

**Proposed New Rules for
Licensed Residential Facilities**

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***** Proposed New Rule *****

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

[Replaces part of 5123:2-3-02, 5123:2-3-04, 5123:2-3-07, 5123:2-3-08, part of 5123:2-3-11, and 5123:2-3-19]

(A) Purpose

The purpose of this rule is to set forth requirements for administration and operation of licensed residential facilities.

(B) Definitions

- (1) "Administrator" means the person responsible for the day-to-day operation of a residential facility. [5123:2-3-01 (B)]
- (2) "Department" means the Ohio department of developmental disabilities.
- (3) "Direct services position" means an employment position in which the employee has the opportunity to be alone with or exercises supervision or control over one or more individuals [5123:2-2-02 (B)(7)] and includes staff who provide habilitation services [to tie back to ICF cost report].
- (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. [5123:2-3-01 (Q)]
- (7) "License" means written approval by the department to a licensee to operate a residential facility. [5123:2-3-01 (R)]
- (8) "Licensee" has the same meaning as in section 5123.19 of the Revised Code. [5123:2-3-01 (S)]
- (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 [Person-Centered Planning] of the Administrative Code.
- (11) "Professional staff" means staff licensed, certified, or registered by the state to provide professional services in the field in which they practice. [5123:2-3-01 (AA)]

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- (12) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code. [5123:2-3-01 (CC)]
- (13) "Supervisory staff" means employees of the residential facility who provide direction or exercise supervision over one or more employees in direct services positions.
- (14) "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. [5123:2-3-01 (HH)]
- (15) "Volunteer" means a person who provides, for no more than twenty-four hours during a calendar year and without compensation, services to enhance and/or expand programs for persons with developmental disabilities being served at residential facilities.

(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. [5123:2-3-02 (C)] The license shall be maintained in the residential facility and shown to anyone upon request. [5123:2-3-02 (O)] 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 be certified in accordance with rule 5123:2-2-01 of the Administrative Code and comply with service-specific requirements set forth in Chapter 5123:2-9 of the Administrative Code. [5123:2-3-19]
- (3) The operator shall ensure that the residential facility is in compliance with all 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. [5123:2-3-04 (B)]
- (4) The operator shall be responsible for compliance with all applicable federal, state, and local regulations including but not limited to, the Americans with Disabilities Act, fire safety code, wage and hour, workers' compensation, unemployment compensation, and withholding taxes. [5123:2-3-07 (B)(1) & (B)(2)]
- (5) 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. The licensee shall be responsible for meeting the requirements established under sections 5123.63 and 5123.64 of the Revised Code. [5123:2-3-04 (D)]

(D) Staffing

(1) Employment of staff

- (a) Personnel records shall be maintained for each employee in accordance with the residential facility's personnel policies. [5123:2-3-07 (D)]
- (b) The operator shall ensure that background investigations are completed in accordance with rule 5123:2-2-02 of the Administrative Code. When the licensee and/or operator is a natural person, he or she is subject to background investigations in accordance with the requirements for candidates set forth in rule 5123:2-2-02 of the Administrative Code. [5123:2-3-04 (E)]
- (c) The operator shall employ an administrator except where the operator serves as the administrator. The administrator shall have the following qualifications except that persons who, on the day immediately prior to the effective date of this rule, were employed by or under contract with a residential facility as the administrator may continue to serve in that role: [5123:2-3-07 (B)(3)]
 - (i) At least one year of full-time (or equivalent part-time) paid work experience in the provision of services to individuals with developmental disabilities; and [5123:2-3-07 (B)(3)]
 - (ii) A bachelor's degree from an accredited institution or 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. [5123:2-2-01 (D)(1)(b)]
- (d) A staff person shall be designated in writing to whom executive authority has been delegated in the temporary absence of the administrator. [5123:2-3-07 (B)(3)]
- (e) All staff in direct services positions shall:
 - (i) Be at least eighteen years of age; and [5123:2-3-07 (B)(4)]
 - (ii) Hold 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. [5123:2-2-01 (C)(2)(b)]

(2) Staffing standards

- (a) Staff shall be 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. [5123:2-3-07 (C)(1)]

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- (b) 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. [5123:2-3-07 (C)(2)]
- (c) All staff in direct services positions shall hold valid "American Red Cross" or equivalent certification in first aid and cardiopulmonary resuscitation. [5123:2-3-07 (C)(3) & 5123:2-2-01 (C)(3)]
- (d) 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 an individual's individual plan or individual service plan. [5123:2-3-07 (C)(4)]
- (e) Volunteers shall at all times be supervised by paid supervisory staff of the residential facility [5123:2-3-07 (B)(5)] and shall provide services only as a supplement to direct services [ICF tag W 182].

(3) Staff training

- (a) All staff and volunteers, prior to assuming their duties, shall receive training that addresses: [5123:2-3-08 (B)(1)]
 - (i) The organization's philosophy, organizational structure, programs, services, and goals; [5123:2-3-08 (B)(1)(d)]
 - (ii) An overview of the nature and needs of individuals with developmental disabilities; [5123:2-3-08 (B)(1)(c)]
 - (iii) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; [5123:2-3-08 (B)(1)(a)]
 - (iv) 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 [5123:2-3-08 (C)(1)(a)]
 - (v) An overview of fire safety and emergency procedures specific to each residential facility in which they work.
- (b) All staff, within thirty days of employment/engagement and at least once annually thereafter, shall be trained in:
 - (i) Fire safety and operation of the residential facility's fire safety equipment and warning systems specific to each residential facility in which they work; and [5123:2-3-11 (F)(1) & (F)(2)]

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- (ii) The residential facility's emergency response plan specific to each residential facility in which they work. [5123:2-3-11 (F)(3) & (F)(4)]
- (c) Staff may work in a residential facility prior to completing the training required by paragraph (D)(3)(b) of this rule, only when at least one staff person who has current training in both fire safety and operation of the residential facility's fire safety equipment and the residential facility's emergency response plan is present in the residential facility. [5123:2-3-11 (F)(5)]
- (d) The operator shall ensure that each employee in a direct services position shall have successfully completed, prior to providing direct services, at least eight hours of training that addresses: [5123:2-3-08 (F)(2)]
 - (i) Principles of person-centered planning;
 - (ii) Self-determination which includes assisting the individual to develop self-advocacy skills, to exercise his or her civil rights, to exercise control and responsibility over the services he or she receives, and to acquire skills that enable him or her to become more independent, productive, and integrated within the community; and [5123:2-9-30 (C)(5)(a)]
 - (iii) Training specific to each individual he or she will serve that includes: [Requirements align with Medicaid adult day services rules.]
 - (a) Requirements set forth in the individual plan or individual service plan including skill development goals, service/support activities, behavioral support strategy, planned interventions, and related documentation requirements; [5123:2-3-08 (B)(4)(a) & (B)(4)(b)]
 - (b) The individual's preferences and strengths;
 - (c) The individual's diagnoses and related needs;
 - (d) The individual's care needs including nutrition, diet and mealtime support, restroom assistance, mobility needs, lifting, and general supervision/support requirements;
 - (e) Medication administration and delegated nursing, as applicable;
 - (f) Teaching techniques and related documentation requirements; and
 - (g) The employee's role regarding management of the individual's funds and related documentation requirements.
- (e) Each employee in a direct services position and supervisory staff shall, commencing

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in the second year of employment, annually complete at least eight hours of training in accordance with standards established by the department. [5123:2-3-08 (C)] The training shall enhance the skills and competencies of the employee relevant to his or her job responsibilities. The training may be structured or unstructured and may include, but is not limited to, lectures, seminars, formal coursework, workshops, conferences, demonstrations, visitations or observations of other facilities/services/ programs, distance and other means of electronic learning, video and audio-visual training, and staff meetings. [5123:2-3-08 (D)] The training shall address:

- (i) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and [5123:2-3-08 (C)(1)(b)]
- (ii) 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. [5123:2-3-08 (C)(1)(a)]
- (f) Within ninety days of employment as a supervisor, supervisory staff shall complete training that addresses the rules, regulations, and laws pertaining to the operation of a residential facility as they relate to the supervisor's job responsibilities. [5123:2-3-08 (B)(7)]
- (g) 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 maintained at the residential facility or other accessible location. Documentation 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. [5123:2-3-08 (E)]

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

[Replaces 5123:2-3-10 and part of 5123:2-3-11]

(A) Purpose

The purpose of this rule is to establish minimum physical environment and safety standards to ensure that individuals living in residential facilities are provided a safe, healthy, and home-like living environment that meets their specific needs. [5123:2-3-10 (A)]

(B) Definitions

- (1) "Emergency response plan" means the operator's written plan to address training and responses to the following: [5123:2-3-11 (B)(1)]
 - (a) Tornados;
 - (b) An emergency or natural disaster that does not require the physical evacuation or relocation of the individuals from the residential facility; and
 - (c) An emergency or natural disaster that requires the physical evacuation or relocation of individuals from the residential facility.
- (2) "Fire safety drill" means a documented simulation of the actions to be taken in response to a fire emergency. [5123:2-3-11 (B)(3)]
- (3) "Fire safety plan" means the operator's written plan to address training and response to a fire emergency as referenced in paragraph (E)(2)(a) of this rule. [5123:2-3-11 (B)(2)]
- (4) "Individual" means a person with a developmental disability.
- (5) "Licensee" has the same meaning as in section 5123.19 of the Revised Code. [5123:2-3-01 (S)]
- (6) "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.
- (7) "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. [5123:2-3-11 (B)(5)]

