

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

<b>Number</b>	<b>Title</b>	<b>Page</b>
5123:2-3-01	Licensed Residential Facilities - Administration and Operation	3
5123:2-3-02	Licensed Residential Facilities - Physical Environment Standards, Fire Safety, and Emergency Response Planning	15
5123:2-3-03	Licensed Residential Facilities - Person-Centered Planning	23
5123:2-3-04	Licensed Residential Facilities - Provision of Services and Maintenance of Service Records	29
5123:2-3-05	Licensed Residential Facilities - Admission, Termination of Services, and Transfer	37
5123:2-3-06	Licensed Residential Facilities - Compliance Reviews, Issuance of Licenses, and Adverse Actions	43
<del>5123:2-3-07</del>	<del>Licensed Residential Facilities - Immediate Removal of Residents</del> [Note: This rule has been removed from package to afford time for additional consideration.]	
5123:2-3-08	Licensed Residential Facilities - Development of <del>Licensed Residential Beds and Renovation</del>	53
5123:2-3-09	Licensed Residential Facilities - Standards for Evaluating Potential Receivers	63
5123:2-3-10	Licensed Residential Facilities - Procedures to Waive Rule Requirements	65

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**[This page intentionally blank.]**

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-01 Licensed residential facilities - administration and operation.**

(A) Purpose

This rule sets forth requirements for administration and operation of residential facilities licensed in accordance with section 5123.19 of the Revised Code.

(B) Definitions

- (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) "Department" means the Ohio department of developmental disabilities.
- (3) "Direct services position" has the same meaning as in section 5123.081 of the Revised Code and includes staff who provide habilitation services.
- (4) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (5) "Individual" means a person with a developmental disability.
- (6) "Individual plan" or "individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (7) "License" means written approval by the department to a licensee to operate a residential facility.
- (8) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.
- (9) "Operator" means the licensee or an entity with which the licensee has established a contract for the management of and provision of services at the residential facility.
- (10) "Person-centered planning" has the same meaning as in rule 5123:2-3-03 of the Administrative Code.
- (11) "Professional staff" means employees of the residential facility licensed, certified, or registered by the state to provide professional services in the field in which they practice.
- (12) "Related party" has the same meaning as in section 5123.16 of the Revised Code.
- (13) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (14) "Supervisory staff" means employees of the residential facility who provide direction or exercise supervision over one or more employees in direct services positions.
- (15) "Support staff" means employees of the residential facility such as secretaries, clerks, housekeepers, maintenance workers, and laundry workers who are not in direct services positions, who are not supervisory staff, and who are not professional staff.

(C) General requirements

- (1) A residential facility shall be licensed by the department in accordance with section 5123.19 of the Revised Code. The license to operate a residential facility is not transferable and is valid only for the licensee, the premises named on the license, the number of individuals specified on the license, and the term specified on the license. The license shall be available at the residential facility and shown to anyone upon request. The licensee shall take all actions necessary to maintain the license.
- (2) A licensee providing home and community-based services under a medicaid waiver administered by the department shall submit an application for approval to provide home and community-based services in accordance with procedures established by the department and comply with rules in Chapter 5123:2-9 of the Administrative Code for the specific home and community-based services provided.
- (3) The operator shall comply with rules adopted under Chapter 5123:2-3 of the Administrative Code, rules adopted under other chapters of the Administrative Code pursuant to section 5123.19 of the Revised Code, and all applicable federal, state, and local regulations, statutes, rules, codes, and ordinances including but not limited to, fire safety code, wage and hour, workers' compensation, unemployment compensation, and withholding taxes.
- (4) The operator shall annually obtain a fire inspection and if applicable, a water and sewer inspection, which shall be provided to the department upon request.
- (5) The operator shall disclose or report in writing to the department if the licensee, operator, or administrator has been or is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code within fourteen calendar days after the date of such charge, conviction, or guilty plea.
- (6) The operator shall disclose or report in writing to the department within fourteen days if the licensee, operator, or administrator is or becomes a related party of a person or government entity for which the department refused to issue or renew or revoked a supported living certificate pursuant to section 5123.166 of the Revised Code.
- (7) The operator shall provide to the department the name, country of birth, date of birth,

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

and social security number for any person owning a financial interest of five per cent or more in the residential facility (including a direct, indirect, security, or mortgage financial interest).

- (8) The operator shall provide and maintain on file with the department, current United States mail and electronic mail addresses.
- (9) The operator shall demonstrate that it has an established internal system to ensure compliance with requirements for:
  - (a) Residential facilities in accordance with rules in Chapter 5123:2-3 of the Administrative Code;
  - (b) Background investigations and appropriate actions in accordance with rule 5123:2-2-02 of the Administrative Code, for its administrator, licensee, operator, and each employee, contractor, or employee of a contractor who is engaged in a direct services position; and
  - (c) Service delivery, service documentation, and billing for services in accordance with rules in Chapter 5123:2-9 of the Administrative Code for the specific home and community-based services provided.
- (10) The operator shall maintain comprehensive general liability insurance in the amount of at least five hundred thousand dollars.
- (11) The operator shall participate as requested by the department in service delivery system data collection initiatives such as the national core indicators staff stability survey.
- (12) The operator and its employees shall interact with individuals in a way to safeguard the rights of individuals enumerated in sections 5123.62 and 5123.65 of the Revised Code.
- (13) The licensee shall be responsible for meeting the requirements established under sections 5123.63 and 5123.64 of the Revised Code.
- (14) When there is a swimming pool or aquatics program on the grounds of the residential facility including residential facilities in apartment complexes, the pool shall be used by individuals only in the presence of a person who holds "American Red Cross" or equivalent lifeguarding certificate, or shallow water lifeguarding certificate if the pool is less than five feet deep, unless otherwise specified in the individual plan or individual service plan.

**(D) Staffing**

- (1) The operator shall conduct background investigations and take appropriate actions in accordance with rule 5123:2-2-02 of the Administrative Code, for the administrator or

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

operator serving as administrator, and each employee, contractor, or employee of a contractor who is engaged in a direct services position. The administrator shall consent to be enrolled in the Ohio attorney general's retained applicant fingerprint database ("Rapback"). When the licensee and/or operator is a natural person, he or she shall be subject to background investigations in accordance with the requirements for candidates set forth in rule 5123:2-2-02 of the Administrative Code and consent to be enrolled in the Ohio attorney general's retained applicant fingerprint database ("Rapback").

- (2) The operator shall enroll ~~the administrator, and~~ each employee, contractor, or employee of a contractor who is engaged in a direct services position in the Ohio attorney general's retained applicant fingerprint database ~~information exchange system~~ ("Rapback"). ~~When the licensee and/or operator is a natural person, he or she shall be enrolled in "Rapback" as well.~~
- (a) An ~~administrator, licensee, operator, and an~~ employee, contractor, or employee of a contractor who is engaged in a direct services position employed by or under contract with the operator on the day immediately prior to the effective date of this rule shall be enrolled in "Rapback" at the point he or she is next subject to a criminal records check by the bureau of criminal identification and investigation in accordance with rule 5123:2-2-02 of the Administrative Code.
- (b) An ~~administrator, licensee, operator, and an~~ employee, contractor, or employee of a contractor who is engaged in a direct services position hired or engaged by the operator on or after the effective date of this rule shall be enrolled in "Rapback" at the point of his or her initial criminal records check by the bureau of criminal identification and investigation in accordance with rule 5123:2-2-02 of the Administrative Code.
- (3) The operator shall be current in payment of payroll taxes, workers' compensation premiums, and unemployment compensation premiums.
- (4) The operator shall ensure that staff are on-duty on the basis of the needs of individuals being served. Staff schedules shall be prepared in advance and available for review at each residential facility.
- (5) The operator shall provide sufficient support staff so that staff in direct services positions are not required to perform support services to the extent that these duties interfere with the exercise of their primary duties.
- (6) The operator shall maintain personnel records for each employee in accordance with the residential facility's personnel policies.
- (7) The operator shall maintain a written record, which may include an electronic record, of initial and continuing training completed by each staff member and volunteer. This information shall be made available upon request by the department and may be

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

maintained at the residential facility or other accessible location.

