

TO BE RESCINDED

5123:2-3-05 **Admission, discharge, and transfer.**

(A) Purpose

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

(B) Definitions

- (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.
- (3) "Transfer" means a temporary or permanent movement of an individual between facilities under the jurisdiction of the provider.

(C) Admission policies

- (1) The provider shall only admit individuals whose service needs can be met.
- (2) Admission to a residential facility is voluntary, requiring consent by the individual, parent of a minor child, or guardian.
- (3) A provider 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 physical, mental, or behavioral disabilities to the extent required by law unless the provider can demonstrate that the accommodation would impose an undue hardship on the operation of the program including an unreasonable risk of harm to individuals or staff in the residential facility.
- (4) If a vacancy exists, the provider shall determine if the individual meets the 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 by both the applicant and the provider.
 - (a) When the referring agency is the county board, referral information shall be provided to the provider 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 to determine if it can provide for the individual's needs without creating an unreasonable risk of harm to individuals or staff in the residential facility. The referring entity shall not knowingly withhold information relevant to the admission of the individual.
- (c) When admitting an individual, the provider shall consider its ability to maintain an adequate level of services to all individuals residing in the facility.
- (5) The provider 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 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.
- (8) If a vacancy exists, and the applicant requests an appeal, the provider shall not fill the vacancy until the hearing decision is rendered.

(D) Discharge and transfer policies

- (1) The facility must allow each individual to remain in the facility and must not discharge or transfer the individual from the facility unless:

- (a) The transfer or discharge is necessary for the individual's welfare and the individual's needs can no longer be met without imposing an undue hardship on the operation of the residential facility;
 - (b) The individual no longer needs or wants the services provided by the facility or chooses to transfer within the agency;
 - (c) The individual is creating an unreasonable risk of harm to himself/herself, other individuals, or staff in the residential facility;
 - (d) Nonpayment for the stay in the facility, including nonpayment of medicaid or other third party payer; or
 - (e) The facility ceases to operate.
- (2) A provider 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 physical, mental, or behavioral disabilities to the extent required by law unless the provider can demonstrate that the accommodation would impose an undue hardship on the operation of the program including an unreasonable risk of harm to individuals or staff in the residential facility.
- (3) Before a facility transfers or discharges an individual, the facility must:
- (a) Notify the individual, parent of a minor child, or guardian, and the county board of the transfer or discharge and the reasons for the move in writing;
 - (b) Explain the transfer or discharge 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; and
 - (c) Record the reasons for the transfer or discharge in the individual's record.
- (4) The notice of discharge or transfer must be made at least thirty calendar days before the discharge or transfer, except when an emergency exists. If at any time prior to the expiration of the thirty-day period the provider determines that the conditions that constituted the emergency no longer exist, the individual may then return to the 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) If an individual, parent of a minor child, guardian, or advocate requests a discharge or transfer hearing, the facility must maintain services or the availability of services until a decision is rendered after the hearing unless an emergency exists.

(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 admission, transfer, or discharge notice.
- (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.
- (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.

(F) Mediation process

- (1) The individual, parent of a minor child, guardian, and/or advocate, and the provider shall attend a mediation meeting to try to attain resolution prior to the scheduled admission, discharge, 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 within fifteen calendar days of receipt of the appeal. The hearing shall be scheduled within fifteen calendar days of the mediation. Timelines may be extended if mutually agreed upon by all parties.
- (4) Unless all parties agree 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 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 paragraph (C)(4) or (C)(5) of this rule; or
 - (b) Any individual who has received a discharge 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;

- (b) Neither the individual nor any representative for the individual is present at 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 shall have the opportunity to present evidence at the hearing. Both the individual and the provider may have legal representation.
 - (6) The burden of proof shall be on the provider to show that the admission, discharge, 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 by both parties.

(H) Sanctions

If a provider 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 facility pursuant to section 5123.19 of the Revised Code and in accordance with the procedures set forth in rule 5123:2-3-02 of the Administrative Code; or

(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 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.

Effective:

Five Year Review (FYR) Dates: 11/06/2015

Certification

Date

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