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- (8) "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. [5123:2-3-02 (B)(1)]
- (9) "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. [5123:2-3-11 (B)(6)]

(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 [Development of Licensed Residential Beds] 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. [5123:2-3-10 (E)(1)]
- (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. [5123:2-3-10 (C)(2)]
- (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. [5123:2-3-10 (E)(2)(a)]
- (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. [5123:2-3-10 (E)(2)(b)]
- (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. [5123:2-3-10 (E)(2)(c)]
- (7) The licensee shall ensure that sidewalks, escape routes, and entrances are free of obstacles and ice and snow. [5123:2-3-10 (E)(2)(e)]

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- (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. [5123:2-3-10 (E)(2)(f)]
- (9) No bedroom may be occupied by more than two individuals. [5123:2-3-10 (D)(2)(c)]
- (10) No bedroom may be occupied by individuals of the opposite sex unless the individuals are consenting adults or under six years of age. [5123:2-3-10 (D)(2)(d)]
- (11) No part of the residential facility shall be off limits to individuals except for staff living 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. [5123:2-3-10 (G)]

(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. [5123:2-3-10 (F)(1)]
- (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. [5123:2-3-10 (F)(2)]
- (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. [5123:2-3-10 (F)(3) & (F)(4)]
- (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. [5123:2-3-10 (F)(5) & (F)(5)(c)]
 - (a) Cribs shall be used only for individuals under age five. 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. [5123:2-3-10 (F)(5)(a)]
 - (b) Side rails and/or bed enclosures may only be used as approved through the individual plan or individual service plan. [5123:2-3-10 (F)(5)(b)]

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(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. [5123:2-3-10 (F)(5)(c)]

(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. [5123:2-3-10 (F)(5)(d)]

(5) The operator shall provide each individual with closet and drawer space in the bedroom for in-season clothing and personal possessions with racks and shelves accessible to the individual. [5123:2-3-10 (F)(6)]

(E) Fire safety and emergency response plans

(1) Each residential facility shall have a fire safety and emergency response plan that is approved by the state fire marshal or local authority.

(a) 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: [5123:2-3-11 (C)(1)]

(i) A primary and secondary means of exit from each floor;

(ii) The location of pull stations and fire control system panels, where applicable;

(iii) Fire escapes;

(iv) The telephone number of the local fire department or 911;

(v) Designated tornado shelter/safe area(s); and

(vi) Designated meeting place(s) in case of fire.

(b) The operator shall develop, in writing, and post at the fire control system panel, instructions for operating and resetting fire control system panels, where applicable. [5123:2-3-11 (C)(2)]

(c) 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. [5123:2-3-11 (C)(4)]

(d) The operator shall ensure that all sprinkler systems, fire alarms, extinguishing systems, and other safety equipment are properly maintained. [5123:2-3-11 (C)(5)]

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- (e) 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. [5123:2-3-11 (C)(6)]
- (f) The operator shall report to the department within one working day any fire responded to by a local fire department. [5123:2-3-11 (C)(7)]
- (g) The operator shall notify the department within one working day if an emergency requires the operator to relocate individuals from the residential facility. [5123:2-3-11 (C)(8)]
- (h) 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. [5123:2-3-11 (C)(9)]
- (i) 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. [5123:2-3-11 (C)(10)]
- (j) Fire safety and tornado drills may be announced or unannounced. [5123:2-3-11 (C)(11)]

(2) Fire safety plan

- (a) The operator shall develop a written fire safety plan that includes, but is not limited to, the following: [5123:2-3-11 (D)(1)]
 - (i) A policy that addresses smoking regulations and the storage of combustible materials. [5123:2-3-11 (D)(1)(a)]
 - (ii) A fire safety training program that includes provisions for rescue, alarm, containment, and evacuation. The training shall be approved by the department or the state/local authority. [5123:2-3-11 (D)(1)(b)]
 - (iii) Designation of assigned meeting place(s) after a physical evacuation of the residential facility. [5123:2-3-11 (D)(1)(c)]
 - (iv) A procedure for permitting re-entry to the residential facility following a fire safety drill and/or physical evacuation. [5123:2-3-11 (D)(1)(d)]

(3) Alarm and sprinkler systems

- (a) Each residential facility with six or more individuals shall be equipped with the following: [5123:2-3-11 (D)(5)]

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- (i) 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. [5123:2-3-11 (D)(5)(a)]
 - (ii) 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." [5123:2-3-11 (D)(5)(b)]
 - (iii) A smoke and fire detection and alarm system meeting the requirements of "National Fire Protection Association" 72, "National Fire Alarm Code," depending upon the nature of the physical facility involved and such other standards as required by the appropriate building and fire officials. [5123:2-3-11 (D)(5)(c)]
 - (iv) 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. [5123:2-3-11 (D)(5)(d)]
- (b) Each residential facility with five or fewer individuals shall be equipped with the following: [5123:2-3-11 (D)(6)]
- (i) At least a single station smoke detector on each floor of the facility. The smoke detector(s) 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. [5123:2-3-11 (D)(6)(a)]
 - (ii) 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. [5123:2-3-11 (D)(6)(b)]

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- (iii) 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. [5123:2-3-11 (D)(6)(c)]

(4) Emergency response plan

- (a) The operator shall develop a written emergency response plan that shall include, but is not limited to: [5123:2-3-11 (E)(1)]
 - (i) Designating a tornado shelter or safe area in the residential facility and the procedure for accessing the area; [5123:2-3-11 (E)(1)(a)]
 - (ii) Responses to weather-related emergencies or other disasters when relocation of individuals is not required; [5123:2-3-11 (E)(1)(b)]
 - (iii) Responses to weather-related emergencies or other disasters when relocation of individuals is required, including the designation of a pre-arranged evacuation site(s) to be used in the case of a physical evacuation of the residential facility. [5123:2-3-11 (E)(1)(c)]
- (b) Emergency response plan training shall be approved by the department or the state/local authority. [5123:2-3-11 (E)(2)]
- (c) The operator shall conduct and document a tornado drill at least once in a twelve-month period. [5123:2-3-11 (E)(3)]

(5) Training in fire safety and emergency response

- (a) Residential facility staff shall be trained in fire safety and emergency response in accordance with paragraph (D)(3) of rule 5123:2-3-01 [Administration and Operation] of the Administrative Code.
- (b) Each individual shall participate in documented training of the residential facility's fire safety plan and emergency response plan within thirty days of residency [5123:2-3-11 (G)(1) & (G)(3)] and at least once during every twelve-month period thereafter. [5123:2-3-11 (G)(2) & (G)(4)] The training shall be appropriate for the individual's needs based on the results of an assessment. [5123:2-3-11 (G)(5)]

***** Proposed New Rule *****

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

[Replaces 5123:2-3-17]

(A) Purpose

The purpose of this rule is to ensure that services for individuals residing in licensed residential facilities 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. [\[5123:2-3-17 \(A\)\]](#)
- (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; alternatives to the action, treatment, or service; consequences of not receiving 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. [\[5123:2-2-06 \(C\)\(6\)\]](#)
- (5) "Intermediate care facility" means an intermediate care facility for individuals with intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative Code.
- (6) "Person-centered planning" means a process for developing an individual plan or individual service plan that addresses an individual's health and long-term services and support needs in a manner that: [\[Centers for Medicare and Medicaid Services\]](#)
 - (a) Is directed by the individual;
 - (b) Includes persons freely chosen by the individual;
 - (c) Results in an individual plan or individual service plan, as applicable, that reflects individually-identified outcomes and preferences; and

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- (d) Assists the individual to achieve individually-defined outcomes in the most integrated community setting, ensures delivery of services in a manner that reflects personal preferences and choices, and contributes to the assurance of the individual's health and welfare.
- (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.
- (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. [5123:2-2-06 (C)(15)]

(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. [5123:2-1-11 (C)(1)]
- (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. [5123:2-1-11 (C)(2)]
- (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. [5123:2-1-11 (C)(3)]
- (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. [5123:2-1-11 (C)(4)]
- (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. [5123:2-1-11 (C)(5)]

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

(E) Requirements for development of individual plans for individuals who reside in intermediate care facilities

- (1) The individual's choices shall be the primary factor for developing the individual plan. The individual choices are those expressed directly by the individual, an adult authorized by the individual, or the individual's guardian, as applicable. [5123:2-3-17 (B)]
- (2) The services, supports, and activities described in the individual plan shall support the individual's choices, 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. [5123:2-3-17 (C)]
- (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. [5123:2-3-17 (D)]
 - (a) Evaluations of the individual shall include at a minimum the following which shall be conducted as needed and at least annually: [5123:2-3-17 (D)(1)]
 - (i) Social history. [5123:2-3-17 (D)(1)(a)]
 - (ii) A general health evaluation including vision, hearing, and screenings appropriate for the individual's age and gender. [5123:2-3-17 (D)(1)(b)]
 - (iii) An evaluation of the individual's general dental health and hygiene. [5123:2-3-17 (D)(1)(c)]
 - (iv) An adaptive behavior or independent living skills assessment. [5123:2-3-17 (D)(1)(d)]
 - (b) If the results from the evaluations described in paragraph (E)(3)(a) of this rule are insufficient to identify appropriate methods of developing the services, supports,

