

5123.166 Adjudication order against certificate applicant or holder

(A) If good cause exists as specified in division (B) of this section and determined in accordance with procedures established in rules adopted under section 5123.1611 of the Revised Code, the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:

- (1) Refusal to issue or renew a supported living certificate;
- (2) Revocation of a supported living certificate;
- (3) Suspension of a supported living certificate holder's authority to do either or both of the following:
 - (a) Continue to provide supported living to one or more individuals from one or more counties who receive supported living from the certificate holder at the time the director takes the action;
 - (b) Begin to provide supported living to one or more individuals from one or more counties who do not receive supported living from the certificate holder at the time the director takes the action.

(B) The following constitute good cause for taking action under division (A) of this section against a person or government entity seeking or holding a supported living certificate:

- (1) The person or government entity's failure to meet or continue to meet the applicable certification standards established in rules adopted under section 5123.1611 of the Revised Code;
- (2) The person or government entity violates section 5123.165 of the Revised Code;
- (3) The person or government entity's failure to satisfy the requirements of section 5123.081 or 5123.52 of the Revised Code;
- (4) Misfeasance;
- (5) Malfeasance;
- (6) Nonfeasance;

(7) Confirmed abuse or neglect;

(8) Financial irresponsibility;

(9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.

(C) Except as provided in division (D) of this section, the director shall issue an adjudication order under division (A) of this section in accordance with Chapter 119. of the Revised Code.

(D)

(1) The director may issue an order requiring that action specified in division (A)(3)(b) of this section be taken before a provider is provided notice and an opportunity for a hearing if both of the following are the case:

(a) The director determines such action is warranted by the provider's failure to continue to meet the applicable certification standards, and

(b) The director determines that the failure either represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who receives or would receive supported living from the provider.

~~(c) If the order will suspend the provider's authority to continue to provide supported living to an individual who receives supported living from the provider at the time the director issues the order, both of the following are the case:~~

~~(i) The director makes the individual, or the individual's guardian, aware of the director's determination under division (D)(1)(b) of this section and the individual or guardian does not select another provider.~~

~~(ii) A county board of developmental disabilities has filed a complaint with a probate court under section 5126.33 of the Revised Code that includes facts describing the nature of abuse or neglect that the individual has suffered due to the provider's actions that are the basis for the director making the determination under division (D)(1)(b) of this section and the probate court does not issue an order authorizing the county board to arrange services for the individual pursuant to an individualized service plan developed for the individual under section 5126.31 of the Revised Code.~~

(2) The director may issue an order to suspend the provider's authority to continue to provide supported living to an individual who receives supported living from the provider at the time the director issues the order, if both of the following are the case:

(a) There is clear and convincing evidence that the provider has violated division (B) of this section; and

(b) That allowing the provider to continue to provide supporting living to an individual would present a danger of immediate and serious harm to the individual.

(3) If the director issues an order under division (D)(1) of this section, sections 119.091 to 119.13 of the Revised Code and all of the following apply:

(a) The director shall send the provider notice of the order by registered mail, return receipt requested, not later than twenty-four hours after issuing the order and shall include in the notice the reasons for the order, the citation to the law or rule directly involved, and a statement that the provider will be afforded a hearing if the provider requests it within ten days of the time of receiving the notice.

(b) If the provider requests a hearing within the required time and the provider has provided the director the provider's current address, the director shall immediately set, and notify the provider of, the date, time, and place for the hearing.

(c) if the provider requests that the hearing be held within thirty days of provider's timely request for the hearing, the department shall set within thirty days.

(d) The hearing shall be conducted in accordance with section 119.09 of the Revised Code, except for all of the following:

(i) The hearing shall continue uninterrupted until its close, except for weekends, legal holidays, and other interruptions the provider and director agree to.

(ii) If the director appoints a referee or examiner to conduct the hearing, the referee or examiner, not later than ten days after the date the referee or examiner receives a transcript of the testimony and evidence presented at the hearing or, if the referee or examiner does not receive the transcript or no such transcript is made, the date that the referee or examiner closes the record of the hearing, shall submit to the director a written report setting forth

the referee or examiner's findings of fact and conclusions of law and a recommendation of the action the director should take.

(iii) The provider may, not later than five days after the date the director, in accordance with section 119.09 of the Revised Code, sends the provider or the provider's attorney or other representative of record a copy of the referee or examiner's report and recommendation, file with the director written objections to the report and recommendation.

(iv) The director shall approve, modify, or disapprove the referee or examiner's report and recommendation not earlier than six days, and not later than fifteen days, after the date the director, in accordance with section 119.09 of the Revised Code, sends a copy of the report and recommendation to the provider or the provider's attorney or other representative of record.

(4) The director may lift an order issued under division (D)(1) of this section even though a hearing regarding the order is occurring or pending if the director determines that the provider has taken action eliminating the good cause for issuing the order. The hearing shall proceed unless the provider withdraws the request for the hearing in a written letter to the director.

(5) The director shall lift an order issued under division (D)(1) of this section if both of the following are the case:

(a) The provider provides the director a plan of compliance the director determines is acceptable; and

(b) The director determines that the provider has implemented the plan of compliance correctly.

(6) If the director issues an order under division (D)(2) of this section, the written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code, and all of the following apply:

(a) The director shall send the provider notice of the order by registered mail, return receipt requested, not later than twenty-four hours after issuing the order and shall include in the notice the reasons for the order, the citation to the law or rule directly involved, and a statement that the provider will be afforded a hearing if the provider requests it within ten days of the time of receiving the notice

(b) If the provider subject to the summary suspension requests a hearing, the date set for the hearing shall be within fifteen days, but not earlier than seven

days, after the provider requests the hearing, unless otherwise agreed to by both the director and the provider.

(c) Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the director pursuant to this section and Chapter 119. of the Revised Code becomes effective.

(d) The director shall issue the final adjudication order within ninety days of completion of the hearing. A failure to issue the order within ninety days shall result in a dissolution of the order issued pursuant to (D)(2) of this section, but shall not invalidate any subsequent final adjudication order.

(e) The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code.