

5123:2-3-16 **Emergency removal of ~~an individual(s)~~ individuals from a residential facility.**

- (A) 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 a process by which the director or his/her designee may order the emergency removal of an individual(s) being served in a residential facility.
- (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).
- (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.
- (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 ~~section 5126.33~~ sections 5126.30 to 5126.333 of the Revised Code.
- (E) Upon receipt of allegations that the physical or psychological health or safety of an individual(s) is in danger, 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) When an allegation, as described in paragraph (E) 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) 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, in a manner reasonably expected to be understood.
- (H) 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). The request shall include a 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). The county 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 contact with the director or his/her designee.

- (I) The director or his/her designee shall determine whether the individual(s) shall be removed from the residential facility based upon information received from the county board, the department, and any other sources including the licensee if, in the opinion of the director, such communication with the licensee does not threaten the health or safety of the individual(s) and shall inform the county board of that determination. The director or his/her designee shall notify the ombudsman section of Ohio legal rights service in accordance with section 5123.604 of the Revised Code of any action being considered pursuant to this rule. The director or his/her designee shall notify the licensee of any action being taken to remove the individual(s) if, in the opinion of the director or his/her designee, the act of notification does not threaten the health and safety of the individual(s).
- (J) The county board shall be responsible for removing the individual(s) 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 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.
- (L) When written consent for the removal has been obtained, the county board shall attempt to notify the parent of a minor child or guardian of the individual, as appropriate, prior to the actual removal of an individual. If such notice is not made prior to the actual removal, it shall be made as soon as practicable after the removal.
- (M) The department may initiate the revocation of the facility's license under rule ~~5123:2-3-03~~ 5123:2-3-02 of the Administrative Code when an individual(s) has been removed 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) The overall health, safety, and welfare of the individuals residing in the residential facility;
 - (2) Any negligence on the part of the licensee which contributed to or caused the emergency removal;
 - (3) Historical, documented, and substantial non-compliance with licensure rules and regulations of the residential facility in question.
- (N) 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 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 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 when an individual(s) returns to the facility following an emergency removal.
- (P) When the licensee 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 ~~government~~ governments, or any other entity authorized to conduct such investigations.
- (Q) Notwithstanding the provisions of this rule, the licensee may initiate the discharge of an individual in accordance with the provisions of rule 5123:2-3-05 of the Administrative Code.
- (R) The licensee shall not fill the vacancy created by the emergency removal of the individual until it has transferred or discharged the individual in accordance with rule 5123: 2-3-05 of the Administrative Code.

Replaces: Former 5123:2-1-13.
Effective: 07/01/2007.
R.C. 119.032 review dates: 11/14/2006 and 07/01/2012

CERTIFIED ELECTRONICALLY.

Certification

05/29/2007.

Date

Promulgated Under: 119.03.
Statutory Authority: 5123.04, 5123.19.
Rule Amplifies: 5123.04, 5123.19.
Prior Effective Dates: 12/09/1988, 09/20/2001.