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and activities necessary to meet the needs of the individual, additional evaluations shall be obtained. [5123:2-3-17 (D)(2)]

- (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 one month after the individual's admission to the residential facility and at least annually thereafter; [5123:2-3-17 (E)]
 - (b) Review the individual plan as needed or upon request; [5123:2-3-17 (G)(1)]
 - (c) Review implementation of the individual plan at least quarterly and revise as needed; and [5123:2-3-17 (G)(2)]
 - (d) Coordinate the services, supports, and activities being provided to the individual with service providers, as identified in the individual plan. [5123:2-3-17 (G)(3)]
- (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. [5123:2-3-17 (H)]
- (6) The qualified intellectual disability professional shall attempt to resolve disputes that arise when informed consent is refused or revoked by making a reasonable accommodation to provide the individual with alternative services or activities. [5123:2-3-17 (I)]
- (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 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. [5123:2-3-17 (J)]

***** Proposed New Rule *****

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

[Replaces 5123:2-3-12, 5123:2-3-13, and 5123:2-3-24]

(A) Purpose

The purpose of this rule is to ensure that services 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. [5123:2-3-13 (A)]

(B) Definitions

- (1) "Day activities" means participation in activities that include, but are not limited to:
[5123:2-3-24 (B)(1)]
 - (a) Activities in the community available to the general public;
 - (b) Community employment;
 - (c) Activity centers; and
 - (d) Adult day care.
- (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; alternatives to the action, treatment, or service; consequences of not receiving 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. [5123:2-2-06 (C)(6)]
- (5) "Licensee" has the same meaning as in section 5123.19 of the Revised Code. [5123:2-3-01 (S)]

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- (6) "Major unusual incident" has the same meaning as in rule 5123:2-17-02 of the Administrative Code.
- (7) "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. [5123:2-3-12 (B)]
- (8) "Off-site" means a location that is not: [5123:2-3-24 (B)(2)]
 - (a) In the same building as any residential facility; and/or
 - (b) Within two hundred feet of a building housing any residential facility.
- (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) "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. [5123:2-2-06 (C)(15)]
- (11) "Unusual incident" has the same meaning as in rule 5123:2-17-02 of the Administrative Code.

(C) All services

All services shall be provided in accordance with the resident's individual plan or individual service plan, as applicable.

(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. [5123:2-3-09 (C)]
- (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. [5123:2-3-09 (D)]
- (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. [5123:2-3-09 (E)]
- (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. [5123:2-3-09 (H)]

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- (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 [Disposal of Dangerous Drugs which are Controlled Substances] of the Administrative Code. [5123:2-3-09 (I)(2)]
- (6) In the event of termination of services pursuant to rule 5123:2-3-05 [Admission, Termination of Services, and Transfer] of the Administrative Code, a written accounting of medication shall be completed no later than the last day 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. The operator shall cooperate with any investigation conducted by a legally authorized entity. 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. [5123:2-3-09 (I)(3)]

(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. [5123:2-3-04 (C)]
- (2) The operator shall: [Requirements align with 5123:2-9-18 (C)(4) & (C)(5) and 5123:2-9-24 (C)(4) & (C)(5)]
 - (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) 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; and
 - (d) Ensure that vehicles used to transport individuals are accessible to the individuals and maintained in a safe manner.

(F) Food

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- (1) The operator shall offer individuals daily meals and snacks that meet the individuals' nutritional needs and preferences as identified in the individual plan or individual service plan, as applicable. [5123:2-3-12 (B)(1)]
- (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. [5123:2-3-12 (B)(2)]
- (3) Meals shall be planned and prepared with the involvement of individuals and provide for variety, substitutions, and accommodation of individuals' personal preferences and religious beliefs. [5123:2-3-12 (B)(3) & (B)(4) & (B)(8)]
- (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. [5123:2-3-12 (B)(6)]
- (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. [5123:2-3-12 (B)(7)]

(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. [5123:2-3-12 (C)(1)]
- (2) The operator shall encourage each individual to select, purchase, and maintain his or her own clothing and to dress as independently as possible. [5123:2-3-12 (C)(2)]
- (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. [5123:2-3-12 (C)(3) & (C)(5)]
- (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. [5123:2-3-12 (C)(4) & (C)(5)]
- (5) The operator shall not discard clothing and personal items without the consent of the individual or the individual's guardian, as applicable. [5123:2-3-12 (C)(6)]

(H) Day activities

- (1) Day activities shall be provided off-site unless the individual plan or individual service plan, as applicable, indicates why, based on evaluations and assessments, delivering day activities off-site is contraindicated. The determination shall be supported by the evaluations and assessments. [5123:2-3-24 (C)]
- (2) Notwithstanding paragraph (H)(1) of this rule, an intermediate care facility that was permitted to deliver day activities on the grounds of the intermediate facility in accordance with former rule 5123:2-3-24 of the Administrative Code, shall develop and submit to the department within one hundred eighty days of the effective date of this rule, a plan for providing day activities off-site within two years of the effective date of this rule.

(I) Individuals' service records

- (1) The following records for each individual for the most recent twelve months shall be maintained at the residential facility: [5123:2-3-13 (C)]
 - (a) A current photograph of the individual. [5123:2-3-13 (C)(1)]
 - (b) Legal status of the individual. [5123:2-3-13 (C)(2)]
 - (c) Individual plan or individual service plan, as applicable, including documentation of informed consent for services, supports, and activities provided. [5123:2-3-13 (C)(6)]
 - (d) A signed authorization to seek medical treatment for the current year or plan period or documentation to demonstrate that attempts to secure such authorization were unsuccessful. [5123:2-3-13 (C)(8)]
 - (e) Medication and/or treatment records which shall indicate: [5123:2-3-13 (C)(5)]
 - (i) The person who prescribed the medication and/or treatment; and
 - (ii) The date, time, and person who administered the medication and/or treatment.
 - (f) Records of major unusual incidents and unusual incidents. [5123:2-3-13 (C)(3)]
- (2) The following records for each individual shall be maintained by the operator in an accessible location and shall be provided to the department for review at the residential facility upon request:
 - (a) Records specified in paragraphs (I)(1)(a) to (I)(1)(f) of this rule for periods prior to the most recent twelve months.

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- (b) Admission and referral records. [5123:2-3-13 (D)(1)]
 - (c) Records of all medical and dental examinations and immunization records as appropriate based upon individual's age. [5123:2-3-13 (D)(2)]
 - (d) All service documentation including notations of progress. [5123:2-3-13 (D)(4)]
 - (e) Reconciliations of the individual's account transaction record as described in rule 5123:2-2-XX [proposed new Personal Funds of the Individual] of the Administrative Code. [5123:2-3-13 (D)(5)]
 - (f) Records of negotiable items owned by the individual which can be transferred or converted to cash (such as bonds or promissory notes). [5123:2-3-13 (D)(6)]
 - (g) Major unusual incident investigation files. [5123:2-3-13 (D)(7)]
 - (h) Records of clothing and personal items. [5123:2-3-13 (D)(8)]
 - (i) Termination of services summary which shall be prepared within seven days following termination of services pursuant to rule 5123:2-3-05 [Admission, Termination of Services, and Transfer] 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. [5123:2-3-13 (D)(9)]
- (3) 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. [5123:2-3-13 (B)]
- (4) The operator shall develop a records retention schedule for all records in accordance with applicable state and federal requirements. [5123:2-3-13 (D)]

***** Proposed Amendments *****

5123:2-3-05 Licensed residential facilities - Admission, ~~discharge~~ termination of services, and transfer.

(A) Purpose

The purpose of this rule is to establish uniform policies for admission, ~~discharge~~ termination of services, and transfer of ~~individuals~~ persons applying for admission to, or living in, residential facilities licensed by the department.

(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.
- ~~(1) "Discharge" means a permanent movement of an individual to another residence that is not under the jurisdiction of the provider.~~
- ~~(2) "Emergency" means any situation creating a significant risk of substantial harm to individuals or staff in the residential facility if action is not taken.~~
- (4) "Emergency" means a situation in which, 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.
- (5) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
[5123:2-9-06 (B)(11)]
- (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; alternatives to the action, treatment, or service; consequences of not receiving the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual may revoke informed consent at any time. [5123:2-2-06 (C)(6)]

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- (7) "Intermediate care facility" means an intermediate care facility for individuals with intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative 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 described in section 5124.34 of the Revised Code.
- ~~(3)~~ (12) "Transfer" means a temporary or permanent movement of ~~an individual~~ a resident between residential facilities under the jurisdiction of the ~~provider~~ operator.

(C) Admission policies

- (1) The ~~provider~~ operator shall only admit ~~individuals~~ persons as residents whose service needs can be met.
- (2) Admission to a residential facility is voluntary, requiring informed consent by the individual, ~~parent of a minor child, or guardian.~~
- (3) ~~A provider~~ 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 ~~the individual's~~ a person's physical, mental, or behavioral ~~disabilities~~ support needs to the extent required by law unless the ~~provider~~ operator can demonstrate that the accommodation would impose an undue hardship on the operation of the ~~program~~ residential facility including an unreasonable risk of harm to ~~individuals~~ residents or staff in the residential facility.
- (4) If a vacancy exists, the ~~provider~~ operator shall determine if the ~~individual~~ applicant meets the residential facility's admission criteria within thirty calendar days of receiving an application for services and referral information. This timeline may be extended if mutually agreed upon in writing by both the applicant and the ~~provider~~ operator.
 - (a) When the referring agency is the county board, referral information shall be provided to the ~~provider~~ operator within seven calendar days of notification of the vacancy.
 - (b) The referral shall contain background information as well as currently valid assessments of functional, developmental, behavioral, social, health, and nutritional status to allow the ~~provider~~ operator to determine if it can provide for the

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~~individual's applicant's~~ needs without creating an unreasonable risk of harm to ~~individuals residents~~ or staff in the residential facility. The referring entity shall not knowingly withhold information relevant to the admission of the ~~individual applicant~~.

