

***** Proposed New Rule - October 5, 2016 *****

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

(A) Purpose

This rule establishes a process by which the director may order the immediate removal of a resident of a residential facility licensed in accordance with section 5123.19 of the Revised Code.

(B) Definitions

- (1) "Compliance review" has the same meaning as in rule 5123:2-3-06 of the Administrative Code.
- (2) "County board" means a county board of developmental disabilities.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Director" means the director of the Ohio department of developmental disabilities or his or her designee.
- (5) "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; and
 - (b) All other available interventions have proved ineffective or infeasible.
- (6) "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.
- (7) "Individual plan" or "individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (8) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.
- (9) "Major unusual incident" has the same meaning as in rule 5123:2-17-02 of the Administrative Code.
- (10) "Operator" means the licensee or an entity with which the licensee has established a contract for the management of and provision of services at the residential facility.
- (11) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

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(C) Establishing grounds for immediate removal

- (1) When a county board, on the basis of its investigation of a major unusual incident, determines that the physical or psychological health or safety of a resident of a residential facility is in immediate danger, the county board shall contact the director to request immediate removal. The request shall include a description of the major unusual incident and/or circumstances which led to the conditions at the residential facility presenting an immediate danger of physical or psychological harm to the resident.
- (2) Upon receipt of an allegation that the physical or psychological health or safety of a resident of a residential facility is in danger, the department may investigate or request a county board to investigate the allegation.
- (3) When a county board requests immediate removal in accordance with paragraph (C)(1) of this rule, or when the department becomes aware of an allegation that the physical or psychological health or safety of a resident of a residential facility is in immediate danger from any other source (e.g., an individual, a compliance review, or the media), the director shall determine whether the resident shall be removed from the residential facility based upon information obtained by the department which may be provided by the county board or any other source including the operator if, in the opinion of the director, such communication with the operator does not threaten the health or safety of the resident.
- (4) When the director determines that conditions at the residential facility present an immediate danger of physical or psychological harm to the resident and all other available interventions have proved ineffective or infeasible, he or she shall issue an order for immediate removal and notify:
 - (a) The county board;
 - (b) Disability rights Ohio;
 - (c) The operator if, in the opinion of the director, the act of notification does not threaten the health or safety of the resident; and
 - (d) The individual if, in the opinion of the director, the act of notification does not threaten the health or safety of the resident.

(D) Effecting immediate removal

- (1) After the county board receives an order for immediate removal issued by the director, the county board shall attempt to notify the individual prior to the actual immediate removal if the department has not already done so.

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- (2) The county board shall be responsible for removing the resident and for arranging transportation, placement, and services in the least restrictive alternative available. The county board shall assist the individual to secure long-term housing. The county board shall ensure implementation of all components of the individual plan or individual service plan, as applicable. The department shall assist in facilitating placements into the least restrictive alternative available.

(E) Additional actions by director or department

- (1) The department may initiate suspension of admissions or revocation of the residential facility's license in accordance with rule 5123:2-3-06 of the Administrative Code when a resident has been subject to immediate removal pursuant to this rule.
- (2) The director, upon receipt of written information from the county board or any other reliable source indicating that the circumstances which led to the immediate removal no longer exist, may permit the resident to return to the residential facility. The director shall notify the county board and disability rights Ohio when a resident returns to the residential facility following an immediate removal.
- (3) When the licensee is a county board or when there are circumstances that are determined by the department to potentially present a conflict of interest, the department may investigate allegations that the physical or psychological health or safety of a resident of a residential facility is in immediate danger 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) Transfer or termination of services

When a resident has been subject to immediate removal in accordance with this rule, the operator may initiate a transfer or termination of services in accordance with rule 5123:2-3-05 of the Administrative Code. The operator shall not fill a vacancy created by immediate removal of a resident until a transfer or termination of services has been effected in accordance with rule 5123:2-3-05 of the Administrative Code.