

# **\*\*\*TO BE RESCINDED\*\*\***

## **5122-33-01 Definitions.**

As used in this chapter:

- (A) "Accommodations" means housing, meal preparation, laundry, housekeeping, transportation, social or recreational activities, maintenance, security, and similar services that are not personal care services or skilled nursing care.
- (B) "Activities of daily living" means walking and moving, bathing, grooming, toileting, oral hygiene, hair care, dressing, eating, and nail care.
- (C) "ADAMHS board" means a board of alcohol, drug addiction, and mental health services.
- (D) "Adult" means an individual eighteen years of age or older.
- (E) "Adult care facility" or "ACF" as defined in section 5119.70 of the Revised Code means an adult family home or an adult group home. For the purposes of this chapter, any residence, facility, institution, hotel, congregate housing project, or similar facility that provides accommodations and supervision to three to sixteen unrelated adults, at least three of whom require personal care services, is an adult care facility regardless of how the facility holds itself out to the public. "Adult care facility" does not include:
  - (1) A nursing home, residential care facility, or home for the aging as defined in section 3721.01 of the Revised Code;
  - (2) An alcohol and drug addiction program as defined in section 3793.01 of the Revised Code;
  - (3) A residential facility for the mentally ill licensed by the department of mental health under section 5119.22 of the Revised Code;
  - (4) A facility licensed to provide methadone treatment under section 3793.11 of the Revised Code;
  - (5) A residential facility licensed under section 5123.19 of the Revised Code or otherwise regulated by the department of developmental disabilities;
  - (6) Any residence, institution, hotel, congregate housing project, or similar facility that provides personal care services to fewer than three residents or that provides, for any number of residents, only housing, housekeeping, laundry, meal preparation, social or recreational activities, maintenance, security, transportation, and similar services that are not personal care services or skilled nursing care;
  - (7) A facility approved by the veterans administration under section 104(a) of the "Veterans Health Care Amendments of 1983," 97 Stat. 993, 38 U.S.C. 630, as amended, and used exclusively for the placement and care of veterans;

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- (8) A facility operated by a hospice care program licensed under section 3712.04 of the Revised Code;
  - (9) Any facility that receives funding for operating costs from the department of development under any program established to provide emergency shelter housing or transitional housing for the homeless; or
  - (10) A terminal care facility for the homeless that has entered into an agreement with a hospice care program under section 3712.07 of the Revised Code.
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- (F) "Adult day care" means non-residential facilities or specifically designated units of operation within an adult care, assisted living residence, nursing home or other type of long term care facility that provides a variety of health, social and related support services in a protective setting during part of the day to aged, infirm or disabled adults who reside elsewhere.
  - (G) "Adult family home" means a residence or facility that provides accommodations and supervision to three to five unrelated adults at least three of whom require personal care services.
  - (H) "Adult group home" means a residence or facility that provides accommodations and supervision to six to sixteen unrelated adults at least three of whom require personal care services.
  - (I) "Boarder" means an adult as defined by paragraph (C) of rule 3701-20-01 of the Administrative Code who does not receive supervision or personal care services from the adult care facility and resides within a separate and discrete part or unit of the adult care facility under section 5119.71 of the Revised Code.
  - (J) "Day" means one calendar day.
  - (K) "Department" means the department of health.
  - (L) "Director" means the director of health or any official or employee of the department designated by the director of health.
  - (M) "Lead mental health agency" means the mental health agency as defined in rules adopted by the department of mental health pursuant to section 5119.61 of the Revised Code.
  - (N) "Local health department" means the board of health, or entity having the duties of the board of health as authorized by section 3709.05 of the Revised Code, for the health district that has jurisdiction over the location of the adult care facility.
  - (O) "Manager" means the person responsible for the daily operation of an adult care facility. The manager and the owner of a facility may be the same person.
  - (P) "Mental health agency" means a community mental health agency, as defined in section 5119.22 of the Revised Code, under contract with an ADAMHS board pursuant to division (A)(8)(a) of section 340.03 of the Revised Code.

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- (Q) "Mental health board" means an alcohol, drug addiction and mental health services board, or a community mental health board authorized by Chapter 340. of the Revised Code.
- (R) "Mental health resident program participation agreement" means a written agreement between an adult care facility and the ADAMHS board serving the alcohol, drug addiction, and mental health service district in which the facility is located, under which the facility is authorized to admit residents who are receiving or are eligible for publicly funded mental health services.
- (S) "Mental health services" means those services specified in section 340.09 of the Revised Code and certified by the department of mental health in accordance with Chapter 5122-25 of the Administrative Code.
- (T) "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life. "Mental illness" does not include dementia, as defined by the most recent edition of the "Diagnostic and Statistical Manual of Mental Disorders."
- (U) "Mental health plan for care" means the individualized plan required by rule 5122-33-18 of the Administrative Code and entered into by the adult care facility owner or manager, a prospective resident and the lead mental health agency.
- (V) "Ombudsperson" means a representative of the office of the state long-term care ombudsperson program as defined in section 173.14 of the Revised Code.
- (W) "Owner" means the person who owns the business of and who ultimately controls the operation of an adult care facility and to whom the manager, if different from the owner, is responsible.
- (X) "Part-time, intermittent basis" means that skilled nursing care is rendered for less than eight hours a day or less than forty hours a week.
- (Y) "PASSPORT administrative agency" means an entity under contract with the department of aging to provide administrative services regarding the PASSPORT program created under section 173.40 of the Revised Code.
- (Z) "Personal care services" means services including, but not limited to, the following:
- (1) Assistance with activities of daily living;
  - (2) Assistance with self-administration of medication, in accordance with paragraph (C) of rule 5122-33-17 of the Administrative Code; and
  - (3) Preparation of special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian in accordance with paragraph (B) of rule 5122-33-20 of the Administrative Code.

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"Personal care services" does not include "skilled nursing care." A facility need not provide more than one of the services listed in this paragraph for a facility to be considered to be providing personal care services. Nothing in this paragraph shall be construed to permit personal care services to be imposed upon a resident who is capable of performing the activity in question without assistance.

- (AA) "Residents' rights advocate" means an employee or representative of any state or local government entity that has a responsibility regarding residents, or an employee or representative of a private non-profit corporation or association permitted by law to educate and counsel residents, assist residents in resolving problems and complaints concerning their care and treatment, and assist them in securing adequate services to meet their needs.
- (BB) "Respite care" means temporary or periodic care provided in an adult care facility, nursing home, residential care facility, or other type of long-term care facility so that the usual caregiver can rest or take time off.
- (CC) "Skilled nursing care" means procedures that require technical skills and knowledge beyond those the untrained person possesses and that are commonly employed in providing for the physical, mental, and emotional needs of the ill or otherwise incapacitated. "Skilled nursing care" includes, but is not limited to, the following:
- (1) Irrigations, catheterizations, application of dressings, and supervision of special diets;
  - (2) Objective observation of changes in the patient's condition as a means of analyzing and determining the nursing care required and the need for further medical diagnosis and treatment;
  - (3) Special procedures contributing to rehabilitation;
  - (4) Administration of medication by any method ordered by a physician, such as hypodermically, rectally, or orally, including observation of the patient after receipt of the medication; or
  - (5) Carrying out other treatments prescribed by the physician that involve a similar level of complexity and skill in administration.