- (c) When ~~admitting an individual~~ reviewing an application for services, the ~~provider operator~~ shall consider its ability to maintain an adequate level of services to all ~~individuals residing in~~ residents of the residential facility.
- (5) The ~~provider operator~~ shall notify the individual, ~~parent of a minor child, guardian, advocate,~~ county board, and referring party in writing of the outcome of the admissions decision within seven calendar days of making the decision.
- (6) Any denial of admission notice must be sent to the individual by certified mail.
- (7) The denial of admission notice shall contain:
 - (a) A statement of what action the ~~provider operator~~ intends to take;
 - (b) The reasons for the denial of admission;
 - (c) An explanation of the individual's right to a hearing and the method by which to obtain a hearing including to whom the hearing request is to be made and the timelines to request a hearing in accordance with paragraph (E) of this rule; and
 - (d) The telephone number and address for ~~Ohio legal rights service~~ disability rights Ohio.
- (8) If a vacancy exists, and the ~~applicant individual~~ requests an appeal, the ~~provider operator~~ shall not fill the vacancy until the hearing decision is rendered.

(D) ~~Discharge and transfer~~ Transfer and termination of services policies

- (1) The ~~facility operator~~ must allow each ~~individual resident~~ to remain in the facility and must not ~~discharge or transfer the individual~~ a resident from the facility or effect a termination of services unless:
 - (a) The transfer or ~~discharge~~ termination of services is necessary for the ~~individual's resident's~~ welfare and the ~~individual's resident's~~ needs can no longer be met without imposing an undue hardship on the operation of the residential facility;
 - (b) The ~~individual resident~~ no longer needs or wants the services provided by the residential facility or chooses to transfer ~~within the agency~~;

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- (c) The ~~individual~~ resident is creating ~~an unreasonable~~ a significant risk of substantial harm to himself/herself, other ~~individuals~~ 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) ~~A provider~~ 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 ~~the individual's~~ a person's physical, mental, or behavioral ~~disabilities~~ support needs to the extent required by law unless the ~~provider~~ operator can demonstrate that the accommodation would impose an undue hardship on the operation of the ~~program~~ residential facility including an unreasonable risk of harm to ~~individuals~~ residents or staff in the residential facility.
- (3) ~~Before a facility transfers or discharges an individual~~ initiating a transfer or termination of services, the ~~facility must~~ operator shall:
- (a) ~~Notify in writing via certified mail, the individual, parent of a minor child, or guardian, and the county board of the transfer or discharge termination of services and the reasons for the move in writing. 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 ~~discharge~~ termination of services and appeal rights to the individual, ~~parent of a minor child, guardian, or advocate~~ in a language and manner ~~which is understandable to the person receiving the information~~ individual understands; and
 - (c) Record the reasons for the transfer or ~~discharge~~ termination of services in the ~~individual's~~ resident's record.
- (4) The notice of ~~discharge or~~ transfer or termination of services must be made at least thirty calendar days before the ~~discharge or~~ transfer or termination of services, except

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when an emergency exists. If at any time prior to the expiration of the thirty-day period the ~~provider~~ operator determines that the conditions that constituted the emergency no longer exist, the individual subject of the transfer or termination of services may ~~then~~ return to the residential facility.

~~(5) The notice must contain:~~

~~(a) The reason for the transfer or discharge;~~

~~(b) The effective date of the transfer or discharge;~~

~~(c) If the transfer or discharge is due to the provider's inability to meet the individual's needs without imposing an undue hardship on the operation of the program; including an unreasonable risk of harm to individuals or staff in the residential facility, a summary of the action taken by the provider, including working with the county board, to try to meet the individual's needs or reduce the risk of harm to individuals or staff;~~

~~(d) The individual's right to appeal the transfer or discharge and the process to do so; and~~

~~(e) The telephone number and address of the Ohio legal rights service.~~

~~(6) The notice to the individual must be sent by certified mail.~~

~~(7) (5) If an individual, parent of a minor child, guardian, or advocate requests a discharge or transfer 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, ~~parent of a minor child, guardian, or advocate~~ 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 denial of admission, transfer, or discharge ~~notice~~ termination of services.

(2) The governing board or administrator shall review the decision and notify the individual, ~~parent of a minor child, guardian, or advocate~~ 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, shall include the contact information for the director.

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- (3) The individual, ~~parent of a minor child, guardian, or advocate~~ 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 ~~and include an explanation as to why the denial of admission, proposed discharge, or proposed transfer decision is incorrect.~~ Upon request, department staff shall assist the individual to prepare the appeal.

(F) Mediation process

- (1) The individual, ~~parent of a minor child, guardian, and/or advocate~~, and the provider operator shall attend a mediation meeting to try to attain resolution prior to the scheduled admission, ~~discharge~~ termination of services, or transfer hearing. Legal representation is not permitted in the mediation meeting.
- (2) The department will provide the mediator.
- (3) The mediation shall be ~~scheduled~~ conducted within fifteen calendar days of receipt of the appeal. The hearing shall be ~~scheduled~~ 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) Paragraph (C)(8) of this rule may be waived if mutually agreed upon in writing by all parties.
- (6) Statements made during the mediation process cannot be used as evidence in any subsequent hearings or court proceedings.

(G) Hearing process

- (1) The department will grant an opportunity for a hearing to:
 - (a) Any individual, ~~parent of a minor child, guardian, or advocate~~ who requests a hearing because the individual's request for admission is denied or not acted on in accordance with paragraphs (C)(4) or (C)(5) of this rule; or
 - (b) Any individual who has received a discharge termination of services or transfer notice and ~~the individual, parent of a minor child, guardian, or advocate~~ requests a hearing.
- (2) The department shall deny or dismiss a request if:
 - (a) The request is not filed within a timely manner;

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- (b) ~~Neither the individual nor any representative for the individual is present at~~ The individual fails to attend a scheduled hearing unless there is good cause for the absence; or
 - (c) The individual, ~~parent of a minor child, guardian, or advocate~~ withdraws the request in writing.
- (3) The director 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, ~~parent of a minor child, guardian, or advocate~~ and the provider operator shall have the opportunity to present evidence at the hearing. Both the individual and the provider operator may have legal representation.
 - (6) The burden of proof shall be on the provider operator to show that the denial of admission, discharge termination of services, or transfer 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 director 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) Sanctions

If ~~a provider~~ an operator fails to follow the requirements of this rule or fails to follow the decision of the director, the department may:

- (1) Suspend admissions to the residential facility pursuant to section 5123.19 of the Revised Code and in accordance with the procedures set forth in rule ~~5123:2-3-02~~ 5123:2-3-06 [Compliance Reviews, Issuance of Licenses, and Sanctions] of the Administrative Code; or

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- (2) Issue licensure citations pursuant to section 5123.19 of the Revised Code and in accordance with the procedures set forth in rule ~~5123:2-3-02~~ 5123:2-3-06 [Compliance Reviews, Issuance of Licenses, and Sanctions] of the Administrative Code.
- (I) This rule is not intended to abridge any right of appeal that a party aggrieved by the decision of the director may have independent of this rule.

***** Proposed New Rule *****

5123:2-3-06 Licensed residential facilities - compliance reviews, issuance of licenses, and sanctions.

[Replaces part of 5123:2-3-02, 5123:2-3-03, 5123:2-3-20, 5123:2-3-21, and part of 5123:2-3-26]

(A) Purpose

The purpose of this rule is to set 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 the imposition of sanctions 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. [5123:2-3-01 (B)]
- (2) "Adverse action" means any of the following actions taken by the department: [5123:2-3-21 (B)(1)]
 - (a) The initiation of license revocation of a residential facility;
 - (b) The issuance of an order for the suspension of admissions to a residential facility;
 - (c) The placement of a monitor in a residential facility; or
 - (d) The immediate removal of residents from a residential facility in accordance with rule 5123:2-3-07 [Immediate Removal of Residents] of the Administrative Code.
- (3) "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.
- (4) "Department" means the Ohio department of developmental disabilities or its designee.
- (5) "Director" means the director of the Ohio department of developmental disabilities.
- (6) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- (7) "Individual" means a person with a developmental disability.