- (8) Documentation of initial and continuing training completed by each staff member and volunteer shall include the name of the person receiving the training, date of training, training topic, duration of training, instructor's name if applicable, and a brief description of the training.

(E) Requirements for administrator

- (1) The operator shall employ an administrator except where the operator serves as the administrator.
- (2) The administrator or operator serving as administrator shall:
  - (a) Be at least twenty-one years of age.
  - (b) Have a valid social security number and one of the following forms of identification:
    - (i) State of Ohio identification;
    - (ii) Valid driver's license; or
    - (iii) Other government-issued photo identification.
  - (c) Be able to read, write, and understand English at a level sufficient to comply with all requirements set forth in administrative rules governing the services provided.
  - (d) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, hold a high school diploma or general education development certificate.
  - (e) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, either:
    - (i) Hold a bachelor's degree from an accredited college or university; or
    - (ii) Have at least four years of full-time (or equivalent part-time) paid work experience as a supervisor of programs or services for individuals with developmental disabilities.
  - (f) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, have at least one year of full-time (or equivalent part-time) paid

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

work experience in the provision of services to individuals with developmental disabilities which included responsibility for:

- (i) Personnel matters;
  - (ii) Supervision of employees;
  - (iii) Program services; and
  - (iv) Financial management.
- (g) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, successfully complete, within thirty days of hire as the administrator or operator serving as administrator, department-provided web-based orientation for administrators of residential facilities.
- (h) Except for a person who, on the day immediately prior to the effective date of this rule, was employed by or under contract with a residential facility as the administrator, successfully complete, within sixty days of hire as the administrator or operator serving as administrator, training in accordance with standards established by the department in:
- (i) Service documentation;
  - (ii) Fiscal administration and/or billing for services, as applicable;
  - (iii) Internal compliance programs;
  - (iv) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and
  - (v) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department.
- (i) Successfully complete, commencing in the second year of employment as the administrator or operator serving as administrator, annual training in accordance with standards established by the department in:
- (i) A residential facility's role and responsibilities with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;
  - (ii) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and



**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (iii) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department since the previous year's training.
  - (3) The operator shall designate in writing a staff member to whom executive authority has been delegated in the temporary absence of the administrator.
  - (4) The operator shall report in writing to the department within fourteen days when the administrator or operator serving as administrator leaves the residential facility's employ. The notification shall indicate when the operator anticipates filling the position and to whom executive authority has been delegated in the interim.
- (F) Requirements for staff, including supervisory staff and professional staff, in direct services positions
- (1) The operator shall ensure that each employee, contractor, and employee of a contractor engaged in a direct services position:
    - (a) Is at least eighteen years of age.
    - (b) Has a valid social security number and one of the following forms of identification:
      - (i) State of Ohio identification;
      - (ii) Valid driver's license; or
      - (iii) Other government-issued photo identification.
    - (c) Holds a high school diploma or general education development certificate, except for persons who, on the day immediately prior to the effective date of this rule, were employed by or under contract with a residential facility in a direct services position.
    - (d) Is able to read, write, and understand English at a level sufficient to comply with all requirements set forth in administrative rules governing the services provided.
    - (e) Successfully completes, prior to providing direct services, eight hours of training in accordance with standards established by the department in:
      - (i) Overview of serving individuals with developmental disabilities including implementation of individual plans and individual service plans;
      - (ii) The role and responsibilities of direct services staff with regard to services including person-centered planning, community participation and integration,

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- self-determination, and self-advocacy;
- (iii) Universal precautions for infection control, including hand washing and the disposal of bodily waste;
  - (iv) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
  - (v) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department; and
  - (vi) An overview of fire safety and emergency procedures.
- (f) Successfully completes, prior to providing direct services, training specific to each individual he or she will support that includes:
- (i) What is important to the individual and what is important for the individual; and
  - (ii) The individual's support needs including, as applicable, behavioral support strategy, management of the individual's funds, and medication administration/delegated nursing.
- (g) Successfully completes, within thirty days of hire, and specific to each residential facility in which he or she works, training in fire safety, operation of fire safety equipment and warning systems, and emergency response plan. Until such time that a staff member completes the training required by this paragraph, he or she may provide direct services only when there is another staff member working in the same unit/building that has current training required by this paragraph.
- ~~(h) Obtains, within thirty days of hire, and thereafter maintains valid "American Red Cross" or equivalent certification in first aid and cardiopulmonary resuscitation which includes an in-person skills assessment completed with an approved trainer. Until such time that a staff member obtains certification in first aid and cardiopulmonary resuscitation, he or she may provide direct services only when there is another staff member working in the same unit/building that holds valid certification in first aid and cardiopulmonary resuscitation.~~
- (h) Obtains, within sixty days of hire, and thereafter maintains valid "American Red Cross" or equivalent certification in first aid which includes an in-person skills assessment completed with an approved trainer. Until such time that a staff member obtains certification in first aid, he or she may provide direct services only when there is another staff member who holds valid certification in first aid present.
- (i) Obtains, within sixty days of hire, and thereafter maintains valid "American Red

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

Cross" or equivalent certification in cardiopulmonary resuscitation which includes an in-person skills assessment completed with an approved trainer. Until such time that a staff member obtains certification in cardiopulmonary resuscitation, he or she may provide direct services only when there is another staff member who holds valid certification in cardiopulmonary resuscitation present. An intermediate care facility for individuals with intellectual disabilities that has nursing staff onsite twenty-four hours per day, seven days per week may, in accordance with rule 5123:2-3-10 of the Administrative Code, request a waiver of the requirement for all direct services staff to hold certification in cardiopulmonary resuscitation.

- (j) Successfully completes, commencing in the second year of employment or contract, annual training in accordance with standards established by the department in:
  - (i) The role and responsibilities of direct services staff with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;
  - (ii) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
  - (iii) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department since the previous year's training;
  - (iv) Fire safety and operation of the residential facility's fire safety equipment and warning systems specific to each residential facility in which he or she works; and
  - (v) The residential facility's emergency response plan specific to each residential facility in which he or she works.
- (2) An employee, contractor, or employee of a contractor engaged in a direct services position shall be deemed to have met the annual training requirements set forth in paragraph (F)(1)(i) of this rule if he or she is scheduled for training and the training is completed within thirty days of the deadline.

(G) Additional requirements for supervisory staff

The operator shall ensure that within ninety days of becoming a supervisor, supervisory staff successfully complete training in accordance with the residential facility's policies and procedures regarding:

- (1) Service documentation;

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

(2) Fiscal administration and/or billing for services, as applicable; and

(3) Management of individuals' funds.

(H) Requirements for support staff

(1) The operator shall ensure that prior to assuming their duties, support staff receive training in accordance with standards established by the department in:

(a) The role and responsibilities of the residential facility with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;

(b) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;

(c) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department; and

(d) An overview of fire safety and emergency procedures.

(2) The operator shall ensure that within thirty days of hire and at least once annually thereafter, support staff receive training in:

(a) Fire safety and operation of the residential facility's fire safety equipment and warning systems specific to each residential facility in which he or she works; and

(b) The residential facility's emergency response plan specific to each residential facility in which he or she works.