Nothing in this paragraph shall be construed to permit skilled nursing care to be imposed upon an individual who does not require skilled nursing care.

- (DD) "Special dietary needs" include, but are not limited to: low or no salt added foods; reduced fat foods; reduced cholesterol foods; reduced or no sugar added foods; frequency and/or portion size of meals; liquid only or clear liquids only for a period designated by a physician or dietician; and simple modification of food textures, such as pureeing.
- (EE) "Sponsor" means an adult relative, friend, or guardian of a resident of an adult care facility who has an interest in or responsibility for the resident's welfare.

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(FF) "Supervision" means any of the following:

- (1) Observing a resident when necessary while he or she engages in activities of daily living or other activities to ensure the resident's health, safety, and welfare;
- (2) Reminding a resident to do or complete such an activity as by reminding him or her to engage in personal hygiene or other selfcare activity; or
- (3) Assisting a resident in keeping an appointment.

(GG) "Unrelated" means that an adult resident is not related to the owner or manager of an adult care facility or to the owner's or manager's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece, nephew, aunt or uncle, or as the child of an aunt or uncle.

### **5122-33-02 General prohibitions.**

- (A) No person shall operate an adult care facility unless the facility is validly licensed by the director under section 5119.73 of the Revised Code and this chapter.
- (B) No person shall admit to an adult care facility more residents than the number authorized in the facility's license.
- (C) No person shall admit a resident to an adult care facility after the director has issued an order pursuant to section 5119.76 of the Revised Code suspending admissions to the facility.
- (D) No person shall interfere with any authorized inspection of an adult care facility conducted pursuant to section 5119.71 or 5119.73 of the Revised Code and rule 5122-33-07 of the Administrative Code. As used in this paragraph, "to interfere" means to obstruct directly or indirectly any individual conducting an authorized inspection from carrying out his or her prescribed duties. Interference includes but is not limited to harassment, intimidation, refusal to permit access to facility records or residents, or refusal by the facility owner or manager to make himself or herself available for facility inspection, or to authorize on-duty staff to act in his or her stead to include allowing unimpeded entry and access to all staff, residents, areas of the facility, and records necessary for conduct of the inspection.
- (E) No person shall violate any of the provisions of Chapter 5119. of the Revised Code or any of the rules of this chapter.
- (F) No person shall knowingly place or recommend placement of any person in an adult care facility that is operating without a license.
- (G) No employee of a unit of local or state government, ADAMHS board, mental health agency, or PASSPORT administrative agency shall place or recommend placement of any person in an adult care facility if the employee knows any of the following:

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- (1) That the facility cannot meet the needs of the potential resident;
- (2) That the placement of the resident would cause the facility to exceed its licensed capacity;
- (3) That an enforcement action initiated by the director of health is pending and may result in the revocation of or refusal to renew the facility license; or
- (4) That the potential resident is receiving or is eligible for publicly funded mental health services and the facility has not entered into a mental health resident program participation agreement.

Information provided by an ombudsman about long-term care options does not constitute a recommendation.

- (H) No person who has reason to believe that an adult care facility is operating without a license shall fail to report this information to the director.
- (I) No person shall admit a resident requiring public mental health services regardless of sponsor or placing entity without first notifying the ADAMHS board serving the geographic area in which the admitting adult care facility is located and with which the facility has an appropriate mental health resident program participation agreement in place.

### **5122-33-03 License application and renewal procedures.**

- (A) An adult family home or adult group home shall not accept residents before receiving its license to operate.
- (B) A person seeking a license to operate an adult care facility shall submit to the director an application, on a form prescribed and provided by the director, which shall include the following items:
- (1) A statement of ownership containing the following information:
    - (a) If the owner is an individual, his or her name, address, telephone number, business address, business telephone number, and occupation. If the owner is an association, corporation, or partnership, the business activity, address, and telephone number of the entity and the name of every person who has an ownership interest of five per cent or more in the entity;
    - (b) If the owner does not own the building or if he or she owns only part of the building in which the facility is housed, the name of each person who has an ownership interest of five per cent or more in the building;

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- (c) The name and address of any adult care facility and any facility described in section 5119.34 of the Revised Code and paragraphs (E)(1) to (E)(10) of rule 5122-33-01 of the Administrative Code in which the owner has an ownership interest of five per cent or more;
  - (d) The identity of the manager of the adult care facility, if different from the owner;
  - (e) The name and address of any adult care facility and any facility described in section 5119.34 of the Revised Code and paragraphs (E)(1) to (E)(10) of rule 5122-33-01 of the Administrative Code with which either the owner or manager has been affiliated through ownership or employment in the five years prior to the date of the application;
  - (f) The names, addresses, and telephone numbers of three persons not employed by or associated in business with the owner who will provide information about the character, reputation, and competence of the owner and the manager and the financial responsibility of the owner;
  - (g) Information about any arrest of the owner or manager for, or adjudication or conviction of, a criminal offense related to the provision of care in an adult care facility or any facility described in section 5119.34 of the Revised Code and paragraphs (E)(1) to (E)(10) of rule 5122-33-01 of the Administrative Code or the ability to operate a facility; and
  - (h) Any other information the director may require regarding the owner's ability to operate the facility including, but not limited to, the names, ages, and work hours of staff members, including the manager; the manager's training and educational background and work experience; the number of residents; and identification of previous or current licenses or similar approvals held;
- (2) If the facility is an adult group home, a balance sheet showing the assets and liabilities of the owner and a statement projecting revenues and expenses for the first twelve months of the facility's operation;
  - (3) A statement regarding the facility's intended bed capacity; whether or not the facility will provide accommodations to persons referred by or receiving service from a mental health board or agency; if the facility intends to seek arrangement through the ADAMHS board to serve the mentally ill; and total number of resident beds anticipated to be occupied by those referred residents; and
  - (4) Evidence and documentation of all applicable inspections, approvals, permits, and licenses required by rules 5122-33-09, 5122-33-10, and 5122-33-11 of the Administrative Code.
- (C) A person seeking renewal of an adult care facility license shall submit to the director an application for renewal, on a form prescribed and provided by the director, which shall include the following items:

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- (1) The name, address, and telephone number of the facility;
  - (2) The type of facility for which the applicant is seeking license renewal;
  - (3) The number of residents residing in the facility and the maximum occupancy of the facility as of the date the applicant submits the application for renewal;
  - (4) Any changes to the information required by paragraph (B) of this rule, unless the department was notified of the changes under paragraph (A) of rule 5122-33-08 of the Administrative Code;
  - (5) Copies of documentation of any inspections, permits, or approvals that may be required by rules 5122-33-09, 5122-33-10, and 5122-33-11 of the Administrative Code since the facility's most recent license was issued;
  - (6) If the facility is an adult group home, a balance sheet showing the current assets and liabilities of the owner; and
  - (7) Any other information the director may require regarding the owner's ability to operate the facility.
- (D) An application for licensure or license renewal shall be accompanied by the following:
- (1) A non-refundable license application fee of twenty-five dollars for an adult family home or fifty dollars for an adult group home in the form of a cashier's check or a postal money order payable to the "Treasurer, State of Ohio."; and
  - (2) A statement signed by the individual submitting the application, and included in the application, certifying that, to the best of his or her knowledge, the information in the application and any accompanying material is true and accurate. If a representative signs the statement, he or she shall include documentation that he or she is the authorized representative of the owner.
  - (3) A statement of attestation signed by the manager certifying compliance with rule 5122-33-28 of the Administrative Code.
- (E) The applicant shall submit any additional information requested by the director within sixty days of the director's request. The director may invalidate the application and deny licensing if the applicant fails to submit requested information within sixty days of the director's request.
- (F) No person may apply for a license to operate an adult care facility if that person is or has been the owner or manager of an adult care facility that has had a previous license to operate revoked or denied renewal for any reason other than nonpayment of the license fee unless:
- (1) A minimum period of twenty-four months has passed from the date of the director of health's order revoking or denying renewal of the facility's previous license; and

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- (2) The licensure revocation or non-renewal was not due to any act or omission that violated the resident's right to be free from abuse, neglect, or exploitation.

## **5122-33-04 Application review process.**

Upon receipt of an application for licensure as an adult care facility or for license renewal, and the fee required by rule 5122-33-03 of the Administrative Code, the director shall do all of the following:

- (A) Review the application, any accompanying documents, and any additional information submitted in accordance with the director's request, for compliance with Chapter 5119. of the Revised Code and rule 5122-33-28 of the Administrative Code and for substantial compliance with this chapter;
- (B) Consider any information regarding the past record of the owner and manager and any individuals who are principal participants in an entity that is the owner or manager in operating facilities providing care to adults. The director shall consider whether any of the following actions have been taken against any of those individuals:
  - (1) Conviction or adjudication of any crime other than a traffic violation;
  - (2) Pending criminal prosecutions;
  - (3) Forfeiture of bail bond posted to guarantee appearance in court to answer any criminal charge;
  - (4) Involvement as a defendant or respondent in a civil or administrative investigation or action involving the provision of care or misappropriation of resident funds in any home, facility, or institution caring for people;
  - (5) Denial or withdrawal of a license, certificate, or approval to care for unrelated dependent children or adults;
  - (6) Denial, suspension, or revocation of a professional license;
  - (7) Conviction or adjudication of any crime involving financial or business management, theft, fraud, or embezzlement;
  - (8) Arrest, conviction, or adjudication of any crime relating to the provision of care;
  - (9) Conviction or adjudication of any crime or civil offense relating to assault, battery, abuse, neglect, or any other violent crime against an individual; or
  - (10) Disqualifying enforcement actions by the director of mental health and addiction services under the provisions of paragraph (F) of rule 5122-33-03 of the Administrative Code; and

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- (C) Review the report of the inspection or inspections conducted pursuant to rule 5122-33-07 of the Administrative Code.

### **5122-33-05 Issuance, renewal, and denial of licenses.**

- (A) Except as otherwise provided in this paragraph, the director shall issue a license to an adult care facility if, after completing review of the information required by rule 5122-33-04 of the Administrative Code, he or she determines that the facility meets the requirements of section 5119.34 of the Revised Code and is in substantial compliance with this chapter. The director may, in accordance with Chapter 119. of the Revised Code, deny a license if the past record of the owner or manager, as considered by the director under paragraph (B) of rule 5122-33-04 of the Administrative Code, indicates that the owner or manager is not suitable to own or manage a facility.
- (B) Any license issued to an adult care facility:
  - (1) Shall contain the name and address of the facility for which it was issued, the date of expiration of the license, and the maximum number of residents that may be accommodated by the facility;
  - (2) Is valid only for the residence or facility specified on the license and for a period of two years after the date of issuance unless revoked or suspended pursuant to Chapter 119. of the Revised Code; and
  - (3) Is not transferable to any other location.
- (C) In determining the number of residents in a facility for the purpose of licensing under Chapter 5119. of the Revised Code and this chapter, the director shall consider all the individuals for whom the facility provides accommodations, including adult day care participants, respite care clients, and boarders, as one group unless either of the following is the case:
  - (1) The facility is both a nursing home licensed under Chapter 3721. of the Revised Code and an adult care facility. In that case, all the individuals in the part or unit licensed as a nursing home shall be considered as one group and all the individuals in the part or unit licensed as an adult care facility shall be considered as another group.
  - (2) The facility maintains, in addition to an adult care facility, a separate and discrete part or unit that provides accommodations to individuals who do not receive supervision or personal care services from the adult care facility.
    - (a) In this case, the individuals in the separate and discrete part or unit shall not be considered in determining the number of residents in the adult care facility if the separate and discrete part or unit is in compliance with the Ohio basic building code established by the board of building standards under Chapters 3781. and 3791. of the Revised Code;

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and the adult care facility, to the extent of its authority, permits the director, on request, to inspect the separate and discrete part or unit and speak with consenting individuals residing there, to determine whether the separate and discrete part or unit meets the requirements of this paragraph.

- (b) This paragraph applies to adult day care participants and boarders who are housed in a separate and discrete part or unit of the building where the adult care facility is located and who are not receiving supervision or personal care services from the adult care facility.
- (D) No single facility may be licensed to operate as more than one adult care facility.
- (E) The director shall renew a license for a two-year period if, after completing review of the application for renewal and other information pursuant to rule 5122-33-04 of the Administrative Code, he or she determines that the facility continues to be in compliance with the requirements of Chapter 5119. of the Revised Code and is in substantial compliance with this chapter.
- (F) The director shall not do any of the following:
  - (1) Issue or renew the license of an adult group home unless it meets the requirements of rule 5122-33-10 of the Administrative Code; or
  - (2) Issue or renew the license of an adult family home unless it meets the fire protection standards established by paragraph (C) of rule 5122-33-09 of the Administrative Code.
- (G) If any adult care facility fails to comply with any requirement of Chapter 5119. of the Revised Code or with any rule of this chapter or rule 5122-33-28 of the Administrative Code, the director may do any one or all of the following:
  - (1) In accordance with Chapter 119. of the Revised Code, deny, revoke, or refuse to renew the license of the facility;
  - (2) Give the facility an opportunity to correct the violation, in accordance with section 5119.34 of the Revised Code;
  - (3) Issue an order suspending the admission of residents to the facility, in accordance with section 5119.34 of the Revised Code;
  - (4) Impose a civil penalty in accordance with section 5119.34 of the Revised Code; or
  - (5) Petition the court of common pleas for injunctive relief in accordance with section 5119.34 of the Revised Code.