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- (8) "License" means written approval by the department to a licensee to operate a residential facility. [5123:2-3-01 (R)] For purposes of this rule, "license" does not include an interim license issued in accordance with rule 5123:2-3-08 [Development of Licensed Residential Beds] of the Administrative Code.
- (9) "Licensee" has the same meaning as in section 5123.19 of the Revised Code. [5123:2-3-01 (S)]
- (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.
- (11) "Placement of a monitor" means twenty-four-hour per day, or whenever an individual is in the residential facility, on-site monitoring of the facility provided or arranged by the department in order to verify compliance with Chapters 5123. and 5124. of the Revised Code or rules adopted under those chapters. [5123:2-3-02 (B)(2)]
- (12) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code. [5123:2-3-01 (CC)]

(C) 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. [5123:2-3-02 (I)(1)(b)]
- (2) There are three types of compliance reviews: [5123:2-2-04 (C)(1)]
 - (a) Routine compliance reviews conducted so that each residential facility is reviewed once during the term of the license; [5123:2-2-04 (C)(1)(a)]
 - (b) 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. [5123:2-3-02 (I)(2)] When a special compliance review is conducted in response to a complaint:
 - (i) If it is determined that an immediate risk to the individual's health or welfare exists, the department shall take measures to ensure that any conditions that pose a risk to the health and welfare of the individual have been corrected and shall initiate an investigation of the complaint by the end of day following receipt of the complaint. [5123:2-3-20 (D)(1)]
 - (ii) If it is determined that no immediate risk to the individual's health or welfare exists, the department shall conduct and complete an investigation within ten working days following the receipt of the complaint. [5123:2-3-20 (D)(1)]

- (iii) The department shall send a written response to the complainant within twenty working days of the conclusion of the special compliance review describing actions taken by the department to address the complaint. [5123:2-3-20 (G)]
- (c) Abbreviated compliance reviews conducted for a licensee that provides home and community-based services and holds accreditation by a national accrediting entity as demonstration that the licensee is meeting applicable requirements for home and community-based services.
 - (i) A licensee that is accredited by a national accrediting entity is eligible for an abbreviated compliance review when the standards of the national accrediting entity: [5123:2-2-04 (C)(1)(c)(i)]
 - (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;
 - (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 licensee's compliance with applicable requirements regarding: [5123:2-2-04 (C)(1)(c)(ii)]
 - (a) Background investigations of the licensee's chief executive officer and employees;
 - (b) The behavioral support portion of individual service plans;
 - (c) Medication administration;
 - (d) Major unusual incidents; and
 - (e) Management of individuals' funds.
 - (iii) To be eligible for abbreviated compliance review, the licensee shall submit a written request to the department that includes a copy of the most recent survey/review of the licensee by the national accrediting entity. [5123:2-2-04 (C)(1)(c)(iii)]
 - (iv) The licensee shall notify the department in writing within ten days if the licensee'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. [5123:2-2-04 (C)(1)(c)(iv)]
 - (v) Abbreviated compliance reviews may not be available when: [5123:2-2-04 (C)(1)(c)(v)]

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- (a) The licensee has not received an initial routine compliance review by the department.
 - (b) The licensee has had multiple or significant substantiated major unusual incidents since the most recent compliance review by the department or by the national accrediting entity.
 - (c) The licensee's chief executive officer and/or management team has changed since the most recent compliance review by the department or survey/review by the national accrediting entity.
 - (d) The licensee's accreditation by the national accrediting entity has been amended or suspended.
- (3) 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. [5123:2-3-02 (I)(1)(a)]
- (4) The compliance review shall be conducted in accordance with the protocol developed by the department and will determine the term of the licensee's subsequent license. [5123:2-3-02 (I)(1)(c)] The protocol shall be posted at the department's website and include, but is not limited to, the following components: [5123:2-2-04 (C)(3)(a)]
 - (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 that shall include the 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.
- (D) Compliance review summary and plan of correction
 - (1) Following the compliance review and prior to issuing citations, the department shall conduct an exit interview with the administrator or his or her designee. The administrator or his or her designee may waive, in writing, the exit interview. During

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the exit interview, the administrator or his or her designee shall be provided an opportunity to respond to any potential citations identified by the department. Information not made available to the department by the conclusion of the exit conference may result in the issuance of a citation. [5123:2-3-02 (J)(1)]

- (2) Within seven days following the exit interview, unless the director initiates a license revocation proceeding, the department shall issue a written compliance review summary to the licensee in accordance with the format described in the protocol for compliance reviews. The compliance review summary shall be objective in terms of observations and citations, relying upon documentation that clearly addresses the standards reviewed. [5123:2-3-02 (J)(2) & 5123:2-2-04 (D)(1)]
- (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 plan of correction for each citation.
 - (a) The written plan of correction for a citation shall include action steps and timelines for remediation. [5123:2-2-04 (D)(2)(b)]
 - (b) A licensee may appeal a citation by submitting a written statement with supporting documentation. A determination on the appeal shall be made in writing by the department within ten days of receipt of the appeal.
 - (c) 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. The 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.
- (4) The department shall approve or disapprove the plan of correction within twenty days of receipt.
 - (a) If the plan of correction is approved, the department shall so notify the licensee and shall verify that the licensee implements the approved plan of correction within the time limits included in the plan. [5123:2-3-02 (J)(3)]
 - (b) If the plan of correction is not approved, the department shall so notify the licensee and may assist the licensee in submitting an acceptable plan of correction. [5123:2-3-02(J)(4)]
- (5) A copy of the approved plan of correction shall be posted at the department's website and provided to any person who requests it in accordance with applicable statutes and regulations regarding individual confidentiality. [5123:2-3-02 (J)(5)]
- (6) The license shall be issued by the director within twenty days following the determination by the department that compliance with all requirements has been met, an

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approved plan of correction has been received, and/or compliance with specific requirements has been waived. [5123:2-3-02 (J)(7)]

(E) Issuance of license

- (1) The department shall issue a license for a term of one year or three years. The term of a license shall be established following the licensee's appeal of any citations in accordance with paragraph (D) of this rule. [5123:2-3-03 (E)]
 - (a) The department shall issue a license for a term of one year to a residential facility that demonstrates minimum compliance with applicable statutes and rules; [Aligns with proposed new rule 5123:2-1-02 (P)(2)(b)]
 - (b) The department shall issue a license for a term of three years to a residential facility that exceeds minimum compliance with applicable statutes and rules. [Aligns with proposed new rule 5123:2-1-02 (P)(2)(a)]
- (2) Notwithstanding the term of a license issued in accordance with this rule, the licensee shall submit an approved fire inspection and if applicable, a water and sewer inspection, to the department by December thirty-first of each year. The department shall make available at its website any required annual inspection forms to the licensee no later than September thirtieth of each year. [5123:2-3-02 (L)]
- (3) No license shall be issued until a complete application including all required inspections has been submitted by the applicant or licensee, as applicable, and have been reviewed and approved by the department. [5123:2-3-02 (F)(5)]
- (4) A license shall remain valid until its expiration date unless the license is terminated, revoked, or voluntarily surrendered. [5123:2-3-02 (K)]

(F) Sanctions

- (1) In proceedings initiated to deny, refuse to renew, or revoke a license under Chapter 5123. of the Revised Code or rules adopted under that chapter, the director may deny, refuse to renew, or revoke a license regardless of whether some or all of the citations that prompted the proceedings have been corrected at the time of the hearing. [5123:2-3-02 (Q)(1)]
- (2) If it is determined 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 director may take any of the following actions: [5123:2-3-02 (Q)(2)]
 - (a) Suspension of admissions to the residential facility in accordance with paragraph (F)(3) of this rule;

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- (b) Placement of a monitor at the residential facility in accordance with paragraph (F)(4) of this rule;
- (c) Non-renewal of the license in accordance with paragraph (F)(5) of this rule;
- (d) Revocation of the license in accordance with paragraph (F)(6) of this rule.

(3) Suspension of admissions

- (a) Appeals from proceedings initiated to order the suspension of admissions to a residential facility shall be conducted in accordance with Chapter 119. of the Revised Code [\[5123:2-3-02 \(Q\)\(3\)\(a\)\]](#)
- (b) When suspension of admissions is ordered before providing an opportunity for adjudication pursuant to Chapter 119. of the Revised Code, the following shall apply: [\[5123:2-3-02 \(Q\)\(3\)\(b\)\]](#)
 - (i) The licensee may request a hearing not later than ten days after receiving the notice specified in section 119.07 of the Revised Code.
 - (ii) If a timely request for a hearing is made, the hearing shall commence not later than thirty days after the department receives the request.
 - (iii) After commencing, the hearing shall continue uninterrupted, except for Saturdays, Sundays, and legal holidays, unless the interruptions are agreed to by the licensee and director.
 - (iv) If a hearing examiner conducts the hearing, the hearing examiner shall file a report and recommendations not later than ten days after the close of the hearing.
 - (v) Not later than five days after the hearing examiner files the report and recommendations, the licensee may file objections to the report and recommendations.
 - (vi) Not later than fifteen days after the hearing examiner files the report and recommendations, the director shall issue an order approving, modifying, or disapproving the report and recommendations.
 - (vii) Notwithstanding the pendency of the hearing, the director shall lift the order for suspension of admissions when the director determines that the citation that formed the basis for the order has been corrected.
- (c) A copy of the order suspending admissions to a residential facility shall be sent to the county board where the facility is located. [\[5123:2-3-02 \(Q\)\(3\)\(c\)\]](#)

- (d) The licensee subject to the suspension of admissions shall send written notice to each individual served by the licensee or the individual's guardian, as applicable, 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 and how the individual or guardian can obtain additional information regarding the suspension. The licensee shall send a copy of the notice to the department upon request. [5123:2-3-02 (Q)(3)(d)]