(I) Volunteers

(1) A residential facility may engage volunteers to provide supplementary services.

(2) The operator shall ensure that volunteers are at all times be under supervision of paid supervisory staff of the residential facility.

(3) The operator shall ensure that volunteers who provide more than forty hours of service working directly with residents during a calendar year shall receive training in:

(a) The role and responsibilities of the residential facility with regard to services including person-centered planning, community participation and integration, self-determination, and self-advocacy;

(b) The rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

Code;

- (c) The requirements of rule 5123:2-17-02 of the Administrative Code including a review of health and welfare alerts issued by the department; and
  - (d) An overview of fire safety and emergency procedures.
- (4) The operator shall ensure that volunteers who provide more than forty hours of service working directly with residents during a calendar year undergo background investigations.
- (a) The background investigation for a volunteer shall include:
    - (i) Requiring the volunteer to submit a statement to the operator with the volunteer's signature attesting that he or she has not been convicted of or pleaded guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.
    - (ii) Requiring the volunteer to sign an agreement under which the volunteer agrees to notify the operator within fourteen calendar days if, while engaged as a volunteer at the residential facility, the volunteer is formally charged with, is convicted of, or pleads guilty to any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code. The agreement shall provide that failure to make the notification may result in termination of the volunteer's services.
    - (iii) Establishing the volunteer is not included in any of the databases described in paragraph (C)(2) of rule 5123:2-2-02 of the Administrative Code.
    - (iv) Obtaining a criminal records check conducted by the Ohio bureau of criminal identification and investigation. If the volunteer does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the criminal records check shall include information from the federal bureau of investigation.
  - (b) The operator shall, at a frequency of no less than once every five years, conduct a background investigation in accordance with paragraph (I)(4)(a) of this rule for each volunteer.
  - (c) The operator shall not engage or continue to engage a volunteer who:
    - (i) Is included in one or more of the databases described in paragraph (C)(2) of rule 5123:2-2-02 of the Administrative Code; or

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (ii) Has a conviction for any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code if the corresponding exclusionary period as specified in paragraph (E) of rule 5123:2-2-02 of the Administrative Code has not elapsed.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-02 Licensed residential facilities - physical environment standards, fire safety, and emergency response planning.**

(A) Purpose

This rule establishes minimum physical environment and safety standards to ensure that individuals living in residential facilities licensed in accordance with section 5123.19 of the Revised Code are provided a safe, healthy, and home-like living environment that meets their specific needs.

(B) Definitions

- (1) "Adult" means an individual age eighteen and older.
- (2) "Child" means an individual less than eighteen years of age.
- (3) "Emergency response plan" means the operator's written plan to address training and responses to the following:
  - (a) An emergency or natural disaster that does not require the physical evacuation or relocation of the individuals from the residential facility; and
  - (b) An emergency or natural disaster that requires the physical evacuation or relocation of individuals from the residential facility.
- (4) "Fire safety drill" means a documented simulation of the actions to be taken in response to a fire emergency.
- (5) "Fire safety plan" means the operator's written plan to address training and response to a fire emergency as referenced in paragraph (E)(2) of this rule.
- (6) "Individual" means a person with a developmental disability.
- (7) "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 management of and provision of services at the residential facility.
- (9) "Physical evacuation" means that the individuals residing in the residential facility physically leave the facility or, in the case of a facility that is classified as I-1 or I-2 occupancy pursuant to section 308 of the Ohio building code, individuals residing in the facility must be moved to a separate fire area within the facility that is separated by a two-hour rated firewall.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (10) "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.
- (11) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
- (12) "State/local authority" means for fire safety, the local fire department or the state fire marshal's office; or for emergency response, a chapter of the "American Red Cross" or the county emergency management agency.

(C) Physical environment standards and configuration

- (1) The operator shall ensure that the residential facility remains in compliance with the feasibility, space, and usage requirements for residential facilities set forth in paragraphs (E) and (F) of rule 5123:2-3-08 of the Administrative Code.
- (2) All areas of the interior and exterior of the residential facility, the grounds and all electrical, plumbing and heating systems of the residential facility shall be maintained in a clean and sanitary manner and in good repair at all times and adequate to meet the needs of the individuals.
- (3) All solid waste shall be disposed of immediately after production or shall be stored in leak-proof containers with tight-fitting covers which provide protection from animals, rodents, and insects until time of disposal. Such waste shall be disposed of through a public disposal service, a private contract service, or otherwise in accordance with the requirements of the Ohio department of health and any local regulations, rules, codes, or ordinances.
- (4) The operator shall take measures to eliminate and prevent the presence of insects, rodents, and other vermin in and around the residential facility. Opened doors and windows shall be screened. The extermination of insects and rodents shall be done in such a manner as not to create a fire or other safety or health hazard.
- (5) All disinfectants, pesticides, poisons, and other toxic substances shall be properly labeled and stored separate from all food products. All substances defined as "hazardous substances" or which are labeled "warning," "caution," or "danger" shall be used in a manner that ensures the health and safety of individuals served in the residential facility.
- (6) Gasoline, kerosene, paints, and all other flammable materials and liquids shall be stored in a safe manner and in accordance with the manufacturer's label. Storage of combustible and non-combustible materials shall not produce conditions that will create a fire or other safety or health hazard.
- (7) The licensee shall ensure that sidewalks, escape routes, and entrances are free of obstacles and ice and snow.



**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (8) The operator shall maintain the heating system, and cooling system if applicable, of the residential facility in safe operating condition. The residential facility should be maintained at a comfortable and healthy temperature based on the individuals' needs and desires.
- (9) No bedroom shall be occupied by more than two individuals.
- (10) No bedroom shall be occupied by individuals of the opposite sex unless both occupants are consenting adults or both occupants are less than six years of age.
- (11) No bedroom shall be occupied by an adult and a child unless the occupants are related to one another.
- (12) No part of the residential facility shall be off limits to individuals except for staff quarters, bathrooms located in or adjacent to staff quarters, the bedrooms of other individuals unless consent is given, and mechanical and boiler rooms or other areas of the facility that present a health or safety risk to the individual as identified in the individual plan or individual service plan.

