

5122:1-3-02 **Department withholding funds.**

(A) The Ohio department of mental health and addiction services (OhioMHAS) may withhold all or part of the state and federal funds allocated or granted by the department to a board of alcohol, drug addiction, and mental health services for any of the following:

- (1) The failure to comply with Chapter 340. or section 5119.22, 5119.24, 5119.36, or 5119.371 of the Revised Code.
- (2) The board denies available service on the basis of race, color, religion, creed, sex, age, national origin, disability as defined in section 4112.01 of the Revised Code, or developmental disability.
- (3) The failure of the board to comply with rules adopted by OhioMHAS.

In accordance with this rule, the director shall withhold funds from a board when required to do so by division (A)(4) of section 340.08 of the Revised Code or division (G)(1) of section 5119.22 of the Revised Code

(B) If a board is in violation of any of the provisions of paragraph (A) of this rule, the director of OhioMHAS, or the director's designee, shall give the board written notice of the intent to withhold funds by certified mail, return receipt requested. A copy of the notice shall be mailed to the attorney or other representative of record representing the board. The notice shall:

- (1) Identify the areas of noncompliance and the action necessary to achieve compliance and shall offer technical assistance to the board to assist it in achieving compliance;
- (2) Contain a statement informing the board that within thirty days from receipt of the notice of noncompliance it shall either:
 - (a) Present its position that it is in compliance; or,
 - (b) Submit evidence of corrective action the board took to achieve compliance.

(C) After receiving the board's position or evidence, the director of OhioMHAS, or the director's designee, shall before withholding funds hold a hearing to determine if there are continuing violations and that assistance is rejected or the board is unable, or had failed, to achieve compliance.

- (1) The director, or director's designee, shall set the date, time and place for the hearing within thirty days after receipt of the board's position or evidence. A copy of the hearing notice shall be mailed by certified mail, return receipt requested, to the board's representative or its attorney and to the board.
- (2) The hearing notice shall contain a statement that at the hearing, the board's representative may appear in person or be represented by its attorney or may present its position, arguments or comments in writing and at the hearing it may present evidence and examine witnesses appearing for and against it.

(D) OhioMHAS shall conduct the adjudication hearing following the procedures in section 119.09 of the Revised Code and among other things may appoint a referee or hearing examiner to conduct the proceedings and make recommendations as appropriate. The referee or hearing examiner shall make the appropriate recommendation within 30 days upon completion of the hearing.

(E) During any hearing procedure conducted under this rule, the funds the department intends to withhold will continue to be disbursed until such time as the referee or hearing examiner makes their recommendation and the director, or director's designee, approves, modifies, or disapproves the recommendation.

(F) The director may appoint a mentor as an alternative to withholding funds as set forth in division (C) of section 5119.25 of the Revised Code.

(G) OhioMHAS shall provide the board and the board's representative or its attorney, a certified copy of its decision by certified mail, return receipt requested.

(H) If the director's, or director's designee's, decision after the hearing is to withhold funding, the certified copy of the decision shall contain notice of the board's right to appeal and file its notice of appeal of the decision within fifteen days of the receipt of the notice of the department's decision.

(I) If the board decides to appeal director's, or director's designee's, decision, the board shall appeal the decision following the procedures in section 119.12 of the Revised Code.