**5122-33-06 Inspections; access to facilities; standards of conduct.**

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- (1) The director shall make at least one unannounced inspection of an adult care facility during each licensure period in addition to inspecting the facility to determine whether a license should be issued or renewed. The director shall take all reasonable actions to avoid giving notice of an unannounced inspection by the manner in which the inspections is scheduled or performed. The director may make additional unannounced inspections as he or she considers necessary. Other inspections may be made at any time that the director considers appropriate. In accordance with paragraph (A) of rule 5122-33-10 of the Administrative Code, the state fire marshal or fire prevention officer of a municipal, township, or other legally constituted fire department approved by the fire marshal shall inspect each adult group home prior to issuance of a license or renewal, at least once annually thereafter, and at any other time requested by the director; and
- (2) Where an inspection is for the purpose of investigating an allegation or allegations of noncompliance in a facility that serves residents who have been referred or are receiving services from an ADAMHS board or mental health agency or are recipients of residential state supplement funds, the onsite inspection visit shall be coordinated with the mental health entity or PASSPORT administration agency and conducted as a joint venture as may be appropriate.

(B) The following persons may enter any adult care facility at any time:

- (1) Employees designated by the director;
- (2) Employees designated by the director of aging;
- (3) Employees designated by the director of mental health;
- (4) Employees designated by the attorney general;
- (5) Employees designated by the director of the Ohio legal rights service;
- (6) Employees designated by a county department of human services to implement sections 5101.60 to 5101.72 of the Revised Code pertaining to adult protective services;
- (7) Employees of a mental health agency, under any of the following circumstances:
  - (a) When the agency has a client residing in the facility;
  - (b) When the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract; or
  - (c) When there is a mental health resident program participation agreement between the facility and the ADAMHS board with which the agency is under contract.

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(8) Employees of an ADAMHS board under any of the following circumstances:

- (a) When authorized by section 340.05 of the Revised Code;
- (b) When a resident of the facility is receiving mental health services provided by that ADAMHS board or another board pursuant to division (A)(8)(b) of section 340.03 of the Revised Code;
- (c) When a resident of the facility is receiving services from a mental health agency under contract with that ADAMHS board or another ADAMHS board; or
- (d) When there is a mental health resident program participation agreement between the facility and that ADAMHS board.

(9) Persons employed pursuant to division (M) of section 173.01 of the Revised Code in the long-term care facilities ombudsperson program.

The employees specified in paragraphs (B)(1) to (B)(8) of this rule shall be afforded access to all records of the facility, including records pertaining to residents, and may copy the records. Representatives of the state long-term care ombudsperson program shall be afforded access to resident and facility records in accordance with section 173.20 of the Revised Code. Neither the employees specified in this paragraph nor the director shall release, without consent, any information obtained from the records of an adult care facility that reasonably would tend to identify a specific resident of the facility, except as ordered by a court of competent jurisdiction.

(C) The following persons may enter any adult care facility during reasonable hours:

- (1) A resident's sponsor;
- (2) Residents' rights advocates;
- (3) A resident's attorney;
- (4) A minister, priest, rabbi, or other person ministering to a resident's religious needs;
- (5) A physician or other person providing health care services to a resident;
- (6) Employees authorized by county departments of human services and local boards of health or health departments to enter adult care facilities;
- (7) A prospective resident and prospective resident's sponsor;
- (8) A case manager providing case management services to a resident in the facility;

(D) The manager of a facility may require a person seeking to enter the facility to present identification sufficient to identify him or her as an authorized person under this rule.

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- (E) Any employee of the state or any political subdivision of the state authorized by Chapter 5119. of the Revised Code and this rule to inspect the facility or to enter for any other purpose shall respect the residents' privacy and dignity, cooperate with the residents, behave in a congenial manner toward the residents, protect the residents' rights, and behave in a cooperative and professional manner toward individuals working in the facility. Such an employee shall do all of the following:
- (1) Refrain from using language or behavior that is derogatory, insulting, intimidating, or threatening;
  - (2) Not harass or coerce residents or otherwise attempt to influence residents' responses to inquiries;
  - (3) Not make remarks or comparisons, positive or negative, about another facility or other residents.
  - (4) Not solicit, accept, or agree to accept from the facility or a resident of the facility compensation, gratuities, gifts, or any other thing of value that is of such character as to manifest a substantial and improper influence upon the state or local employee with respect to his or her duties;
  - (5) Conduct inspections authorized under sections 5119.70 to 5119.88 of the Revised Code in accordance with that chapter and Chapter 5122-33 of the Administrative Code; and
  - (6) Obtain the resident's consent prior to conducting an examination of a resident unless a court has issued a search warrant or other order authorizing such an examination. When requesting the resident's consent to examine him or her, the employee shall explain that the resident has the option to consent or not to consent to the examination, that the employee will not examine the resident without the resident's consent, and that the resident will not suffer any adverse consequences if he or she refuses to consent.

### **5122-33-07 Notice of violations and opportunity to correct.**

- (A) Except as otherwise provided in sections 5119.76 to 5119.78 of the Revised Code and except in cases of violations that jeopardize the health and safety of any of the residents, if the director determines that a licensed facility is in violation of Chapter 5119. of the Revised Code, Chapter 3701-13 of the Administrative Code, or this chapter, he or she shall give the facility an opportunity to correct the violation. The director shall notify the facility of the violation and specify a reasonable time for making the corrections. Notice of the violation shall be in writing and shall include a citation to the statute or rule violated. The director shall state the action that he or she will take if the corrections are not made within the specified period of time.

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- (1) The facility shall be required to submit to the director a plan of correction stating the actions that will be taken by the facility to correct the violation. The director shall conduct an inspection to determine whether the facility has corrected the violation in accordance with the plan of correction.
  - (2) If the director determines that the facility has failed to correct the violation in accordance with the plan of correction, the director may impose a penalty under section 5119.77 of the Revised Code and paragraph (H) of rule 5122-33-05 of the Administrative Code.
- (B) If the director subsequently determines that the facility has failed to correct the violation in a reasonable time for making the required corrections, the director shall impose penalties in accordance with sections 5119.75, 5119.76, 5119.77, and 5119.78 of the Revised Code as follows:
- (1) If the director determines that the facility has failed to make corrections within the time frame specified and/or the violation jeopardizes the health or safety of the residents, the director shall revoke or refuse to renew the license of the facility in accordance with Chapter 119. of the Revised Code.
  - (2) If the director determines that the facility has failed to make corrections within the time frame specified and the violation does not jeopardize the health or safety of the residents, the director may impose civil money penalties or suspend new admissions to the facility until the violation is corrected or revoke or refuse to renew the license.