(D) Furnishings, equipment, and supplies

- (1) The operator shall provide the residential facility with safe, sanitary, comfortable, and homelike equipment, furniture, and appliances in good repair and appropriate for the age and ability of individuals.
- (2) The operator shall provide a means (e.g., telephone, wireless telephone, or computer) for communicating with others to which individuals have free access at all times and in a manner that affords an individual privacy.
- (3) The operator shall ensure a sufficient supply of soap and basic toiletries (i.e., deodorant, shampoo, oral hygiene items, and feminine hygiene products), toilet paper, clean towels and washcloths, and first aid supplies are available to meet the needs of the individuals.
- (4) The operator shall provide each individual with a bed or crib that is clean, comfortable, sturdy, safe, and in good condition and appropriate for the individual's age and ability. Hideaway beds, rollaway beds, sleeper sofas, and futons shall not be used.
  - (a) Cribs shall be used only for individuals less than five years of age. An individual needing to sleep in a crib shall sleep in a crib which is at least six inches longer than the individual's extended length.
  - (b) Side rails and/or bed enclosures may only be used as approved through the individual plan or individual service plan.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (c) No individual shall sleep on an exposed mattress or on an exposed mattress cover. Waterproof mattress covers shall be provided for all infants and individuals who are incontinent.
  - (d) The operator shall provide each individual with bedding appropriate to the weather and climate. Linens and bedding for each bed or crib shall be maintained to provide clean and sanitary sleeping accommodations for each individual.
  - (5) The operator shall provide each individual with closet and drawer space in his or her bedroom for in-season clothing and personal possessions with racks and shelves accessible to the individual.
- (E) Fire safety and emergency response
- (1) Each residential facility shall have a written fire safety plan and a written emergency response plan that are approved by the state fire marshal or local authority.
    - (a) The fire safety plan shall include, but is not limited to:
      - (i) A policy that addresses smoking regulations and the storage of combustible materials.
      - (ii) A fire safety training program that includes provisions for rescue, alarm, containment, and evacuation.
      - (iii) Designation of assigned meeting places after a physical evacuation of the residential facility.
      - (iv) A procedure for permitting re-entry to the residential facility following a fire safety drill and/or physical evacuation.
    - (b) The emergency response plan shall include, but is not limited to:
      - (i) Designating a tornado shelter or safe area in the residential facility and the procedure for accessing the area;
      - (ii) Responses to weather-related emergencies or other disasters when relocation of individuals is not required; and
      - (iii) Responses to weather-related emergencies or other disasters when relocation of individuals is required, including the designation of a pre-arranged evacuation sites to be used in the case of a physical evacuation of the residential facility.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (2) A current graphic floor plan shall be posted unobstructed on each floor of the residential facility and in an area most appropriate for the posting of staff information. The graphic plan shall include, but is not limited to:
  - (a) A primary and secondary means of exit from each floor;
  - (b) The location of pull stations and fire control system panels, where applicable;
  - (c) Fire escapes;
  - (d) The telephone number of the local fire department or 911;
  - (e) Designated tornado shelter/safe areas; and
  - (f) Designated meeting places in case of fire.
- (3) No exit, stairway, corridor, ramp, elevator, fire escape, or other means of exit from a building shall be used for storage purposes or be otherwise obstructed from use.
- (4) A fire extinguisher approved by the state/local authority shall be located on each floor and in the natural path of escape from a fire, at readily accessible and visible points which are not likely to be obstructed.
- (5) Each residential facility with six or more individuals shall be equipped with the following:
  - (a) An automatic sprinkler system meeting the requirements of "National Fire Protection Association" 13-D, "Sprinkler Systems in One and Two Family Dwellings." The sprinkler system shall be interconnected with the smoke and fire detection and alarm system.
  - (b) An automatic sprinkler system meeting the requirements of "National Fire Protection Association" 13, "Standard for the Installation of Sprinkler Systems," if a residential facility has seventeen or more individuals, or if a residential facility with six to sixteen individuals is impractical of physical evacuation (thirteen minutes or more). The sprinkler system shall be interconnected with the smoke and fire detection and alarm system. A new residential facility with six to sixteen individuals classified as I-1 occupancy pursuant to section 308 of the Ohio building code on or after May 18, 1995, shall be required to have a sprinkler system meeting the requirements of "National Fire Protection Association" 13-R, "Installation of Sprinkler Systems in Residential Occupancies Up to Four Stories in Height."
  - (c) A smoke and fire detection and alarm system meeting the requirements of "National Fire Protection Association" 72, "National Fire Alarm Code," depending upon the

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

nature of the physical facility involved and such other standards as required by the appropriate building and fire officials.

- (d) Fire alarm pull stations near each main exit and in the natural path of escape from a fire, are readily accessible and visible from points which are not likely to be obstructed.
- (6) Each residential facility with five or fewer individuals shall be equipped with the following:
  - (a) At least a single station smoke detector on each floor of the facility. Each smoke detector shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping. Where sleeping rooms are on an upper level, the detector shall be placed at the center of the ceiling directly above the stairway. All detectors shall be installed and maintained in accordance with the manufacturer's recommendations. When the detectors are wall-mounted, they shall be located within twelve inches, but no closer than four inches, of the ceiling. Installation shall not interfere with the operating characteristics of the detector. When activated, the detector shall provide an alarm audible in the residential facility.
  - (b) An approved fire alarm system, which includes bells/sirens/horns/lights or other equipment as may be appropriate, when services are provided to individuals who are visually and/or hearing impaired.
  - (c) An automatic sprinkler system meeting the requirements of "National Fire Protection Association" 13-D, "Sprinkler Systems - One and Two Family Dwellings," and a smoke detection system as required in paragraph (E)(3)(b)(i) of this rule if the residential facility is not capable of being physically evacuated in three minutes or less.
- ~~(7) The operator shall post at the fire control system panel, written instructions for operating and resetting fire control system panels, where applicable.~~
- ~~(8)~~ (7) The operator shall ensure that all sprinkler systems, fire alarms, extinguishing systems, and other safety equipment are properly maintained.
- ~~(9)~~ (8) The department may utilize the "National Fire Protection Association" 101, 2011 edition, life safety code, "Fire Safety Evacuation System" to determine if additional life safety requirements are needed.
- ~~(10)~~ (9) The operator shall conduct and document at least three fire safety drills in a twelve-month period with one conducted during the morning, one conducted during the afternoon or evening, and one conducted during the time when individuals are routinely asleep.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- ~~(11)~~ (10) The operator shall conduct and document a tornado drill at least once in a twelve-month period.
- ~~(12)~~ (11) Fire safety drills and tornado drills may be announced or unannounced and shall be conducted in accordance with the assessed needs of individuals as identified in their individual plans or individual service plans.
- ~~(13)~~ (12) Residential facility staff shall be trained in fire safety, operation of safety equipment and warning systems, emergency procedures, and emergency response plan in accordance with rule 5123:2-3-01 of the Administrative Code.
- ~~(14)~~ (13) Each individual shall participate in documented training of the residential facility's fire safety plan and emergency response plan within thirty days of residency and at least once during every twelve-month period thereafter. The training shall be appropriate for the individual's needs based on the results of an assessment.
- ~~(15)~~ (14) Except at an intermediate care facility for individuals with intellectual disabilities, individuals may be trained to assist one another in case of fire or other emergency to the extent their abilities permit without additional personal risk and as indicated in their individual plans or individual service plans.
- ~~(16)~~ (15) The operator shall report to the department within one working day any fire responded to by a local fire department.
- ~~(17)~~ (16) The operator shall notify the department within one working day if an emergency requires the operator to relocate individuals from the residential facility.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**[This page intentionally blank.]**

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-03 Licensed residential facilities - person-centered planning**

(A) Purpose

This rule establishes standards to ensure that services for individuals residing in residential facilities licensed in accordance with section 5123.19 of the Revised Code are delivered in accordance with an individual plan or individual service plan that is developed through person-centered planning.

(B) Definitions

- (1) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (2) "Individual" means a person with a developmental disability.
- (3) "Individual plan" or "individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (4) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner the individual or his or her guardian 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 or his or her guardian, as applicable, may revoke informed consent at any time.
- (5) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (6) "Person-centered planning" means an ongoing process directed by an individual and others chosen by the individual to identify the individual's unique strengths, interests, abilities, preferences, resources, and desired outcomes as they relate to the individual's support needs.
- (7) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 as in effect on the effective date of this rule.
- (8) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board of developmental disabilities to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (9) "Team," as applicable, has the same meaning as in rule 5123:2-1-11 of the Administrative Code or means an interdisciplinary team as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

**(C) Decision-making responsibility**

- (1) Individuals, including individuals who have been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code, have the right to participate in decisions that affect their lives and to have their needs, desires, and preferences considered.
- (2) An individual for whom a guardian has not been appointed shall make decisions regarding receipt of a service or support or participation in a program provided for or funded under Chapter 5123. or 5126. of the Revised Code. The individual may obtain support and guidance from another person; doing so does not affect the right of the individual to make decisions.
- (3) An individual for whom a guardian has not been appointed may, in accordance with section 5126.043 of the Revised Code, authorize an adult (which may be referred to as a "chosen representative") to make a decision described in paragraph (C)(2) of this rule on behalf of the individual as long as the adult does not have a financial interest in the decision. The authorization shall be made in writing.
- (4) When a guardian has been appointed for an individual, the guardian shall make a decision described in paragraph (C)(2) of this rule on behalf of the individual within the scope of the guardian's authority. This paragraph shall not be construed to require appointment of a guardian.
- (5) An adult or guardian who makes a decision pursuant to paragraph (C)(3) or (C)(4) of this rule shall make a decision that is in the best interest of the individual on whose behalf the decision is made and that is consistent with the individual's needs, desires, and preferences.

