

TO BE RESCINDED

5123:2-3-02 Licensure application, issuance, survey, renewal, and sanction procedures.**(A) Purpose**

The purpose of this rule is to outline the process and requirements for an initial and renewal license application, the licensure survey process and the imposition of sanctions for a residential facility.

(B) Definitions

(1) “Renovation” means a permanent change in the physical structure of a licensed 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.

(2) “Placement of a monitor” means twenty-four-hour per day, or whenever an individual is in the facility, on-site monitoring of a residential facility provided or arranged by the department in order to verify compliance with Chapter 5123. of the Revised Code or rules adopted under that chapter.

(C) The license to operate a residential facility is not transferable and is valid only for the licensee, the premises named on the license, and for the number of individuals specified on the license.

(D) If a licensee proposes to change the location, the licensed capacity and /or the owner or management contractor of the residential facility, the licensee shall follow the requirements outlined in rule 5123:2-16-01 of the Administrative Code.

(E) The director shall initiate disciplinary action against any department employee who notifies or causes the notification to any unauthorized person of an unannounced inspection of a residential facility by the department.

(F) Initial and renewal license application

(1) Following development approval in accordance with rule 5123:2-16-01 of the Administrative Code, each person or government agency who wishes to operate a residential facility shall submit an application for a license, on forms prescribed by the department, to the licensure office not less than thirty days prior to the date of the planned opening of the facility.

(2) The licensee of the residential facility shall submit floor plans at the time of

initial application.

- (3) When the license application is made for the purpose of obtaining an initial license or for the relocation of an existing license to another location, the department shall conduct a survey of each residential facility for which such application has been made prior to issuing a license. The survey shall be completed within twenty days after the application is received by the licensure office.
- (4) The licensee shall arrange for and permit appropriate inspections of the residential facility by all authorized agencies before a license is issued and shall be responsible for payment of all fees charged for inspections required for licensure. Reports of approved inspections shall be filed with the licensure office prior to issuance of a license verifying that the residential facility has passed:
 - (a) A building safety inspection by a local building inspector or the Ohio division of factory and building if the residential facility serves six or more individuals is required for initial licensure;
 - (b) A fire safety inspection by a local fire department, state fire marshal or person certified by the state fire marshal's office;
 - (c) A sanitation inspection by the Ohio department of health or by a county or municipal health department if the residential facility is not served by a public water or sewage system; and
 - (d) A heating and wiring inspection in lieu of the building inspection by a certified electrician or bona fide heating company if the residential facility serves five or less individuals is required only for initial licensure.
- (5) No license will be issued until all required inspections, applications and fees have been submitted by the applicant or licensee, as applicable, and have been reviewed and approved by the department.

(G) Renovations

- (1) When the licensee proposes to make renovations to a facility, the licensee shall notify the department in writing no less than thirty days prior to its intent to begin such renovation.

- (2) The licensee shall provide any information required by the department in order for the department to determine whether new inspections and/or a licensure survey is required following the renovations.
- (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 survey is required following the renovations.

(H) Denial of license

- (1) An application for a license shall be denied if it is determined that the licensee cannot meet the requirements of Chapter 5123. of the Revised Code or rules adopted under that chapter.
- (2) 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 denial and offering the licensee a hearing on the denial 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.

(I) Survey(s)

- (1) Initial and renewal
 - (a) The department shall conduct a survey of a residential facility at least once during the term of the license and may conduct additional surveys as determined by the department. In conducting surveys, the department shall be given access to the residential facility; all records, accounts, and any other documents related to the operation of the facility; the licensee; the individuals residing in the facility; and all persons acting on behalf of, under the control of, or in connection with the licensee. The licensee and all persons acting on behalf of, under the control of, or in connection with the licensee shall cooperate with the department in conducting the survey.
 - (b) The survey may be unannounced or announced. Surveys shall be generally conducted at times when the individuals are present in the residential facility.
 - (c) The survey shall consist of a series of observations, interviews, and review of records to determine if the interactions, activities, practices, and

conditions within the residential facility are consistent with Chapter 5123. of the Revised Code and rules adopted under that chapter. The survey shall be conducted in accordance with procedures developed by the department and will determine the term of the licensee's subsequent license by utilizing the licensure survey tool as defined in rule 5123:2-3-03 of the Administrative Code.