### **5122-33-08 Change in statement of ownership; closure, transfer, or sale of facility.**

- (A) An owner shall notify the director in writing if the identity of the manager changes and of any changes in the information contained in the statement of ownership made pursuant to division (C) of section 5119.71 of the Revised Code and paragraph (B)(1) of rule 5122-33-03 of the Administrative Code. The owner shall provide this notification no later than ten days after the change occurs.
- (B) The procedure for closing an adult care facility shall include all of the following:
- (1) The owner shall inform the director in writing at least thirty days prior to the proposed date of closing. At the same time, the owner or manager shall inform each resident, his or her guardian, his or her sponsor, his or her case manager, or any organization or agency acting on behalf of the resident, of the closing of the facility and the date of the closing. The owner shall return their ACF license to the director with the notice of intent to close, or no later than the last day of the facility's business;
  - (2) Immediately upon receiving notice that a facility is to be closed, the director shall monitor the transfer of residents to other facilities and ensure that residents' rights are protected. The

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director shall notify the ombudsman in the region in which the facility is located and the mental health board serving the area in which the facility is located of the closing;

- (3) All charges shall be prorated as of the date on which the facility closes. If payments have been made in advance, the payments for services not rendered shall be refunded to the resident or the resident's guardian not later than seven days after the closing of the facility; and
  - (4) Immediately upon the closing of a facility, the owner shall surrender the license to the director, and the license shall be canceled.
- (C) The owner shall notify the residents at least thirty days in advance of any change in the identity of the person who has possession of the facility, unless the change is in the nature of a corporate reorganization resulting in the same individual or individuals having ultimate ownership interest.
- (D) An owner who sells or transfers an adult care facility shall be responsible and liable for the following:
- (1) Any civil penalties imposed against the facility under section 5119.77 of the Revised Code for violations that occur before the date of transfer of ownership or during any period in which the seller or his agent operates the facility; and
  - (2) Any outstanding liability to the state, unless the buyer or transferee has agreed, as a condition of the sale or transfer, to accept the outstanding liabilities and to guarantee their payment, except that if the buyer or transferee fails to meet these obligations the seller or transferor shall remain responsible for the outstanding liability.

### **5122-33-09 Fire protection standards for adult family homes.**

- (A) Adult family homes, or applicants for licensing as an adult family home, are not required to have the following inspections under section 5119.71 of the Revised Code:
- (1) Inspection and approval by a local certified building department or by the department of commerce as meeting the building standards referenced in division (A) of section 5119.71 of the Revised Code; or
  - (2) Inspection by the state fire marshal or fire prevention officer of a municipal, township, or other legally constituted fire department approved by the state fire marshal for compliance with the rules adopted under section 3737.83 of the Revised Code.
- (B) Each adult family home shall be inspected by the director to determine compliance with paragraph (C) of this rule, and the plumbing requirements specified in paragraph (C) of rule 5122-33-11 of the Administrative Code. This inspection may be made at the same time as an inspection made by the director under section 5119.73 of the Revised Code and rule 5122-33-06 of the Administrative Code.

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(C) Each adult family home shall comply with the following fire protection standards:

- (1) Each home shall develop a written evacuation procedure which shall be explained to each resident and posted on each floor of the home. The manager and any other individuals working in the home shall be trained in fire emergency and evacuation procedures within three working days after beginning employment in the facility.
  - (a) Each home shall conduct fire drills at least four times each year, with each staff member participating in at least one drill annually.
  - (b) The written procedure shall include a floor plan indicating the location of the smoke detectors, fire extinguishers, evacuation routes and exits. The procedure also shall include a plan for evacuating all individuals in the home, including special procedures for evacuating residents with impaired mobility;
- (2) Each home shall install and maintain at least one battery-operated smoke detector, or electrical smoke detector with battery back-up, on each floor of the home, including the basement and attic (except for crawl spaces and unfinished attics), and in any attached garage.
  - (a) The smoke detectors shall bear the seal of "Underwriters Laboratories" and shall be installed and maintained in accordance with the manufacturers' specifications.
  - (b) At least one such smoke detector shall be installed in each hallway where resident bedrooms are located and in or near each designated smoking area and kitchen area. A smoke detector installed in one of these areas on a particular floor satisfies the requirement that a detector be installed on that floor.
  - (c) The home shall check each smoke detector monthly to ensure that the battery is charged and functioning and shall maintain records documenting these monthly checks.
  - (d) The home shall establish, for each resident who has a disability which makes a smoke detector an ineffective fire alert mechanism for the resident, an alternate fire alert mechanism which will warn the resident adequately;
- (3) Each home shall provide and maintain the following types of fire extinguishers tested and listed by "Underwriters Laboratory" or "Factory Mutual":
  - (a) At least one dry chemical fire extinguisher with a minimum rating of "40 BC" in the kitchen area; and
  - (b) At least one dry chemical fire extinguisher with a minimum rating of "2A-10 BC" on each floor of the home.
- (4) Each extinguisher shall be inspected annually and refilled as necessary by an individual certified by the state fire marshal. The label on the extinguisher shall show the date of its annual inspection and refilling.

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- (5) Each home shall prohibit the use of electrical cooking appliances in residents' rooms;
- (6) Each home shall locate non-ambulatory individuals' bedrooms on a floor that exits to ground level. As used in this paragraph, "non-ambulatory" means that the individual has any of the following conditions:
  - (a) The individual is unable to get in and out of bed independently;
  - (b) The individual is unable to walk without physical assistance from another individual; or
  - (c) The individual requires a wheelchair;
- (7) Each home shall prohibit use of heating devices other than the main heating systems specified in paragraph (I)(7) of rule 5122-33-22 of the Administrative Code, or any of the following devices:
  - (a) Suspended unit heaters or unit heaters in locations other than means of egress and resident sleeping areas. These heaters may be used only if they are located high enough to be out of the reach of individuals using the area and if they have safety features to stop the flow of fuel or electricity immediately in case of either excessive temperatures or ignition failure;
  - (b) Fireplaces and firestoves in accordance with paragraph (I) (8) of rule 5122-33-22 of the Administrative Code; or
  - (c) Portable space-heating devices, if the heating elements are not open flame devices or exposed coils. Use of kerosene heaters is prohibited. Space heaters shall be grounded properly. The home shall ensure that extension cords are not used with space heaters unless the insulation and wire gauge are acceptable to the director; and
- (8) Each home shall maintain all interior and exterior doors in safe operating condition and shall ensure that they are capable of latching securely when closed.