**(D) Development of individual plans and individual service plans**

- (1) Person-centered planning shall be the foundation for development of individual plans and individual service plans.
- (2) Individual service plans for individuals who reside in licensed residential facilities other than intermediate care facilities for individuals with intellectual disabilities shall be developed with the individual by a service and support administrator in accordance with rule 5123:2-1-11 of the Administrative Code.
- (3) Individual plans for individuals who reside in intermediate care facilities for individuals with intellectual disabilities shall be developed in accordance with paragraph (E) of this rule.



**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (E) Requirements for development of individual plans for individuals who reside in intermediate care facilities for individuals with intellectual disabilities
- (1) What is important to the individual and what is important for the individual as expressed directly by the individual, and as applicable, by an adult authorized by the individual or the individual's guardian shall drive development of the individual plan.
  - (2) The services, supports, and activities described in the individual plan shall reflect what is important to the individual and what is important for the individual, meet the individual's needs, provide opportunities for the individual to interact with persons without disabilities in integrated community settings, and assist the individual in expanding and developing skills that will lead to a more independent, secure, and enjoyable life.
  - (3) Evaluations shall be used as a resource to identify appropriate methods of developing the services, supports, and activities necessary to meet the needs of the individual.
    - (a) Evaluations of the individual shall include at a minimum the following which shall be conducted as needed and at least annually:
      - (i) A general health evaluation including vision, hearing, and screenings appropriate for the individual's age and gender.
      - (ii) An evaluation of the individual's general dental health and hygiene.
      - (iii) An adaptive behavior or independent living skills assessment.
    - (b) The individual's social history shall be reviewed at least annually and updated as needed.
    - (c) If the results from the evaluations described in paragraphs (E)(3)(a) and (E)(3)(b) of this rule are insufficient to identify appropriate methods of developing the services, supports, and activities necessary to meet the needs of the individual, additional evaluations shall be obtained.
  - (4) The qualified intellectual disability professional shall perform and document the following:
    - (a) Coordinate development of the individual plan with the individual and the team within thirty days after the individual's admission to the residential facility and at least annually thereafter;
    - (b) Describe, annually and upon request, the supports and services available to an individual residing in an intermediate care facility for individuals with intellectual

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

disabilities and the supports and services available to an individual enrolled in a home and community-based services waiver.

- (c) Ensure that development of the initial individual plan and each subsequent individual plan reflects meaningful planning for:
    - (i) The individual's discharge from the intermediate care facility for individuals with intellectual disabilities that:
      - (a) Identifies supports and services necessary for the individual's successful transition to an integrated community setting and specifies who is responsible for ensuring necessary supports and services are provided; and
      - (b) Includes strategies or methods for eliminating or overcoming barriers preventing the individual from transitioning to an integrated community setting.
    - (ii) The individual's unique strengths, interests, abilities, preferences, resources, and desired outcomes as they relate to community employment in accordance with paragraph (D) of rule 5123:2-2-05 of the Administrative Code.
  - (d) Review the individual plan as needed or upon request;
  - (e) Review implementation of the individual plan at least quarterly and revise as needed;
  - (f) Coordinate the services, supports, and activities being provided to the individual with service providers, as identified in the individual plan; and
  - (g) Contact the county board when an individual residing in the intermediate care facility for individuals with intellectual disabilities requests, or a person on the individual's behalf requests pursuant to paragraph (C) of this rule, assistance to move from the intermediate care facility for individuals with intellectual disabilities to a community setting.
- (5) The qualified intellectual disability professional shall secure informed consent for the individual plan from the individual, adult authorized by the individual, or the guardian, as applicable.
- (6) The qualified intellectual disability professional shall attempt to address concerns when informed consent is refused or revoked by presenting alternative services or activities to the individual.
- (7) The individual plan shall be provided to the individual, adult authorized by the individual, or individual's guardian, as applicable; to all parties responsible for

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

implementation of the individual plan; and to authorized regulatory agents. The individual plan shall not be released to other persons without the informed consent of the individual, adult authorized by the individual, or individual's guardian, as applicable.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**[This page intentionally left blank.]**

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-04 Licensed residential facilities - provision of services and maintenance of service records.**

**(A) Purpose**

This rule establishes standards to ensure that services provided in residential facilities licensed in accordance with section 5123.19 of the Revised Code focus on achievement of outcomes that are important to and important for individuals served, that individuals are involved in development and delivery of their services, that the confidentiality of individuals' records is maintained, and that individuals' records are readily accessible for service delivery and for review by the department.

**(B) Definitions**

- (1) "Community participation" means engagement of an individual in daytime and evening activities that:
  - (a) Are available to the general public (such as employment, clubs, meetings, and advocacy groups);
  - (b) Are important to the individual;
  - (c) Involve others with and without disabilities who are not paid to provide care to the individual; and
  - (d) Create opportunities for the individual to develop meaningful relationships in his or her local community as is typical of other citizens of that community.
- (2) "Individual" means a person with a developmental disability.
- (3) "Individual plan" or "individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (4) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner the individual or his or her guardian understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; the alternatives to the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual or his or her guardian, as applicable, may revoke informed consent at any time.
- (5) "Intermediate care facilities for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (6) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.
  - (7) "Major unusual incident" has the same meaning as in rule 5123:2-17-02 of the Administrative Code.
  - (8) "Modified or specially-prescribed diets" means diets that are altered in any way to enable the individual to eat (e.g., food is chopped or pureed) or diets that are intended to correct or prevent a nutritional deficiency or health problem.
  - (9) "Operator" means the licensee or an entity with which the licensee has established a contract for the management of and provision of services at the residential facility.
  - (10) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
  - (11) "Team," as applicable, has the same meaning as in rule 5123:2-1-11 of the Administrative Code or means an interdisciplinary team as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
  - (12) "Unusual incident" has the same meaning as in rule 5123:2-17-02 of the Administrative Code.
- (C) Standards of service provision
- (1) The operator, administrator, and staff of the residential facility shall:
    - (a) Provide services only to individuals whose needs he or she can meet.
    - (b) Provide services in a person-centered manner.
    - (c) Be able to effectively communicate with each individual receiving services.
    - (d) Be knowledgeable in the individual plan or individual service plan for each individual served prior to providing services to the individual.
    - (e) Implement services in accordance with the individual plan or individual service plan.
    - (f) Take all reasonable steps necessary to prevent the occurrence or recurrence of incidents adversely affecting health and safety of individuals served.
    - (g) Comply with the requirements of rule 5123:2-2-06 of the Administrative Code.
  - (2) The operator, administrator, and staff of the residential facility shall not:

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (a) Provide services to his or her minor (i.e., less than eighteen years of age) child or his or her spouse.
- (b) Engage in sexual conduct or have sexual contact with an individual for whom he or she is providing care.
- (c) Administer any medication to or perform health care tasks for individuals who receive services unless he/she meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.
- (d) Use or be under the influence of the following while providing services:
  - (i) Alcohol;
  - (ii) Illegal drugs;
  - (iii) Illegal chemical substances; or
  - (iv) Controlled substances that may adversely affect the provider's ability to furnish services.