(2) Special surveys

The department may conduct a survey of a residential facility in response to a complaint, a major unusual incident, or any situation where there is reason to believe that the facility is not being operated in compliance with Chapter 5123. of the Revised Code or rules adopted under that chapter.

(J) Survey report issuance

- (1) Following the survey and prior to issuing deficiencies, 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 the exit interview, the administrator or his or her designee shall be provided an opportunity to respond to any potential deficiencies identified by the department. Information not made available to the licensure surveyor by the conclusion of the exit conference may result in the issuance of a deficiency.
- (2) Following each exit interview, unless the director initiates a license revocation proceeding, a report shall be provided to the licensee listing any deficiencies, specifying a timetable within which the licensee shall submit a plan of correction describing how the deficiencies will be corrected, and, when appropriate, specifying a timetable within which the licensee must correct the deficiencies. The report shall be provided to the licensee no later than twenty working days following the exit interview and shall be made available to any person who requests it in accordance with applicable statute and regulations regarding individual confidentiality.
- (3) Any licensee who has received the report listing any deficiencies shall submit a plan to correct the deficiencies to the licensure office within the timetable specified in the report. After a plan of correction is submitted, the department shall approve or disapprove the plan. If the plan of compliance 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.

- (4) If the plan of correction is not approved, the department shall so notify the licensee and shall assist the licensee in submitting an acceptable plan of compliance.
 - (5) A copy of the approved plan of correction shall be provided to any person who requests it in accordance with applicable statute and regulations regarding individual confidentiality.
 - (6) A licensee may appeal the determination that a deficiency exists by submitting a written statement with supporting documentation to the licensure office within thirty days of receipt of the report. A determination on the appeal shall be made in writing by the licensure office within thirty days of receipt of the appeal. The licensee may file a written appeal to the appropriate deputy director within fourteen days after the date of the determination by the licensure office. The decision of the deputy director shall be the final administrative appeal within the department.
 - (7) The license shall be issued by the director within twenty days following the determination by the licensure office that compliance with all requirements has been met, an approved plan of correction has been received, and/or compliance with specific requirements has been waived.
- (K) The license of a licensee shall remain valid until an expiration date is established in accordance with rule 5123:2-3-03 of the Administrative Code unless the license is terminated, revoked or voluntarily surrendered.
- (L) Notwithstanding the term of a license issued in accordance with this rule, the department shall send any required annual inspection form(s) to the licensee no later than ninety days prior to the inspection's due date. The licensee shall submit an approved fire inspection and any other applicable inspections as described in paragraph (F)(4) of this rule to the department no later than the due date indicated on the inspection form.
- (M) The director may issue an interim license to operate a residential facility in accordance with rule 5123:2-3-23 of the Administrative Code.
- (N) When two or more buildings are adjacent to each other and constitute a single operation, such buildings may be operated under a single license as one residential facility.
- (O) The license shall be maintained in the residential facility and shown to anyone upon request.

(P) Any nursing home that contained beds that the Ohio department of health had certified prior to June 30, 1987 as intermediate care facility for the mentally retarded (ICF/MR) beds under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended is not required to be licensed by the department.

(Q) 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 deficiencies that prompted the proceedings have been corrected at the time of the hearing.