### **5122-33-10 Building and fire safety requirements for adult group homes.**

- (A) Before an adult group home may be licensed the home shall be inspected and approved by, and have a certificate of occupancy from, a local, certified building department or by the department of commerce as meeting the applicable requirements of Chapters 3781. and 3791. of the Revised Code and any rules adopted under them. In the case of a license renewal, if any alterations to the buildings have been made since the most recent license was issued, the home shall have a certificate of occupancy for the home issued by the department of commerce or a local, certified building department.

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- (B) Before an adult group home may be licensed and annually thereafter, the home shall be inspected by the state fire marshal or fire prevention officer of a municipal, township, or other legally constituted fire department approved by the state fire marshal and found to be in compliance with rules adopted under section 3737.83 of the Revised Code regarding fire prevention and safety in adult group homes.
- (C) Each adult group home shall develop a written evacuation procedure which shall be explained to each resident of the home. The manager and any other individuals working in the home shall be trained in facility fire emergency and evacuation procedures as well as how to secure emergency assistance in the event of fire, medical emergency, or other crises. The facility shall ensure that each individual working in the home completes fire emergency and evacuation training within three working days after beginning employment with the facility.
- (D) Each adult group home shall locate non-ambulatory individual's bedrooms on a floor that exits to ground level. As used in this paragraph, "non-ambulatory" means that the individual has any of the following conditions:
  - (1) The individual is unable to get in and out of bed independently;
  - (2) The individual is unable to walk without physical assistance from another individual; or
  - (3) The individual requires a wheelchair.

### **5122-33-11 Water, sewage and plumbing requirements for adult care facilities.**

- (A) Each adult care facility using a water source other than a public water system shall obtain a permit from the local health department before commencing to construct, develop, install, or alter any private water system, except in the case of an emergency alteration as provided in paragraph (H) of rule 3701-28-03 of the Administrative Code.
- (B) Each adult care facility not using a public sewage disposal system shall have its household sewage disposal system inspected and approved by the local health department, in accordance with rule 3701-29-17 of the Administrative Code, in the following instances:
  - (1) A facility shall obtain a permit from the local health department before commencing to construct, develop, install, or alter any household sewage disposal system; and
  - (2) If the local health department requires approval to maintain or operate household sewage disposal systems, the facility also shall obtain this approval.
- (C) Each adult family home shall comply with the following plumbing requirements:

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- (1) Each home shall maintain a safe and operable plumbing system. When altering existing plumbing or installing new plumbing, the home shall not use materials, devices, or fixtures for purposes other than their intended use;
- (2) Water heaters shall be protected by a relief valve approved by the "American National Standards Institute" and shall discharge in a safe manner; and
- (3) For new and altered plumbing, each shower compartment and shower and bath combination shall be provided with an automatic safety-mixing device to prevent sudden, unanticipated changes in hot water temperatures.

### **5122-33-12 Facility management responsibilities.**

- (A) The owner of an ACF may serve as the manager or shall arrange for an individual to serve as the manager. The owner, manager, or both shall be responsible for administering and managing all aspects of the facility including, but not limited to the following functions:
  - (1) Arranging for all necessary inspections, approvals, and licenses and paying all associated fees and costs;
  - (2) Securing appropriate staffing for the facility;
  - (3) Supervising the staff to ensure acceptable performance of assigned job duties and continued compliance with Chapter 5119. of the Revised Code and this chapter;
  - (4) Establishing and maintaining a stable financial position for the operation of the facility and exercising sound fiscal management practices;
  - (5) Protecting the rights of residents;
  - (6) Complying with applicable federal, state, and local laws governing operation of the facility, such as laws concerning zoning, reporting of income, operation of a business, and employment practices;
  - (7) Ensuring continued compliance with Chapter 5119. of the Revised Code, and rule 5122-33-28 and this chapter of the Administrative Code;
  - (8) Developing and administering the policies of the facility; and
  - (9) Preparing, maintaining, and submitting reports and records as required by the director pursuant to this chapter.
  - (10) Ensuring that staff receive training in and are capable of the following:
    - (a) Using designated crisis notification systems; and

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- (b) Fulfilling designated staff role(s) in resident-specific crisis plans.
- (11) Ensuring that all training required for managers and staff in accordance with rules 5122-33-13 and 5122-33-14 of the Administrative Code is appropriate to the needs of residents, and is performed and documented in a timely manner; and
- (12) Ensuring that information is available to facility and staff from the referring or placing agency regarding crisis handling of mentally ill patients in accordance with paragraph (G) of rule 5122-33-18 of the Administrative Code.
- (B) If an owner or manager admits or retains an individual who the owner or manager knows has been assessed with mental illness, and the owner or manager has no evidence that the individual has been referred by or is receiving services from a mental health agency, the owner or manager shall offer to assist the individual in obtaining appropriate mental health services and shall document this requirement.
- (C) If an owner or manager admits or retains an individual who the owner or manager knows has been assessed with mental illness; the owner or manager has no evidence that the individual has been referred by a mental health agency; and the individual chooses to request or continue to receive mental health services provided through mental health agencies, the owner or manager shall:
  - (1) Contact the ADAMHS board in the area the ACF is located to inform the board of the resident's request:
  - (2) Contact the resident's home board or appropriate mental health agency or agencies in accordance with instructions received from the mental health board contacted under paragraph (C)(1) of this rule; and
  - (3) Request from and enter into a mental health plan for care with the lead mental health agency, in accordance with rule 5122-33-18 of the Administrative Code.
- (D) If an owner or manager admits an individual who the owner or manager knows has been assessed with mental illness and has been receiving mental health services through a mental health agency which will no longer provide such services to the individual, the owner or manager shall act in accordance with paragraph (B) of this rule and shall request an assessment of the individual in accordance with rule 5122-33-18 of the Administrative Code.

### **5122-33-13 General staffing requirements.**

- (A) As used in this rule and rule 5122-33-14 of the Administrative Code, "staff member" means an individual working in an ACF, including the owner; the manager; a full-time, part-time, or temporary paid employee; an individual working on contract; or a volunteer. "Staff member" does not include an individual staying temporarily in an adult family home in the absence of staff members under paragraph (F) of this rule.