**(D) Healthcare**

- (1) Self-administration or assistance with self-administration of prescribed medication shall be conducted in accordance with rule 5123:2-6-02 of the Administrative Code.
- (2) Delegation of nursing tasks, excluding the provision of health-related activities, shall be conducted in accordance with rule 5123:2-6-06 of the Administrative Code and Chapter 4723-13 of the Administrative Code.
- (3) Administration of prescribed medications pursuant to sections 5123.42 to 5123.46 of the Revised Code shall be conducted in accordance with Chapter 5123:2-6 of the Administrative Code.
- (4) The operator shall comply with the requirements for reporting medication administration and delegated nursing errors in accordance with rules 5123:2-6-07 and 5123:2-17-02 of the Administrative Code.
- (5) The operator shall develop and follow written procedures for the disposal of medication. The procedures shall require that disposal of prescribed medication is verified and recorded by two staff members or by an independent external entity. Dangerous drugs shall be disposed in accordance with rule 4729-9-06 of the Administrative Code.
- (6) In the event of termination of services pursuant to rule 5123:2-3-05 of the Administrative Code, a written accounting of medication shall be completed no later than the last day

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

of the individual's residency and verified by two staff members. The operator shall ensure a plan is developed for transfer of medications to the individual or his or her guardian, as applicable.

- (7) In the event of the death of an individual, a written accounting of medication shall be completed immediately and no later than twenty-four hours following the death and verified by two staff members.
- (8) Disposal of medication shall occur in a manner set forth in paragraph (D)(5) of this rule, unless an investigation calls for the disposal of medication to be delayed.

(E) Transportation

- (1) The operator shall provide or arrange for the transportation of the individuals residing in the residential facility in accordance with each resident's individual plan or individual service plan, as applicable.
- (2) The operator shall:
  - (a) Ensure that each employee providing transportation holds a valid driver's license as specified in Ohio law.
  - (b) Ensure that each employee providing transportation is covered by valid personal or corporate liability insurance as specified in Ohio law.
  - (c) Obtain, for each employee providing transportation, a driving record prepared by the bureau of motor vehicles no earlier than fourteen days prior to the date of initial employment as a driver and at least once every three years thereafter. A person having six or more points on his or her driving record is prohibited from providing transportation.
  - (d) Require each employee providing transportation to immediately notify the operator in writing if he or she accumulates six or more points on his or her driving record or if his or her driver's license is suspended or revoked.
  - (e) ~~Ensure that vehicles used to transport individuals are accessible to the individuals and maintained in a safe manner.~~ Develop and maintain written policies and procedures regarding vehicle accessibility, vehicle maintenance, and requirements for vehicle drivers.

(F) Food

- (1) The operator shall offer individuals daily meals and snacks that meet the individuals' nutritional needs and preferences as identified by the individual.



**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (2) Modified or specially-prescribed diets shall be prepared and served in accordance with the instructions of a physician or licensed dietician. The operator shall keep on file in the residential facility records of modified or specially-prescribed diets for the previous thirty days.
- (3) Meals shall ~~be planned and prepared by individuals with support of staff as needed and~~ provide for variety, substitutions, and accommodation of individuals' personal preferences and religious beliefs. Individuals shall participate in meal planning and preparation to the extent of their interest and ability to do so.
- (4) Fresh food supplies sufficient for three days and staple food supplies sufficient for at least five days shall be available in the residential facility at all times.
- (5) Food shall be prepared and stored properly and in accordance with health codes to protect it against contamination and spoilage. Food products shall be stored separately from potentially harmful non-food items, particularly cleaning and laundry compounds.

(G) Clothing and personal belongings

- (1) The operator shall ensure that each individual has an adequate amount of personal clothing in good repair, well-fitting, and comparable in style to that worn by age peers in the community. The team shall ensure the clothing needs of an individual who does not have personal funds available to cover needed items are met. All clothing shall be clean and in accordance with the season and the kinds of activities in which the individual is engaged.
- (2) The operator shall encourage each individual to select, purchase, and maintain his or her own clothing and to dress as independently as possible.
- (3) For an individual who has been assessed to need assistance with management of personal possessions, the operator shall record the individual's clothing and personal items within fourteen days of admission and update the record annually thereafter.
- (4) Any single item with a purchase price of fifty dollars or more purchased by or on behalf of an individual who has been assessed to need assistance with management of personal possessions, shall be added to the record when acquired and deleted from the record when discarded or lost.
- (5) The operator shall not discard clothing and personal items without the consent of the individual or the individual's guardian, as applicable.

(H) Community participation and day activities for individuals who reside in intermediate care facilities for individuals with intellectual disabilities

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (1) The operator shall ensure that each individual routinely has information in formats the individual understands about day activities offered by other providers and opportunities to explore and experience community participation in accordance with his or her individual plan and desired outcomes as they relate to community employment in accordance with paragraph (D) of rule 5123:2-2-05 of the Administrative Code.
- (2) The operator shall ensure that individuals participate in day activities that foster community participation unless an individual's individual plan indicates why, based on evaluations and assessments, such participation is medically contraindicated.
- (3) The operator shall ensure that individuals have access to a variety of day activities.
- (4) Day activities shall not be provided in an intermediate care facility for individuals with intellectual disabilities or within two hundred feet of the intermediate care facility for individuals with intellectual disabilities except that an intermediate care facility for individuals with intellectual disabilities that was providing day activities in or on the grounds of the intermediate care facility for individuals with intellectual disabilities prior to July 1, 2005 may continue to provide day activities at that same location.

(I) Individuals' service records

- (1) The following current records for each individual shall be maintained at the residential facility:
  - (a) A photograph of the individual.
  - (b) Legal status of the individual.
  - (c) Individual plan or individual service plan, as applicable, including documentation of informed consent for services, supports, and activities provided.
  - (d) A signed authorization to seek medical treatment or documentation to demonstrate that attempts to secure such authorization were unsuccessful.
  - (e) Medication and/or treatment records which indicate the date, time, and person who administered the medication and/or treatment.
- (2) The following records for each individual shall be maintained by the operator in an accessible location and shall be provided upon request to the department for review at the residential facility or at another location mutually agreed upon by the operator and the department.
  - (a) Former versions of records specified in paragraphs (I)(1)(a) to (I)(1)(e) of this rule.
  - (b) Admission and referral records.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (c) All service documentation including notations of progress.
  - (d) Records of all medical and dental examinations and immunization records as appropriate based upon individual's age.
  - (e) Medication and/or treatment records which indicate the person who prescribed the medication and/or treatment and the date, time, and person who administered the medication and/or treatment.
  - (f) Records of major unusual incidents and unusual incidents.
  - (g) Major unusual incident investigation files.
  - (h) Reconciliations of the individual's account transaction record as described in rule 5123:2-2-07 of the Administrative Code.
  - (i) Records of negotiable items owned by the individual which can be transferred or converted to cash (such as bonds or promissory notes).
  - (j) Records of clothing and personal items for individuals who have been assessed to need assistance with management of personal possessions.
  - (k) Termination of services summary which shall be prepared within seven days following termination of services pursuant to rule 5123:2-3-05 of the Administrative Code. The termination of services summary shall include the individual's progress during residence and new address of residence. In the event of an individual's death, a termination of services summary shall be completed within thirty days of death and include the disposition of the individual's personal items.
- (3) If operation of a residential facility is transferred from one operator to another, the outgoing operator shall convey the records specified in paragraphs (I)(1) and (I)(2) of this rule to the incoming operator.
  - (4) All information contained in an individual's record shall be considered privileged and confidential. Records shall be maintained in accordance with state and federal regulations in such a manner to ensure their confidentiality and protect them from unauthorized disclosure.
  - (5) The operator shall develop a records retention schedule for all records in accordance with applicable state and federal requirements.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**[This page intentionally left blank.]**

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-05 Licensed residential facilities - admission, 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 individuals living in, residential facilities licensed in accordance with section 5123.19 of the Revised Code.

