 5123.19 of the Revised Code.
- (7) "ICF/MR" means intermediate care facility for the mentally retarded.
- (8) "Individual" means a person with mental retardation or developmental disabilities who is eligible for services pursuant to Chapters 5123. and 5126. of the Revised Code.
- (9) "Legal entity" means a person as defined in section 1.59 of the Revised Code, or government agency named as licensee on a license or employed by the licensee as a management contractor.
- (10) "Licensee" means the person or government agency that has applied for a license to operate a residential facility and to which the license was issued under section 5123.19 of the Revised Code.
- (11) "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.
- (12) "Modification" means a change in the licensee, the address of some or all of the existing licensed beds, or in the number of existing licensed beds that the licensee is approved to operate at a specific address. "Modification" includes the rebuilding of existing licensed beds at the same site, a change in the type or source of funding, a significant change in the ownership of a residential facility, or a change in the identity of the licensee or management contractor. "Modification" also means the conversion of ICF/MR certified beds, licensed by ODH, that have received development approval as of July 1, 2003, to licensure under section 5123.19 of the Revised Code.
- (13) "ODH" means the Ohio department of health as established by section 121.02 of the Revised Code.
- (14) "Replacement" means replacement of existing licensed beds as determined necessary by the director of the department in accordance with paragraph (J) of this rule when a license is revoked, terminated, or not renewed by the department or voluntarily surrendered by the licensee as described in division (B) of section 5123.196 of the Revised Code.
- (15) "Replacement bed" means a licensed bed approved for development pursuant to paragraph (J) of this rule.

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

(C) The department shall approve development proposals for the modification or replacement of existing licensed beds in accordance with the requirements of this rule.

(D) Moratorium on new beds

The director shall refuse to approve a proposal for the development of residential facility beds or to issue a license under section 5123.19 of the Revised Code if the approval or issuance will cause the number of existing licensed beds as defined in paragraph (B)(6) of this rule to exceed the number of licensed beds permitted by section 5123.196 of the Revised Code.

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

(F) Any existing facility shall be permitted to continue to operate at the capacity at which it is licensed on the effective date of this rule and a facility approved for development shall be permitted to continue development at the capacity at which it is approved as of the effective date of this rule.

(G) Existing beds converted from licensure by the ODH to licensure under section 5123.19 of the Revised Code are not subject to the size requirements in paragraphs (I)(4)(b) and (I)(4)(c) of this rule.

(H) General conditions

(1) No more than one distinct and separate physical structure may be licensed on the same property site.

(2) Notwithstanding paragraph (H)(1) of this rule, individual apartments or other distinct living units within the same apartment building, or within the same complex of apartment buildings or living units may be licensed individually.

(3) Two or more licensed facilities shall not exist on adjoining property sites unless the licensed facilities are apartments within an apartment building on adjoining property sites.

(4) Licensed facilities existing on the effective date of this rule are not subject to the provisions of paragraphs (H)(1) and (H)(3) of this rule.

(I) Modifications

- (1) The applicant is responsible for submitting a proposal for modification to the department and the county board at least ninety days prior to the proposed effective date of the modification. Licensed facilities operated by the department shall submit a proposal for modification in accordance with department procedures.
- (2) The county board, in accordance with its comprehensive service plan, shall respond to all modification proposals that are submitted to the department and the county board by providing a written recommendation to the department within forty days after receiving the proposal from the applicant. The recommendation shall include the county board's position on the applicant's proposed modification and the rationale for its position. The county board shall provide a written copy of the recommendation to the applicant. The department shall consider the county board to be in support of the applicant's proposal if a written recommendation is not received from the county board within forty days after receiving the proposal from the applicant.
- (3) A change in the address of some or all of the licensed beds in a facility from one county to another shall require the written recommendation of all county boards affected by the address change.
- (4) Approval of an increase in the number of licensed beds in an existing facility as a result of a modification shall be limited by the following:

 - (a) The total number of licensed beds existing statewide does not increase as a result.
 - (b) An increase in the licensed beds in an ICF/MR is limited to a resulting total of eight licensed beds.
 - (c) An increase in the licensed beds in any other licensed facility is limited to a resulting total of four licensed beds.
- (5) Downsizing through the relocation of existing licensed beds to new licensed facilities shall not be limited to the size restrictions in paragraph (I)(4) of this rule as long as the total number of resulting beds does not exceed the original licensed capacity of the facility being downsized.
- (6) The capacity of two or more facilities being downsized may be combined to develop a single facility; however, the resulting licensed capacity may not exceed the size restrictions in paragraph (I)(4) of this rule.
- (7) An applicant may propose to increase its licensed capacity above the limits established in paragraphs (I)(4)(c) and (I)(6) of this rule pursuant to paragraph (L)(1)(b) of this rule.

(8) The size restrictions in paragraph (I)(4) of this rule shall not apply to either of the following if it is necessitated by a structural fault identified by an appropriately qualified architect or engineer or by renovation costs that equal or exceed the lesser of ten thousand dollars per bed or eighty-five per cent of the market value of the property which, if not repaired, jeopardizes continued licensure or certification:

(a) Relocation of an existing facility by the existing licensee; or

(b) Rebuilding of the original licensed facility on the original site by the existing licensee.

(9) If a county board obtains development approval and becomes a licensee as a result of a significant change of ownership, it shall develop a request for proposal for the management contractor of the residential facility pursuant to paragraph (K) of this rule.

(10) The department shall consider the county board's recommendation and shall notify, in writing, the applicant of its decision within thirty days after receipt of all information requested from the applicant and/or the county board by the department relevant to the proposed modification. In the event that the applicant or the county board does not submit the requested information within fourteen days after the request from the department, the department shall base its decision on the information available.

(11) The department shall establish specific timelines at the time of development approval of each proposal.

(a) Failure to meet established timelines may result in withdrawal of development approval.

(b) Revisions or extensions to established timelines are subject to prior written approval by the department.

(12) A significant change in ownership or control, an inherent element of ownership, of a residential facility occurs as follows:

(a) For a newly formed corporation, the date of a significant change of ownership is generally the date that the articles of incorporation are filed with the Ohio secretary of state and the corporation assumes control of beds licensed to it.

(i) If a corporation is already an existing entity, the date on which the corporation assumes control of beds licensed to another person or governmental entity is the date of the significant change of ownership.

- (ii) When a corporation, which is the licensee, is involved in a merger and is not the surviving entity, the date on which the merger is filed with the Ohio secretary of state is the date of the significant change of ownership.
 - (iii) When a corporation, which is the licensee, is involved in a consolidation, the date on which the consolidation is filed with the Ohio secretary of state is the date of the significant change of ownership.
 - (iv) When more than fifty per cent of the financial interest of a corporation is sold to another legal entity within a period of one year, allowing the other legal entity a controlling interest in that corporation, the significant change of ownership is effective upon the date of the sale of that portion of the financial interest that brings the total over fifty per cent of the overall financial interest of the corporation.
 - (b) For a partnership, when there is a change in one or more partners and the new partner(s) acquires the largest interest in the partnership, the date that the new partner(s) acquires the largest interest is the date of the significant change of ownership.
 - (c) For a proprietorship, when the proprietor sells more than fifty per cent of his/her interest to another legal entity, the date of the sale is the date of the significant change of ownership.
 - (d) In a family-owned business, the date when a new family member is added or removed from the current license is the date of the significant change of ownership.
 - (e) For a county board, the date that the county board assumes control of beds licensed to another person is the date of the significant change of ownership.
- (13) Change in identity of the licensee or management contractor occurs as follows:
- (a) A change in the identity of a current licensee for a corporation, partnership, proprietorship, or management contractor includes the date upon which its name changes and the name change is placed on file with the Ohio secretary of state.
 - (b) A change in the identity of a management contractor includes the placement of a management contractor at a facility that had no previous management contractor as well as a change of management contractors. The date of a change in the identity of a management contractor is the

effective date of the management contract.