(4) Placement of a monitor

- (a) When the director orders placement of a monitor in a residential facility, the department shall notify the county board where the facility is located. [5123:2-3-02 (Q)(4)(a)]
- (b) The licensee subject to placement of a monitor shall send written notice to each individual served by the licensee or the individual's guardian, as applicable, 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 or guardian can obtain additional information regarding placement of the monitor. The licensee shall send a copy of the notice to the department upon request. [5123:2-3-02 (Q)(4)(b)]

(5) Non-renewal of license

- (a) The director may decline to renew the license of a licensee upon its expiration when he or she determines that the residential facility is not being operated in compliance with Chapters 5123. and 5124. of the Revised Code or rules adopted those chapters. [5123:2-3-02 (Q)(5)(a)]
- (b) If such a determination is made, the department shall send a letter to the licensee by certified mail, return receipt requested, within seven days of the compliance review. The letter shall list the citations identified during the compliance review and shall inform the licensee of the process for reconsideration. A copy of the letter shall be sent to the county board where the residential facility is located and to the Ohio department of medicaid and the Ohio department of health if the facility is an intermediate care facility. [5123:2-3-02 (Q)(5)(b)]
- (c) The licensee shall have fourteen days from the date the letter is mailed to request a written reconsideration of the director's decision to not renew the license. The request for reconsideration shall include a plan of correction that includes actions the licensee will take with timelines. [5123:2-3-02 (Q)(5)(c)]
- (d) If the licensee submits a request for reconsideration, the director shall review the request for reconsideration within ten days of receipt of the request and the plan of correction and determine if it is acceptable. If the plan of correction is determined

to be unacceptable by the director, the director shall send a letter by certified mail, return receipt requested, to the licensee informing the licensee of the director's decision to deny the request for reconsideration and the director's decision to not renew the facility's license upon its expiration and that the licensee must cease operation within thirty days of the receipt of the letter or the license's expiration date, whichever is later, and shall inform the licensee of his or her right to request a hearing 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. If the licensee requests a hearing pursuant to Chapter 119. of the Revised Code and if the hearing process extends beyond the expiration date of the licensee's current license, the facility's license shall continue to be valid until the department's decision, pursuant to Chapter 119. of the Revised Code, is rendered. [5123:2-3-02 (Q)(5)(d)]

- (e) If the plan of correction is approved, the department shall conduct a compliance review to verify the plan of correction has been implemented within thirty days of the receipt of the request for reconsideration to determine if the licensee has come into substantial compliance with Chapters 5123. and 5124. of the Revised Code and rules adopted under those chapters. [5123:2-3-02 (Q)(5)(e)]
- (f) Within twenty days following the department's plan of correction compliance review, the director shall send a letter to the licensee by certified mail, return receipt requested, informing the licensee of the director's decision to reconsider the non-renewal of the license. [5123:2-3-02 (Q)(5)(f)]
- (i) If the director determines the licensee has come into substantial compliance with Chapters 5123. and 5124. of the Revised Code and rules adopted under those chapters, the licensee will be issued a one-year license.
- (ii) If the director determines the licensee remains in substantial non-compliance with Chapters 5123. or 5124. of the Revised Code or rules adopted under those chapters, the letter shall affirm the director's decision to not renew the license of the facility upon its expiration and that the licensee must cease operation within thirty days of the receipt of the letter or the license's expiration date, whichever is later, and shall inform the licensee of his or her right to request a hearing 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.
- (a) If the licensee does not request a hearing within the thirty-day time limit, an adjudication order will be rendered pursuant to Chapter 119. of the Revised Code. A copy of the order shall be sent to the county board where the facility is located and to the Ohio department of medicaid and the Ohio department of health if the facility is certified as an intermediate care

facility. The director shall arrange that a letter or a copy of the order shall also be sent to each individual served by the licensee, 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.

- (b) If the licensee requests a hearing within the thirty-day time limit, the director shall set the date, time, and place of the hearing in accordance with Chapter 119. of the Revised Code. The licensee shall be notified of the scheduled hearing by certified mail, return receipt requested.
 - (c) If the hearing process extends beyond the expiration date of the licensee's current license, the facility's license shall continue to be valid until the department's decision, pursuant to Chapter 119. of the Revised Code, is rendered.
 - (g) If the licensee does not submit a request for reconsideration within the twenty-day time limit, a letter shall be sent by certified mail, return receipt requested, signed by the director, notifying the licensee that the license will not be renewed upon its expiration and that the licensee must cease operation on the expiration date of the license and shall inform the licensee of his or her right to request a hearing pursuant to Chapter 119. of the Revised Code which, if timely requested, shall be held in accordance with Chapter 119. of the Revised Code. A copy of the letter shall be sent to the county board where the facility is located and to the Ohio department of health and the Ohio department of medicaid if the facility is an intermediate care facility. The director shall arrange that a letter shall also be sent to each individual served by the licensee or the individual's guardian, as applicable. [5123:2-3-02 (Q)(5)(g)]
 - (h) If the licensee does not request a hearing within the thirty-day time limit, an adjudication order will be rendered pursuant to Chapter 119. of the Revised Code. A copy of the order shall also be sent to the county board where the facility is located and to the Ohio department of medicaid and the Ohio department of health if the facility is an intermediate care facility. The director shall arrange that a letter shall also be sent to each individual served by the licensee or the individual's guardian, as applicable. [5123:2-3-02 (Q)(5)(h)]
- (6) Revocation of license
- (a) When the director initiates license revocation proceedings, no opportunity for submitting a plan of correction shall be given. [5123:2-3-02 (Q)(6)(a)]
 - (b) The director may initiate licensure revocation proceedings when he or she determines 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. [5123:2-3-02 (Q)(6)(b)]

(c) If such a determination is made, a letter shall be sent by the department to the licensee by certified mail, return receipt requested, stating the reasons for the revocation and offering the licensee 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. [5123:2-3-02 (Q)(6)(c)]

(d) When the director initiates license revocation proceedings, the director shall notify in writing each individual served in the residential facility or the individual's guardian, as applicable, the county board in which the residential facility is located, and the Ohio department of medicaid and the Ohio department of health if the residential facility is an intermediate care facility. [5123:2-3-02 (Q)(6)(d)]

(e) If the hearing process extends beyond the expiration date of the current license, the license of the residential facility shall continue to be valid until the director's decision, pursuant Chapter 119. of the Revised Code, is rendered. [5123:2-3-02 (Q)(6)(e)]

(L) Termination of license or reduction of licensed capacity

(1) The director may terminate a license or reduce licensed capacity if more than twelve consecutive months have elapsed since the residential facility or licensed bed was last occupied by an individual or a when the licensee failed to provide notice of modification in accordance with rule 5123:2-3-08 [Development of Licensed Residential Beds] of the Administrative Code. [5123:2-3-02 (R)(1)]

(2) If such a determination is made, the department shall send a letter to the licensee by certified mail, return receipt requested, offering the licensee a hearing on the termination or reduction in accordance with Chapter 119. of the Revised Code. The applicant or licensee, as applicable, 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. [5123:2-3-02 (R)(2)]

(M) Public notification of adverse actions

The department shall post at its website information regarding any adverse action taken within five working days following any adverse action taken. [5123:2-3-21 (C)(1)]

(N) Revocation, termination, non-renewal, and voluntary surrender of license

(1) When a license is revoked, terminated, or not renewed by the department or is voluntarily surrendered by a licensee, the licensed beds shall revert to the department.

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- (2) When a license is revoked, terminated, or not renewed by the department or is voluntarily surrendered by a licensee and the department determines that the 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 beds are located to develop a request for proposal for the purpose of recommending a licensee. [5123:2-3-26 (F)(4)]
- (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. [5123:2-3-26 (F)(4)(a)]
- (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. [5123:2-3-26 (F)(4)(b)]
- (c) The county board shall submit all proposals and its recommendation to the department within ten days after completing its review of the proposals. [5123:2-3-26 (F)(4)(c)]
- (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. [5123:2-3-26 (F)(4)(d)]

***** Proposed Amendments *****

~~5123:2-3-16 — Emergency removal of individuals from a residential facility.~~

5123:2-3-07 Licensed residential facilities – immediate removal of residents.

(A) Purpose

~~The purpose of this rule is to ensure the health, safety, and welfare of individuals residing in a residential facility licensed under section 5123.19 of the Revised Code by establishing~~
establish a process by which the director or his/her designee may order the ~~emergency~~
immediate removal of ~~an individual(s) being served in a resident of a residential facility.~~

(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) "Immediate removal" means the process initiated upon issuance of an order by the director, for removing a resident of a residential facility when:

(a) Conditions at the residential facility present an immediate danger of physical or psychological harm to the resident;

(b) All other available interventions have proved ineffective or infeasible; and

(c) The individual gives informed consent.