(B) Definitions

- (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.
- (4) "Emergency" means either a situation in which:
  - (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 of the Administrative Code or a preadmission screening for developmental disabilities in accordance with rule 5123:2-14-01 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 as applicable, his or her 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 informed consent at any time.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (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.
- (9) "Operator" means the licensee or an entity with which the licensee has established a contract for the management of and provision of services at the residential facility.
- (10) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
- (11) "Termination of services" means an action initiated by the residential facility to permanently move a resident to another residence that is not under the jurisdiction of the operator and 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.
- (12) "Transfer" means a temporary or permanent movement of a resident between residential facilities under the jurisdiction of the operator.

(C) Admission policies

- (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) Transfer and termination of services policies

- (1) The operator shall allow each resident to remain in the facility and shall not transfer a resident from the facility or effect a 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;
  - (b) The resident no longer needs or wants the services provided by the residential facility or chooses to transfer;

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (c) The resident is creating a significant risk of substantial harm to himself or herself, 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.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (5) If an individual requests a hearing regarding the transfer or termination of services, 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) Administrative review process**

- (1) The individual 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 governing board or administrator review decision to appeal to the director. The appeal shall be in writing. 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) Mediation process**

- (1) The individual and the operator shall attend a mediation meeting to try to attain resolution prior to the scheduled hearing regarding the transfer or termination of services. Legal representation is not permitted in the mediation meeting.
- (2) The department will provide the mediator.
- (3) The mediation shall be conducted within fifteen calendar days of receipt of the appeal. The hearing shall be conducted within fifteen calendar days of the mediation. Timelines may be extended if mutually agreed upon in writing by all parties.
- (4) Unless all parties agree in writing to abide by the recommendations of the mediator, the mediation shall be nonbinding.
- (5) Statements made during the mediation process cannot be used as evidence in any subsequent hearings or court proceedings.

**(G) Hearing process**



**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (1) The department will grant an opportunity for a hearing to any individual who has received a transfer or termination of services notice and requests a hearing.
- (2) The department shall deny or dismiss a request if:
  - (a) The request is not filed 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 will select a time and place for the hearing. The department will 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.
- (5) The individual and the operator shall have the opportunity to present evidence at the hearing. Both the individual and the operator may have legal representation.
- (6) The burden of proof shall be on the operator to show that the transfer or termination of services decision 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.
- (8) The hearing officer shall issue a written recommendation to the director within ten calendar days of the conclusion of the hearing.
- (9) The department 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.
- (10) Timelines may be extended if mutually agreed upon in writing by both parties.

(H) Adverse actions

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

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (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.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-06      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

- (1) "Administrator" means the person responsible for the day-to-day operation of a residential facility.
- (2) "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.
- (3) "County board" means a county board of developmental disabilities.
- (4) "Department" means the Ohio department of developmental disabilities.
- (5) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (6) "Individual" means a person with a developmental disability.
- (7) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (8) "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 of the Administrative Code.
- (9) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.
- (10) "Operator" means the licensee or an entity with which the licensee has established a contract for the management of and provision of services at the residential facility.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

(11) "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. The compliance review may be unannounced or announced.

(2) There are ~~three~~ four types of compliance reviews:

(a) Initial compliance reviews conducted at a newly licensed residential facility within the first year of the facility's operation.

~~(a)~~ (b) Routine compliance reviews conducted so that each residential facility is reviewed once during the term of its license.

~~(b)~~ (c) 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, 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)* The behavioral support portion of individual service plans;

*(c)* Medication administration;

*(d)* Major unusual incidents; and

*(e)* Community participation and integration.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (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 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 ~~an initial~~ a 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.
  - (d) The residential facility's accreditation by the national accrediting entity has been amended or suspended.
- ~~(e)~~ (d) 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. Upon receipt of a complaint, department staff shall:
  - (i) Take necessary measures to ensure that any conditions that pose a risk to the health or welfare of the individual have been corrected.
  - (ii) Determine whether a special compliance review shall be conducted.
  - (iii) 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.
  - (iv) Send a written response to the complainant describing actions taken by the department to address the complaint.

(D) Compliance review procedures

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (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 the operation of the residential facility; the operator; the individuals residing in the facility; and all persons acting on behalf of, under the 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) Compliance reviews shall be conducted in accordance with the protocol for compliance reviews developed by the department. The protocol shall be posted at the department's website and include, but is not limited to, the following components:
  - (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 licensees 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 which shall be objective in terms of observations and citations and 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 licensee;
  - (f) The criteria for conducting announced and unannounced reviews; and
  - (g) Any forms or methods of documentation approved by the department.
- (E) Compliance review summary, appeal, and plan of correction when no adverse action is being initiated
  - (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

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

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 days following the exit interview, the department shall issue the compliance review summary to the licensee.
- (3) Within fourteen 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 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 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 days to submit a plan of correction for the citation.
  - (b) The 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 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.

**(F) Issuance of license**

- (1) Following routine compliance reviews and abbreviated compliance reviews, the department shall issue a three-year license to the licensee within twenty 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; and collection of the licensure fee specified in paragraph (J) of this rule.
- (2) A license shall remain valid until its expiration date unless the license is revoked 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 take any of the following adverse actions:
  - (a) Suspension of admissions

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (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
    - (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 subject to the suspension of admissions 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 working days of its notification from the department that a suspension of admissions has been imposed on the facility. The notice shall contain information regarding the reason for the 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) 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) 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.



**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (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 working 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 the monitor and how the individual, parent, or guardian can obtain additional information regarding placement of the monitor. The licensee shall send a copy of the notice to the department.
- (c) Refusal to renew 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 days from the date the letter is mailed to submit a written appeal or written plan of correction for each citation in accordance with the process set forth in paragraph (E)(3) of this rule.
  - (iv) Within twenty 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

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

days of receipt of the letter or the license expiration date, whichever is later. The letter shall inform the licensee of his or her right to request a hearing on the proposed refusal to renew pursuant to Chapter 119. of the Revised Code. The licensee shall have thirty 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 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 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 days after the date the department's decision, pursuant to Chapter 119. of the Revised Code, is rendered.
- (d) Revocation of 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 right to request a hearing on the proposed revocation in accordance with Chapter 119. of the Revised Code. The licensee shall have thirty 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 a license, the department shall arrange for notification in writing each individual served in 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 in which the residential facility is

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

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 a license, no opportunity for submitting a plan of correction shall be given.
  - (v) If the licensee does not request a hearing within thirty 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 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 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 or replacement in accordance with rule 5123:2-3-26 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 right to request a hearing on the proposed termination pursuant to Chapter 119. of the Revised Code. The licensee shall have thirty 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 license, the licensed beds shall revert to the department.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (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 of 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 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.
- (J) Licensure fees
  - (1) Licensure fees shall be paid in advance of issuance of the 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)(c)(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.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-08 Licensed residential facilities - development of licensed residential beds 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. 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.