(14) When a change of ownership or the identity of the licensee or management contractor is proposed, the director shall advise the licensee within sixty days of notification of the proposed change whether development approval is required and whether the current license shall continue in effect or a new license will be required.

(15) When the required ninety day prior notification for a change of ownership or identity of the licensee or management contractor is not given to the department, the director may terminate the license of the residential facility that failed to timely provide such notification. The licensee shall have thirty days from the date the letter is mailed to request a hearing in accordance with Chapter 119. of the Revised Code.

(J) Replacements

(1) The department may approve a development proposal for the replacement of existing licensed beds if the director of the department determines the replacement is necessary due to an emergency.

(2) If the department approves a development proposal for the replacement, the county board of the county where the replacement beds are located shall develop a request for proposal pursuant to paragraph (K) of this rule. The county board may submit a proposal in response to the request for proposal, subject to the provisions of paragraph (K)(8) of this rule.

(3) If a county board obtains development approval and becomes a licensee as a result of circumstances described in paragraph (J)(1) of this rule, it shall develop a request for proposal for the management contractor of the residential facility pursuant to paragraph (K) of this rule.

(K) Request for proposal (RFP)

The department shall establish the format, criteria for evaluation, procedure, and timelines for the RFP process to be used by a county board. The county board shall solicit proposals from any interested applicants and shall ensure that all interested applicants are afforded an equal opportunity to respond to the RFP. Written notice shall be provided to the general public and to all interested licensees as prescribed by the department. The county board shall complete its review of all proposals no later than thirty days following the date established in the RFP as the date when the proposals are due to the county board.

(1) The RFP shall include the following specifications:

(a) Specific service requirements of the individuals;

- (b) Physical characteristics and requirements of the facility, location, number of individuals to receive services, and the proximity of the facility to other residential facilities, as applicable; and
 - (c) Funding conditions and limits, if applicable.
- (2) Proposals submitted to the county board shall include sufficient detail to allow evaluation of the criteria identified in paragraph (K)(4) of this rule.
- (3) Proposals in response to the RFP shall be reviewed and rated by a local review committee established by the county board. The review committee shall include representatives of the county board, licensees, and individuals who will be residing in the facility, other individuals with developmental disabilities, and/or their legal guardian or persons selected by individuals to speak on their behalf.
- (4) Criteria for evaluating proposals and selecting applicants shall include, but not be limited to, the following:
 - (a) Ability of the applicant to provide the services required by the individual who has indicated a choice to live in a residential facility;
 - (b) Physical characteristics and requirements of the facility, location, number of individuals to receive services, and the proximity of the facility to other residential facilities;
 - (c) Compliance with licensure requirements for previous or existing facilities operated by the applicant or certification requirements for applicants subject to such requirements;
 - (d) Involvement of one or more principals of the applicant's organization in prior licensure or certification revocation, receivership, emergency removal, or suspension of admissions;
 - (e) If the applicant is a natural person, a criminal records check that meets the requirements of rule 5123:2-3-06 of the Administrative Code;
 - (f) Fiscal solvency of the applicant;
 - (g) A plan to ensure equal employment opportunities;
 - (h) Substantiated complaints filed with the ombudsman in accordance with sections 5123.601 to 5123.604 of the Revised Code that are related to the applicant;
 - (i) Pending and prior investigations of major unusual incidents, which

includes the scope and nature of the incident(s), the analysis and any findings involving individuals being served by the applicant; and

(j) Compliance with department rules.

(5) The county board shall submit all proposals and its recommendation(s) to the department within ten days after completing its review of the proposals.

(6) The county board shall send a written copy of the board's recommendation(s) to each applicant within ten days after completing its review of the proposals. The county board shall provide each applicant its rationale in recommending or choosing not to recommend a particular provider or management contractor for replacement beds. Such written rationale shall be based on the criteria listed in paragraphs (K)(4)(a) to (K)(4)(j) of this rule.