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- (B) In addition to meeting the minimum staffing requirements of paragraph (C) of this rule, each ACF shall provide a sufficient number of staff members and appropriate scheduling of staff time to meet the care and supervisory needs of its residents in a timely manner and to provide necessary meal preparation, housekeeping, laundry, and home maintenance for the residents. The owner or manager shall establish a schedule for staff coverage that includes coverage during vacations, emergency situations, and long-term absences due to illness. The facility shall not require a resident to supervise other residents, provide personal care services, perform any staff functions, or manage the facility.
- (C) At any time a resident meeting any one of the requirements in paragraphs (C)(1) to (C)(4) of this rule is present in the facility including non-waking hours, weekends, and holidays, the ACF shall ensure the physical presence in the facility of at least one staff member who meets the conditions specified in paragraphs (H) to (J) of this rule except as further provided in paragraph (F) of this rule:
- (1) The resident requires assistance with walking and moving, bathing, toileting, dressing, or eating;
  - (2) The resident requires ongoing supervision;
  - (3) The resident is non-ambulatory as defined in paragraph (C)(6) of rule 5122-33-09 of the Administrative Code;
  - (4) The resident is prescribed one or more medications to be taken or applied on an "as required" or pro re nata (PRN) basis; or
  - (5) If the resident requires assistance, as authorized by paragraph (C) of rule 5122-33-17 of the Administrative Code, with self-administration of any prescription medications, a staff member shall be present at the time of the self-administration of the medication or medications and remain on duty for a sufficient amount of time to observe medication acceptance and reaction.
- (D) As required by paragraph (C)(1) of rule 5122-33-23 of the Administrative Code, an adult care facility shall ensure that a staff member is present in the facility if the facility is locked and the residents do not have keys.
- (E) In addition to meeting the requirements of paragraph (C) of this rule, if the residents' bedrooms are not accessible by staff members from an inside corridor or area, the facility shall do all of the following:
- (1) The facility shall equip each resident's bedroom with a resident-activated call signal system. As used in this paragraph, "call signal system" means a set of devices that are connected electrically, electronically, by radio frequency transmission, or in a like manner and that effectively can alert the staff member or members on duty of emergencies or resident needs; and

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- (2) When only one staff member is on duty, the facility shall designate another staff member who can be contacted immediately in case of emergency.
- (F) An adult family home may temporarily use an individual who is not a staff member to stay in the facility. An individual temporarily providing coverage in a home under this paragraph:
- (1) Shall be at least eighteen years of age;
  - (2) Shall be capable of calling for emergency assistance and assisting residents in responding to an emergency;
  - (3) Shall not be a resident of the adult care facility;
  - (4) Shall not be left alone with residents for more than four consecutive hours in any twenty-four hour period and not for more than nine hours in any thirty-day period; and
  - (5) Shall not provide personal care services such as assistance with walking or moving, bathing, toileting, dressing or eating or assistance with self-administration of medications.
- (G) The facility's manager shall meet the requirements of paragraphs (H) to (J) of this rule, shall provide not fewer than sixteen hours of service in the facility during each calendar week, and shall be responsible for the daily operation of the facility, as required by rule 5122-33-12 of the Administrative Code. If the manager is unable to provide at least sixteen hours of service in the facility in a given calendar week because of a vacation, illness, or other temporary situation, he or she shall designate a staff member, who shall not be less than twenty-one years of age, to serve as acting manager. The manager or acting manager shall be readily available at all other times when he or she is not present at the facility.
- (H) Each member of an adult care facility's staff, except for a volunteer not providing personal care services, shall possess both of the following qualifications:
- (1) Each staff member other than the manager shall be at least eighteen years of age. The manager shall be at least twenty-one years of age; and
  - (2) Each staff member shall demonstrate an ability to read, write, and understand directions.
- (I) Each ACF shall comply with the following tuberculosis testing requirements:
- (1) The facility shall require each individual working in an ACF, in any capacity, for ten or more hours in any thirty-day period to be tested for tuberculosis no later than five working days after beginning employment.
  - (2) The required tuberculosis test shall include a single blood assay for *M. tuberculosis* (BAMT) test, or the two-step Mantoux test using five tuberculin units of purified protein derivative, or if the individual has a documented history of a significant BAMT or Mantoux test, a chest x-ray.

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- (a) The individual shall not have any resident contact until after the results of the BAMT test, or first step of the Mantoux test have been obtained and recorded in millimeters of induration. Only a single Mantoux or BAMT is required if the individual has documentation of either a single step Mantoux test or a two-step Mantoux test or BAMT having been performed within one year of commencing work.
  - (b) The first step of the Mantoux test should be read within forty eight to seventy two hours following application. If the first step in the Mantoux test is nonsignificant, a second step shall be performed at least seven, but not more than twenty-one days after the first step was performed.
  - (c) If the tuberculosis testing performed pursuant to paragraphs (I)(2)(a) and (I)(2)(b) of this rule is nonsignificant, a single Mantoux or BAMT test shall be performed annually within thirty days of the anniversary date of the most recent testing.
  - (d) If the results of the BAMT test or either step of the Mantoux test are significant, the individual shall have a chest x-ray and shall not enter the home until after the results of the chest x-ray have been obtained and the individual is determined to not have active pulmonary tuberculosis. Whenever a chest x-ray is required by paragraph (I) of this rule, a new chest x-ray need not be performed if the individual has had a chest x-ray no more than thirty days before the date of the significant BAMT or Mantoux test. Additional tuberculosis testing is not required after one medically documented significant test. A subsequent chest x-ray is not required unless the individual develops symptoms consistent with active tuberculosis.
  - (e) If the chest x-ray does not indicate active pulmonary tuberculosis, but there is evidence of a significant BAMT or Mantoux test, the ACF shall require that the individual be evaluated and considered for preventive therapy. Thereafter, the ACF shall require the individual to report promptly any symptoms suggesting tuberculosis. The ACF shall maintain a listing of individuals with evidence or a history of conversion and annually document the presence or absence of symptoms of such an individual and maintain this documentation on file; and
  - (f) If the chest x-ray reveals active pulmonary tuberculosis, the ACF shall not permit the individual to enter the home until the appropriate local public health authority determines the individual is no longer infectious.
- (3) If at any time an individual working in an ACF has tuberculosis or symptoms suggesting tuberculosis or has been exposed to tuberculosis, the facility shall not permit the individual to enter the home until appropriate tuberculosis testing or treatment is obtained.
- (4) Operators shall retain documentation evidencing compliance with this paragraph and shall furnish such documentation to the director upon request.