(2) If it is determined that a residential facility is not being operated in accordance with Chapter 5123. of the Revised Code or rules adopted under that chapter, the director may take any of the following actions:

(a) Suspensions of admissions to the residential facility in accordance with paragraph (Q)(3) of this rule;

(b) Placement of a monitor at the residential facility in accordance with paragraph (Q)(4) of this rule;

(c) Non-renewal of the license in accordance with paragraph (Q)(5) of this rule;

(d) Initiation of licensure revocation in accordance with paragraph (Q)(6) of this rule.

(3) Suspension of admission

(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

(b) When a suspension of admission is ordered before providing an opportunity for an adjudication pursuant to Chapter 119. of the Revised Code, the following shall apply:

(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 deficiency that formed the basis for the order has been corrected.
- (c) A copy of the order suspending admissions to a facility shall be sent to the county board where the residential facility is located.
- (d) The licensee subject to the suspension of admissions shall send written notice 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, 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, parent or guardian can obtain additional information regarding the suspension. The licensee shall send a copy of the notice to the department upon request.

(4) Placement of a monitor

- (a) When the director places a monitor in a residential facility, the department shall notify the county board where the facility is located.
- (b) The licensee subject to the monitoring shall send written notice 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, within three working days of its notification from the department that a monitor has been placed in the facility. The notice shall contain information regarding the reason for the monitoring and how the individual, parent or guardian can obtain additional information regarding the monitoring. The licensee shall send a copy of the notice to the department upon request.

(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 Chapter 5123. of the Revised Code or rules adopted under that chapter as reflected in the licensure survey tool as defined in rule 5123:2-3-03 of the Administrative Code.
- (b) If such a determination is made, a letter shall be sent by the department to the licensee by certified mail, return receipt requested, within twenty days of the survey. The letter shall list the deficiencies identified during the survey and shall inform the licensee of the process of reconsideration. A copy of the letter shall be sent to the county board where the facility is located and to the Ohio department of job and family services and the Ohio department of health if the facility is an ICF/MR.
- (c) The licensee shall have twenty 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 compliance that includes actions the licensee will take and timelines.
- (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 compliance and determine if it is acceptable. If the plan of compliance 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 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.

- (e) If the plan of compliance is approved, the department shall conduct a survey to verify the plan of compliance 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 Chapter 5123. of the Revised Code and rules adopted under that chapter.
- (f) Within twenty days following the department's plan of compliance survey, 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.
 - (i) If the director determines the licensee has come into substantial compliance with Chapter 5123. of the Revised Code and rules adopted under that chapter, the licensee will be issued a one-year license.
 - (ii) If the director determines the licensee remains in substantial non-compliance with Chapter 5123. of the Revised Code and rules adopted under that chapter, 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 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 health and the Ohio department of job and family services if the facility is certified as an ICF/MR. 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 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 job and family services if the facility is certified as an ICF/MR. The director shall arrange that a letter 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.
- (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 health and the Ohio department of job and family services if the facility is certified as an ICF/MR. The director shall arrange that a letter 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.

(6) License revocation

- (a) When the director initiates license revocation proceedings, no opportunity for submitting a plan of correction shall be given.
- (b) The director may initiate licensure revocation proceedings when he or she determines that the residential facility is not being operated in compliance with Chapter 5123. of the Revised Code or rules adopted under that chapter.
- (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 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.
- (d) When the director initiates license revocation proceedings, the director shall notify in writing each individual served in the residential facility, the individual's guardian if the individual is an adult for whom a guardian has been appointed, the individual's parent or guardian if the individual is a minor, the county board in which the residential facility is located and to the Ohio department of job and family services and the Ohio department of health if the residential facility is certified as an ICF/MR.
- (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.

(R) Termination of license

- (1) The director may terminate a license if more than twelve consecutive months have elapsed since the residential facility was last occupied by an individual or a when the licensee failed to provide notice of any significant change in the identity of the licensee or management contractor in accordance with rule 5123:2-16-01 of the Administrative Code.
- (2) If such a determination is made, the department shall send a letter to the licensee by certified mail, return receipt requested, offering the licensee a hearing on the termination 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.

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