(5) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
[5123:2-9-06 (B)(11)]

(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; alternatives to the action, treatment, or service; consequences of not receiving the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual may revoke informed consent at any time. [5123:2-2-06 (C)(6)]

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

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- (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) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
- ~~(B) Where all other available interventions have proved ineffective or not feasible, the director or his/her designee may order the immediate removal of an individual(s) from a residential facility whenever conditions at the facility present an immediate danger of physical or psychological harm to an individual(s). [Incorporated into definition of "immediate removal" in new paragraph (B)(4) of this rule.]~~
- ~~(C) The removal of an individual(s) under the provisions of this rule may only be implemented with the written consent of the individual(s) or parent(s) of a minor child or guardian(s), as applicable. [Incorporated into definition of "immediate removal" in new paragraph (B)(4) of this rule.]~~
- ~~(D) When conditions at a residential facility present an immediate danger of physical or psychological harm and the individual(s) or parent(s) of a minor child or guardian(s), as applicable, do not give consent for the removal, the process for removing the individual must be done in accordance with sections 5126.30 to 5126.333 of the Revised Code. [Moved to new paragraph (G) of this rule.]~~
- (C) Establishing grounds for immediate removal
- ~~(E) (1) Upon receipt of ~~allegations~~ an allegation that the physical or psychological health or safety of ~~an individual(s)~~ a resident of a residential facility is ~~in danger~~ at risk, the county board shall determine if the situation is one of immediate danger. The department, at its own discretion, may also investigate such situations.~~
- ~~(F) (2) When an allegation, as described in paragraph ~~(E)~~ (C)(1) of this rule, is received by the county board, the county board shall file a major unusual incident report with the department and conduct an investigation to establish the validity of the alleged facts in accordance with the procedures outlined in rule 5123:2-17-02 of the Administrative Code.~~
- ~~(G) (3) During the interview and/or investigation process, the county board shall explain the nature of the situation and all known potential outcomes to the ~~individual(s) or parent(s) of a minor child or guardian(s), as applicable,~~ individual in a manner ~~reasonably expected to be understood~~ the individual understands.~~
- ~~(H) (4) If a determination is made that the situation is one of immediate danger, the county board shall contact the director ~~or his/her designee~~ with a request to remove the ~~individual(s)~~ resident. The request shall include a description of the incident(s) and/or circumstances which led to the conditions at the residential facility presenting the immediate danger of physical or psychological harm to the individual(s). The county~~

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board shall submit the request to remove and description of the incident(s) and/or circumstances which led to the conditions at the facility presenting the immediate danger of physical or psychological harm to the individual(s) in writing to the director within twenty-four hours of the county board's initial contact with the director or his/her designee.

~~(H)~~ (5) The director or his/her designee shall determine whether the individual(s) resident shall be removed from the residential facility based upon information received from the county board, ~~the department~~, and any other sources including the licensee operator if, in the opinion of the director, such communication with the licensee operator does not threaten the health or safety of the individual(s) resident and shall inform the county board of that determination.

(6) The director shall communicate his or her determination to the county board and if grounds exist, issue an order for immediate removal. The director or his/her designee shall notify the ombudsman section of Ohio legal rights service disability rights Ohio in accordance with section 5123.604 of the Revised Code of any action being considered taken pursuant to this rule. The director or his/her designee shall notify the licensee operator of any action being taken to remove the individual(s) resident if, in the opinion of the director or his/her designee, the act of notification does not threaten the health or safety of the individual(s) resident.

(D) Effecting immediate removal

~~(L)~~ (1) ~~When written consent for the removal has been obtained,~~ After the county board receives the order for immediate removal issued by the director, the county board shall attempt to notify the parent of a minor child or guardian of the individual, as appropriate, prior to the actual immediate removal of an individual. If such notice is not made prior to the actual immediate removal, it shall be made as soon as practicable after the immediate removal.

~~(J)~~ (2) The county board shall be responsible for removing the individual(s) resident and for arranging transportation, placement, and services in the least restrictive alternative available. The county board shall ensure implementation of all components of the individual's plan individual plan or individual service plan, as applicable, and compliance with all provisions of state and federal regulations related to the individual's eligibility for services and service delivery. The department will assist in facilitating placements of individuals into the least restrictive alternative available.

~~(K)~~ The county board may arrange for or provide services to an individual(s) removed under the provisions of this rule for up to sixty days without soliciting proposals as required in rule 5123:2-16-01 of the Administrative Code. During this sixty day period, the county board shall be required to solicit proposals for service provision in accordance with rule 5123:2-16-01 of the Administrative Code.

(E) Additional actions by director or department

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~~(M)~~ (1) The department may initiate the revocation of the residential facility's license ~~under rule 5123:2-3-02~~ in accordance with rule 5123:2-3-06 [Compliance Reviews, Issuance of Licenses, and Sanctions] of the Administrative Code when ~~an individual(s) has been removed~~ a resident has been subject to immediate removal pursuant to this rule. When determining whether a license should be revoked ~~in accordance with this rule~~, the department shall consider the following factors which include, but are not limited to:

~~(1)~~ (a) The overall health, safety, and welfare of the ~~individuals residing in~~ residents of the residential facility;

~~(2)~~ (b) Any negligence on the part of the licensee operator which contributed to or caused the ~~emergency~~ immediate removal;

~~(3)~~ (c) Historical, documented, and substantial non-compliance with ~~licensee~~ rules and regulations of governing the residential facility ~~in question~~.

~~(N)~~ (2) The director ~~or his/her designee~~, upon receipt of written information from the county board or any other reliable source indicating that the circumstances which led to the ~~emergency~~ immediate removal no longer exist, and with the consent of the individual ~~or parent of a minor child or guardian, as applicable~~, may permit the individual resident to return to the residential facility. ~~(O)~~ The director ~~or his/her designee~~ shall notify the county board and the ~~ombudsman section of Ohio legal rights service~~ disability rights Ohio when ~~an individual(s) a resident~~ returns to the residential facility following an ~~emergency~~ immediate removal.

~~(P)~~ (3) When the licensee operator is the county board or when there are circumstances that are determined by the department to potentially present a conflict of incentives, the department may conduct the investigation outlined in this rule, or may request that an investigation be conducted by another county board, a council of governments, or any other entity authorized to conduct such investigations.

(F) Actions by operator

~~(Q)~~ (1) Notwithstanding the provisions of this rule, the licensee operator may initiate ~~the discharge of~~ termination of services for an individual in accordance with the provisions of rule 5123:2-3-05 [Admission, Termination of Services, and Transfer] of the Administrative Code.

~~(R)~~ (6) The licensee operator shall not fill the vacancy created by the ~~emergency~~ immediate removal ~~of the individual~~ until it has transferred ~~or discharged~~ the individual or effected a termination of services in accordance with rule 5123:2-3-05 [Admission, Termination of Services, and Transfer] of the Administrative Code.

(G) Process for removing a resident when the individual does not consent

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When conditions at a residential facility present an immediate danger of physical or psychological harm and the individual does not consent to removal, the process for removing the resident shall be carried out in accordance with sections 5126.30 to 5126.333 of the Revised Code.

***** Proposed Amendments *****

5123:2-3-26 5123:2-3-08 Licensed residential facilities - Development of licensed residential beds.

(A) Purpose

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

(B) Definitions

- (1) "Adult" means an individual age eighteen and older.
- (4) (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 under age eighteen.
- (4) "County board" means a county board of developmental disabilities.
- (2) (5) "Development" means an applicant's plan for the operation of a licensed residential facility including a plan for modification ~~or replacement~~ and which is subject to approval of the department.
- (3) ~~"Intermediate care facility for individuals with intellectual disabilities" (or "intermediate care facility") means an intermediate care facility for the mentally retarded certified as in compliance with applicable standards for the medicaid program by the director of health in accordance with Title XIX of the Social Security Act, 79 Stat. 286 (1965), 42 U.S.C. 1396.~~
- (6) "Intermediate care facility" means an intermediate care facility for individuals with intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative Code.
- (4) (7) "Licensed bed" means a bed in a residential facility licensed by the department pursuant to section 5123.19 of the Revised Code.
- (5) (8) "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.
- (6) (9) "Modification" means:

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- (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; or
- (f) A change in the type or source of funding of a licensed residential facility; or .
- ~~(g) Transition of an intermediate care facility from licensure by the Ohio department of health to licensure by the department.~~

~~(7) "Replacement" means assigning licensed beds to a different licensee when a license is revoked, terminated, or not renewed by the department or is voluntarily surrendered by a licensee and the department determines that the beds are needed to provide services to individuals who resided in the residential facility in which the beds were located.~~

(C) Moratorium on licensed beds

- (1) The department shall maintain a written record of the maximum number of licensed beds that are permitted in accordance with division (D) of section 5123.196 of the Revised Code.
- (2) The department shall not approve a proposal for the development of licensed beds or issue a license under section 5123.19 of the Revised Code if the approval or issuance will cause the number of licensed beds to exceed the number of licensed beds permitted by section 5123.196 of the Revised Code.

