

5123:2-3-26

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 obtaining development approval in accordance with this rule.

(B) Definitions

- (1) "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.
- (2) "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 by 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.
- (4) "Licensed bed" means a bed in a residential facility licensed by the department pursuant to section 5123.19 of the Revised Code.
- (5) "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) "Modification" means:
 - (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;
- (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.
- (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 assume ownership of a residential facility only when no other person or government agency desiring to operate the residential facility is qualified.

(E) 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;

(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) 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)(c), (B)(6)(d), (B)(6)(e), or (B)(6)(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.

 - (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) 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 for the residential facility in accordance with

rule 5123:2-3-02 of the Administrative Code.

(6) 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.

(7) 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) The provisions of this rule may be waived pursuant to rule 5123:2-3-15 of the Administrative Code.

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CERTIFIED ELECTRONICALLY

Certification

11/02/2012

Date

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