(7) The department shall establish specific timelines at the time of development approval. If timelines are not met for the replacement, the department may withdraw approval. If the department withdraws approval, the department may approve another proposal that has been reviewed by the county board within the past year, or may require the county board to solicit new proposals in accordance with paragraph (K) of this rule.

(8) If the county board submits a proposal in response to the RFP, and in cases of other possible conflicts of interest, the director of the department shall appoint a committee that shall review the proposal(s) and submit its recommendation(s) to the department within ten days after completing its review of the proposals.

(9) 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 board's or the committee's recommendation. The department shall provide each applicant its rationale in selecting or choosing not to select a particular provider or management contractor for replacement beds. Such written rationale shall be based on the criteria listed in paragraphs (K)(4)(a) to (K)(4)(j) of this rule.

(L) Increasing the number of beds in existing licensed residential facilities

(1) Existing licensed beds may be used in the following situations:

(a) To increase the licensed capacity of an existing facility within the limits established in paragraphs (I)(4) and/or (I)(6) of this rule; or

(b) To increase the licensed capacity of an existing facility above the limits established in paragraphs (I)(4)(c) and/or (I)(6) if a waiver is obtained in accordance with paragraph (L)(5) of this rule.

- (2) If an applicant proposes to increase its licensed capacity as described in paragraph (L)(1)(a) of this rule, the applicant shall include with its proposal a written statement from the county board of the county where the applicant is located, indicating an emergency exists for a particular individual(s) and that the proposed placement in the existing facility is the most appropriate alternative available.
- (3) If an applicant proposes to increase its licensed capacity as described in paragraph (L)(1)(b) of this rule, the applicant shall include with its proposal the following written information provided by the county board:
- (a) A statement from the county board of the county where the applicant is located, indicating an emergency exists for a particular individual(s) and that the proposed placement in the residential facility is the most appropriate alternative available; and
 - (b) Verification that the individual(s), his/her parent or guardian, as appropriate, of the individuals living in the residential facility have agreed to the increase in licensed capacity and will not be adversely affected by the placement of the additional individual(s) in the facility; and
 - (c) Confirmation that each individual being admitted to the residential facility as a result of this provision will have a private bedroom unless the individual(s) declines, in writing, a private bedroom.
- (4) In no case may the licensed capacity of the residential facility be more than eight.
- (5) Upon review and determination by the department that a proposal meets the requirements of paragraph (L)(2) or (L)(3) of this rule, the director may waive the size restriction in paragraphs (I)(4)(c) and/or (I)(6) of this rule. The department may also review the applicant's historical compliance with licensure rules as a consideration for the issuance of a waiver under this paragraph.

(M) Appeal process

The applicant or the county board may appeal the decision of the department regarding a proposed modification or replacement of existing beds in accordance with rule 5123:2-17-01 of the Administrative Code.

(N) If the department determines an individual is in emergency need of services, immediate action shall be taken to ensure the health and safety of the individual.

- (1) In such emergency, the department may, in accordance with rule 5123:2-3-15 of

the Administrative Code, grant permission to waive paragraph (C) of rule 5123:2-3-04 of the Administrative Code to allow the census of an existing facility to temporarily exceed the approved licensed capacity of the facility and the licensee to admit the individual.

(2) The resulting census shall not be limited to the size restrictions in paragraph (I)(4) of this rule.

(3) Approval to waive licensed capacity shall be time limited, specific to a facility and an individual(s), and may be renewed for a total of twelve months for a specific individual in a specific facility.

(O) Pursuant to section 5123.042 of the Revised Code, if a county board fails to establish a county comprehensive service plan, the director may establish goals for the development of residential beds for the board based on documented need as determined by the department. If a county board fails to develop or implement such a plan, the department may, without the involvement of the county board, review and select licensees for the development of residential beds in the county.

(P) License application

A person or government agency desiring to operate a residential facility shall, upon obtaining development approval pursuant to this rule and establishing the facility, apply for licensure of the facility to the department in accordance with rule 5123:2-3-02 of the Administrative Code.

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