(B) Definitions

- (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 eighteen years of age.
- (4) "County board" means a county board of developmental disabilities.
- (5) "Development" means an applicant's plan for the operation of a licensed residential facility including a plan for modification ~~or renovation~~ which is subject to approval of the department.
- (6) "Initial license" means written approval by the department to a licensee to operate a residential facility for a period of three years.
- ~~(6)~~ (7) "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 days.
- ~~(7)-(8)~~ "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- ~~(8)~~ (9) "Licensed bed" means a bed in a residential facility licensed by the department pursuant to section 5123.19 of the Revised Code.
- ~~(9)~~ (10) "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.
- ~~(10)~~ (11) "Modification" means:

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (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 as the result of an acquisition, sale of a majority interest, merger, or 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) 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.
- ~~(11)~~ (12) "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.
- ~~(12)~~ (13) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

(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 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 in accordance with the terms of the approval granted by the department.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (3) 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.
  - (4) 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.
  - (5) 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.
  - (6) 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.
  - (7) Notwithstanding paragraph (D)(6) 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.
  - (8) A county board may not assume ownership of a residential facility.
- (E) Feasibility requirements
- (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 exit 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 all applicable rules of

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

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) Parking spaces, curb cuts, appropriate walkways, exit/entry ramps, toilets, showers, tubs, sinks, doorways, and other features of facilitating accessibility shall be provided to the individuals residing in the residential facility.
- (5) Bathrooms and plumbing fixtures, including grab rails where needed, appropriate to any age and degree of ability of the individuals shall be provided in the residential facility.
- (6) All bathrooms and plumbing fixtures shall be in compliance with applicable state and local regulations, rules, codes, and ordinances.
- (7) Only lead-free paints and finishes shall be used in the residential facility.
- (8) If the residential facility 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.

(F) Space requirements and usage

- (1) Living area



**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (a) The residential facility shall have a minimum total of eighty square feet of living area for each individual.
- (b) Living areas shall not include bedrooms, bathrooms, laundry rooms, closets, hallways, garages, and unfinished basements.
- (c) Living areas shall include, but not be limited to, living rooms, dining rooms, recreation or family rooms, and portion of kitchen floor space available for individual use.

**(2) Bedrooms**

- (a) Each bedroom occupied by one individual shall have a minimum total of eighty square feet of floor space.
- (b) Each bedroom occupied by more than one individual shall have a minimum total of sixty square feet of floor space 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 have two means of egress, one of which may be a window. The room must have a window through which the individual using the room can safely evacuate.
- (e) Living rooms, dining rooms, entryways, closets, corridors, 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 total of fifteen square feet of floor space for each individual in the residential facility, not including the area generally

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

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 of the residential facility and adequate to meet their needs.

(G) 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) 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.

(H) Renovation

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (1) When the licensee proposes to make a renovation to a residential facility, ~~including a renovation that is part of a non-extensive renovation made pursuant to rule 5123:2-7-25 of the Administrative Code,~~ the licensee shall notify the department in writing no less than thirty 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 licensure compliance review is required following the renovation.
- (3) The department shall provide a written response to the licensee within fourteen days after receiving all the information it needs to determine whether new inspections and/or a licensure compliance review is required following the renovation. ~~A response provided by the department to a licensee regarding a non-extensive renovation made pursuant to rule 5123:2-7-25 of the Administrative Code meets the requirements of this paragraph.~~

(I) Development proposal process

- (1) The applicant shall 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 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;
    - (ii) The rebuilding of a licensed residential facility at the same address; or

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (iii) The rebuilding of a licensed residential facility at a different address.
- (2) The department shall notify the applicant in writing of the approval or disapproval of the development proposal together with a statement of reason within sixty days of receipt of a complete application. The department shall maintain on its website a list of development proposals and action taken thereon.
- (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) A person or government agency desiring to operate a residential facility shall, ~~upon~~ after obtaining development approval pursuant to this rule and establishing the facility, ~~apply for a license in a manner prescribed by~~ notify the department in writing to request issuance of the initial license no less than thirty days prior to the date of the planned opening of the facility. The department shall issue the initial license to the licensee within twenty 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) Three hundred dollars for a residential facility with fifteen or fewer beds; and
  - (b) One thousand five hundred dollars for a residential facility with sixteen or more beds.
- (5) The department may issue an interim license when it determines initiation or continuation of services at the residential facility is appropriate pending completion 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).
- ~~(5)~~ (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 a manner prescribed by the department no less than ~~thirty~~ sixty days prior to the date of the planned opening of the facility.
- ~~(6)~~ (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.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

(J) Waiving provisions of this rule

The provisions of this rule may be waived pursuant to rule 5123:2-3-10 of the Administrative Code.

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**[This page intentionally left blank.]**

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-09 Licensed residential facilities - standards for evaluating potential receivers.**

(A) Purpose

This rule establishes standards for evaluating potential receivers of residential facilities licensed in accordance with section 5123.19 of the Revised Code.

(B) Definitions

- (1) "Department" means the Ohio department of developmental disabilities.
- (2) "Receiver" means a person who takes possession of and operates a residential facility when conditions existing at the residential facility present a substantial risk of physical or mental harm to residents and no other remedies at law are adequate to protect the health, safety, and welfare of the residents.
- (3) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

(C) Eligibility to be considered for inclusion on list of potential receivers

A person wishing to be considered for inclusion on a list of potential receivers maintained by the department shall have at least five years of experience as a provider licensed to operate a residential facility in Ohio in accordance with section 5123.19 of the Revised Code.

(D) Standards for evaluating potential receivers

The standards to be considered by the department for evaluating persons to be included on a list of potential receivers shall include, but are not limited to:

- (1) Substantial compliance with requirements for previous or existing residential facilities operated by the potential receiver over the past five years under any corporate name.
- (2) Involvement of one or more principals of the potential receiver in prior licensure revocation, receivership, immediate removal, or suspension of admissions.
- (3) Fiscal solvency of the potential receiver.
- (4) Pending and prior investigations of major unusual incidents within the past five years, which includes the scope and nature of the incident(s), the analysis, and any findings involving individuals being served by the potential receiver.
- (5) The experience of the potential receiver in the provision of services to individuals with developmental disabilities including, but not limited to:

**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

- (a) Characteristics of individuals served;
- (b) Geographic areas served;
- (c) Number of individuals served;
- (d) Specialized services offered; and
- (e) A table of organization that identifies key employees or positions and their qualifications.



**\*\*\* Proposed New Rules \*\*\***  
**Post-Clearance Revisions - October 29, 2015**

**5123:2-3-10      Licensed residential facilities - procedures to waive rule requirements.**

- (A) For adequate reasons and when requested in writing by a licensee, the director may waive a condition or specific requirement of a rule in Chapter 5123:2-3 of the Administrative Code or a rule in other chapters of the Administrative Code adopted by the department to license or regulate the operation of residential facilities licensed in accordance with section 5123.19 of the Revised Code.
- (B) The director may require or solicit input regarding the licensee's request for a rule waiver from individuals residing in the residential facility, the individuals' guardians, or the county board of developmental disabilities for the county in which the residential facility is located.
- (C) The director shall grant or deny a request for a rule waiver within ten working days of receipt of the request or within such longer period of time as the director deems necessary and may put whatever conditions on the rule waiver as are determined to be necessary.
- (D) Approval to waive a condition or specific requirement shall not be contrary to the rights, health, or safety of the individuals residing in the residential facility.
- (E) The decision to grant or deny a rule waiver is final and may not be appealed.