(D) General principles

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

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- (4) The number of licensed beds in a residential facility that is not an intermediate care facility shall not exceed four.
- (5) Licensed residential facilities shall not exist on adjoining property sites.
- (6) No more than one distinct and separate physical structure may be licensed on the same property site.
- (7) Notwithstanding paragraph (D)(6) of this rule, 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 ~~only when no other person or government agency desiring to operate the residential facility is qualified.~~

(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. [5123:2-3-11 (C)(3)]
- (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 the Ohio building code, the Ohio sanitary code, the Ohio fire code, and any county or municipal building, safety, and fire regulations or codes. [5123:2-3-10 (B)(1)]
- (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. [5123:2-3-10 (B)(2)]
- (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. [5123:2-3-10 (B)(3)]

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- (6) All bathrooms and plumbing fixtures shall be in compliance with applicable state and local regulations, rules, codes, and ordinances. [5123:2-3-10 (B)(4)]
- (7) Only lead-free paints and finishes shall be used in the residential facility. [5123:2-3-10 (B)(5)]
- (8) If the residential facility serves children age six and under who are ambulatory, the outside play area shall be enclosed by a fence with a height sufficient to prevent egress from the area. [5123:2-3-10 (B)(6)]
- (9) Swimming pools shall meet local and state requirements regarding construction, operation, and sanitation. [5123:2-3-10 (B)(7)]
- (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. [5123:2-3-10 (E)(2)(d)]
- (11) The residential facility's address number shall be clearly visible from the street. [5123:2-3-10 (E)(2)(g)]
- (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. [5123:2-3-10 (H)]
- (13) The licensee shall not erect any sign which labels the functions of the residential facility or the individuals who reside therein. [5123:2-3-10 (I)]
- (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. [5123:2-3-10 (J)]

(F) Space requirements and usage

(1) Living area

- (a) The residential facility shall have a minimum total of eighty square feet of living area for each individual. [5123:2-3-10 (D)(1)(a)]
- (b) Living areas shall not include bedrooms, bathrooms, laundry rooms, closets, hallways, garages, and unfinished basements. [5123:2-3-10 (D)(1)(b)]
- (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. [5123:2-3-10 (D)(1)(c)]

(2) Bedrooms

- (a) Each bedroom occupied by one individual shall have a minimum total of eighty square feet. [5123:2-3-10 (D)(2)(a)]
- (b) Each bedroom occupied by more than one individual shall have a minimum total of sixty square feet of floor space for each individual. [5123:2-3-10 (D)(2)(b)]
- (c) No bedroom may be occupied by more than two individuals. [5123:2-3-10 (D)(2)(c)]
- (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 the window. The room must have a window through which the individual using the room can safely evacuate. [5123:2-3-10 (D)(2)(e)]
- (e) Living rooms, dining rooms, entryways, closets, corridors, outside porches, unfinished attics, and unfinished basements shall not be used as bedrooms. [5123:2-3-10 (D)(2)(f)]
- (f) Each bedroom shall be adequately ventilated and shall have at least one outside window complete with a window treatment to provide adequate privacy for the individual. [5123:2-3-10 (D)(2)(g)]
- (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. [5123:2-3-10 (D)(2)(h)]
- (h) Bedrooms shall not be used as throughways to and from other areas of the residential facility. [5123:2-3-10 (D)(2)(i)]

(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. [5123:2-3-10 (D)(3)(a)]
- (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 recognized as counter and appliance space necessary for the normal preparation of meals. [5123:2-3-10 (D)(3)(b)]

(4) Bathroom and laundry

- (a) The residential facility shall provide for toilet and bathing facilities at a minimum ratio of to , appropriate in size, and design to meet the needs of the

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individuals. Toilet and bathing facilities shall be provided on each floor with bedrooms. [5123:2-3-10 (D)(4)(a)]

(b) The residential facility shall provide for individual privacy in toilets, bathtubs, and showers. [5123:2-3-10 (D)(4)(b)]

(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. [5123:2-3-10 (D)(4)(c)]

(d) Laundry services shall be accessible to the individuals of the residential facility and adequate to meet their needs. [5123:2-3-10 (D)(4)(d)]

(G) Renovations

(1) When the licensee proposes to make renovations to a facility, including renovations that are 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 prior to its intent to begin such renovation. [5123:2-3-02 (G)(1)]

(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 renovations. [5123:2-3-02 (G)(2)]

(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 renovations. [5123:2-3-02 (G)(3)] 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.

~~(E)~~ (H) 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;

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- (7) For licensed beds in a residential facility that is not an intermediate care facility, 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.

~~(F)~~ (I) Development proposal process

- (1) The applicant shall submit a development proposal to the department in writing. 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 division (Z) of section 5111.20 of the Revised Code to the owner or operator of the facility;
 - (b) Describe the modification ~~or replacement~~ accurately and completely; and
 - (c) Include an explanation if a modification is sought under paragraph ~~(B)(6)(e), (B)(6)(d), (B)(6)(e), or (B)(6)(f)~~ (B)(9)(c), (B)(9)(d), (B)(9)(e), or (B)(9)(f) of this rule.
- (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) When a license is revoked, terminated, or not renewed by the department or is voluntarily surrendered by a licensee and the department determines that the beds are needed to provide services to individuals who resided in the residential facility in which the beds were located, the department may authorize the county board of the county where the replacement beds are located to develop a request for proposal for the purpose of recommending a licensee. [Moved to paragraph (N) of Compliance Reviews, Issuance of Licenses, and Sanctions rule.]~~

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- ~~(a)~~ The department shall establish and make available the format, procedure, timelines, and criteria for evaluation for the request for proposal process to be used by a county board.
 - ~~(b)~~ The county board shall solicit proposals from any interested applicants and shall ensure all interested applicants are afforded an equal opportunity to respond to the request for proposal. Written notice shall be provided to the general public and to all interested licensees as prescribed by the department.
 - ~~(c)~~ The county board shall submit all proposals and its recommendation to the department within ten days after completing its review of the proposals.
 - ~~(d)~~ The department shall consider the county board's recommendation and shall notify in writing, the county board and all applicants of its decision within thirty days after receiving the county board's recommendation. The department shall provide each applicant its rationale in selecting or choosing not to select a particular licensee.
- ~~(5)~~ (4) A person or government agency desiring to operate a residential facility shall, upon obtaining development approval pursuant to this rule and establishing the facility, apply for a license in accordance with rule 5123:2-3-02 of the Administrative Code a manner prescribed by the department no less than thirty days prior to the date of the planned opening of the facility.
- ~~(6)~~ (5) A person or government agency submitting a development proposal to place a licensed bed on hold for future development shall have three hundred sixty-five days from the date of approval of the development proposal to apply for a license for the residential facility in accordance with rule 5123:2-3-02 of the Administrative Code a manner prescribed by the department no less than thirty days prior to the date of the planned opening of the facility. [5123:2-3-02 (F)(1)]
- ~~(7)~~ (6) The applicant may appeal the decision of the department regarding a development proposal in accordance with rule 5123:2-17-01 of the Administrative Code.
- ~~(G)~~ (J) Waiving provisions of this rule
- The provisions of this rule may be waived pursuant to rule ~~5123:2-3-15~~ 5123:2-3-10 [Procedures to Waive Rule Requirements] of the Administrative Code.

***** Proposed Amendments *****

5123:2-19-01 5123:2-3-09 Licensed residential facilities - Standards for evaluating applicants as potential receivers of residential facilities.

(A) Purpose

The purpose of this rule is to establish standards for evaluating ~~persons (applicants) desiring to be included on a list of~~ potential receivers of residential facilities.

(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. [Wording from section 5123.191 of the Revised Code.]

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

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

~~An applicant~~ 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 under section 5123.19 of the Revised Code.

~~(C)~~ (D) Standards for evaluating potential receivers

~~The applicant shall submit an application developed by the department in order to be considered as a potential receiver. Factors~~ The standards to be considered by the department for evaluating ~~and selecting applicants~~ persons to be included on a list of potential receivers shall include, but are not limited to:

(1) Substantial compliance with ~~licensure~~ requirements for previous or existing residential facilities operated by the applicant potential receiver over the past five years under any corporate name.

(2) Involvement of one or more principals of the ~~applicant~~ potential receiver in prior licensure revocation, receivership, ~~emergency~~ immediate removal, or suspension of admissions.

(3) Fiscal solvency of the ~~applicant~~ potential receiver.

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- ~~(4) Substantiated complaints filed with the ombudsman in accordance with sections 5123.601 to 5123.604 of the Revised Code that are related to the applicant. [Statute was repealed; Ombudsman no longer exists.]~~
- ~~(5)~~ (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 ~~applicant~~ potential receiver.
- ~~(6)~~ (5) ~~A description of the~~ The experience of the ~~applicant~~ potential receiver in the provision of services to individuals with developmental disabilities. ~~This description shall include, but is not limited to~~ including, but not limited to:
- (a) Characteristics of individuals served;
 - (b) Geographic areas served ~~by the applicant~~;
 - (c) Number of individuals served;
 - (d) Specialized services offered ~~by the applicant~~; and
 - (e) A table of organization that identifies key employees or positions and their qualifications.
- ~~(D) The applicant shall request a written recommendation from a county board of mental retardation and developmental disabilities and/or a council of governments where the applicant provides services. The refusal of a county board and/or council of governments to provide a recommendation to the applicant shall not be the sole basis for the department to deny the application.~~
- ~~(E) The department shall inform the applicant whether it will be included on the list of potential receivers within sixty calendar days of the date the application is received by the department and the reason(s) for the denial of an application.~~
- ~~(F) If the application is denied, the applicant may appeal to the director or the director's designee within fifteen calendar days following the date of the applicant's notification.~~
- ~~(G) The director or the director's designee shall make a determination of the appeal within fifteen calendar days of the date the appeal is received by the department. The determination of the director or the director's designee is final.~~
- ~~(H) When a facility is subject to receivership in accordance with section 5123.191 of the Revised Code, the department shall assist the court in identifying a receiver by providing the court with the list of approved applicants established by the department in accordance with this rule.~~

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- ~~(I) The department shall accept applications to be included on the list of potential receivers at any time and shall make the list available to anyone who requests it. The department shall re-evaluate potential receivers for compliance with paragraph (C) of this rule prior to providing the list to the court.~~

***** Proposed Amendments *****

~~5123:2-3-15~~ 5123:2-3-10 Licensed residential facilities - Procedures to waive licensure 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.
- (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.