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- (J) In addition to other training required by the rules, the facility shall ensure that each staff member, other than a volunteer who does not provide personal care services, completes the orientation and training prescribed by this paragraph. The facility shall ensure that the staff members receive this orientation and training within three working days after beginning employment with the facility.
- (1) Each staff member shall have training in the facility's fire emergency and evacuation procedures and instruction in how to secure emergency assistance in the event of suspected fire, medical emergency, or other crisis.
  - (2) Each staff member shall have orientation and training applicable to the staff member's job responsibilities. The orientation and training required by this paragraph shall include at least orientation to the physical layout of the facility, the staff member's job responsibilities, the facility's policies and procedures, and residents' rights.
  - (3) Any staff member who stays in the facility with residents when no other staff members are present shall have received the training and orientation required by this paragraph.
- (K) In addition to meeting the requirements of paragraphs (G) to (J) of this rule, all individuals who provide personal care services in an ACF shall meet the following training requirements:
- (1) Each individual shall have first-aid training evidenced by one of the following:
    - (a) Currently valid documentation of successful completion of the "American Red Cross Standard First-Aid Course"; or
    - (b) Documentation of successful completion, within the past three years, of first aid training by a licensed physician or registered nurse, an emergency medical technician, or an instructor certified by the "American Red Cross." This training shall include recognition and emergency management of bleeding, burns, poisoning, respiratory distress including choking, musculoskeletal injury, wounds including animal and insect bites, sudden illness, shock, hypothermia, heat stroke and exhaustion, and frostbite; and
  - (2) Documentation that, prior to providing personal care services without supervision in the facility, the individual successfully completed training or continuing education that covers the correct techniques of providing personal care services to others. The training or continuing education shall be sufficient to ensure that the individual can demonstrate an ability to provide personal care services required by the individual's job responsibilities properly.
  - (3) The documentation required by this paragraph shall be signed and dated by the provider of the training. Certificates from on-line or remote-learning first aid courses or training shall not be accepted for purposes of meeting the requirements of this rule.

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- (L) The owner or manager shall provide for ongoing training to ensure that individuals working in the facility maintain job competency and appropriate skills to care for individual residents of the facility.
- (M) The manager shall obtain:
- (1) An initial six hours of training within one year of hire or the effective date of initial licensure in topics such as, but not limited, to the following:
    - (a) Cleanliness/sanitary conditions;
    - (b) Conflict resolution;
    - (c) Documentation;
    - (d) Financial management: provider and resident;
    - (e) Resident screening and referral procedures;
    - (f) Role and responsibilities of adult care facilities; and
    - (g) Role and responsibilities of ombudspersons, other governmental systems and resources.
  - (2) Thereafter, the manager shall, over each twelve month period from the date of hire or initial licensing of the facility, obtain a minimum of six hours of continuing education covering topics pertinent to operating an ACF, including but not limited to topics enumerated in paragraph (M)(1) of this rule, as well as the following:
    - (a) Implementation and interpretation of ACF administrative rules and statute;
    - (b) Personal care service protocols; and
    - (c) Policy and procedure updates.
  - (3) If the manager is subject to annual training requirements set forth in paragraph (B) of rule 5122-33-14 of the Administrative Code, three of the training hours obtained may be credited toward requirements prescribed by this paragraph.
- (N) Sources of training in paragraphs (L) and (M) of this rule may include physicians, registered nurses, social workers, psychologists, and counselors licensed under the applicable chapter of Title 47 of the Revised Code; organizations such as the American red cross, accredited learning institutions, mental health boards or agencies, other appropriate governmental entities, or other authorities recognized by the director of health as qualified to provide this training. In addition to classroom instruction, training may be provided through other means subject to the approval of the director as appropriate for the purposes of this rule.

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- (O) The owner or manager shall maintain documentation evidencing compliance with the training requirements of this rule. This documentation shall specify the topic, description, date, duration and source of training provided to all staff members in accordance with this rule.
- (P) No individual shall work in an ACF under either of the following circumstances:
  - (1) During the communicable stage of a disease which may be transmitted in the performance of the individual's job responsibilities; or
  - (2) When the individual is under the influence of illegal drugs, or is using alcohol; or is using medications to the extent that the health or safety of any resident of the facility is jeopardized.
- (Q) Except as provided in Chapter 3701-13 of the Administrative Code, no adult care facility shall employ a person who applies on or after January 27, 1997, for a position that involves the provision of direct care to an older adult, if the person:
  - (1) Has been convicted of or pleaded guilty to an offense listed in division (C)(1) of section 5119.85 of the Revised Code; or
  - (2) Fails to complete the form(s) or provide fingerprint impressions as required by division (B)(3) of section 5119.85 of the Revised Code.

### **5122-33-14 Additional staffing requirements.**

In addition to meeting the training requirements contained in rule 5122-33-13 of the Administrative Code, each ACF which accepts residents diagnosed with mental illness shall ensure that, prior to the admission of the first resident so diagnosed, the following training and continuing education requirements are met:

- (A) The manager and each staff member providing personal care services shall complete a general orientation in caring for persons diagnosed with mental illness and instruction on how to access local mental health crisis or emergency services related to mental illness. Adult care facilities providing care to residents diagnosed with mental illness shall comply with the provisions of this paragraph with the following exception:

An individual hired to serve as a manager or to provide personal care services in a facility that accepts residents diagnosed with mental illness, shall complete the orientation and instruction in caring for persons diagnosed with mental illness and instructions on how to access local mental illness crisis or emergency service related to mental illness within thirty days of hire.
- (B) The manager and each staff member providing personal care services shall over each twelve month period from date of hire or initial licensing of the facility receive a minimum of six hours of training in topics relevant to persons diagnosed with mental illness who are residing in the

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facility. Three hours of this mental illness related training may be used to fulfill annual training requirements for managers, as prescribed in paragraph (M) of rule 5122-33-13 of the Administrative Code.

- (C) The training required by paragraphs (A) and (B) of this rule may be provided by physicians, registered nurses, social workers, psychologists, and counselors licensed under the applicable chapter of Title 47 of the Revised Code, mental health-related organizations, accredited learning institutions, appropriate governmental entities, or other authorities recognized by the director of health as qualified to provide this training. In addition to classroom instruction, training may be provided through other means as appropriate for the purposes of this rule subject to the approval of the director.
- (D) The owner or manager shall maintain documentation of all on-site and off-site training conducted for facility management and staff. Such documentation must include the topic, description, date, duration and source of training provided to the manager and staff members in accordance with this rule. Such documentation shall be made available to state surveyors for review upon request.

### **5122-33-15 Recordkeeping.**

Each ACF shall maintain the following records:

- (A) An individual record for each resident which shall be stored at the facility in which the resident currently resides and in a manner that protects and ensures confidentiality, except that information shall be immediately accessible for an emergency.
  - (1) Staff members who have access to residents' personal information shall not discuss or share the information with another individual working in the facility unless transmission of the information is necessary to provide care to or to meet the needs of the resident. Individuals working in the facility shall not discuss residents' personal information with or in front of other residents of the facility, or with persons outside of the facility except as provided for in paragraph (A)(3) of this rule. Individuals working in the facility shall return resident records to the storage area and not allow the records to remain open in the view of others in the facility.
  - (2) The facility shall safeguard resident records against loss, destruction, or unauthorized use. Each resident record shall be maintained by the facility for at least two years after the resident is permanently transferred or discharged or dies.
  - (3) The facility shall not release any resident records to any individual outside the facility without the resident's consent, except for the following circumstances:
    - (a) Release upon transfer to another adult care facility or a nursing home, residential care facility, home for the aging, hospital, or other health care facility or provider;

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- (b) Release to individuals who are authorized to have access under paragraph (C) of rule 5122-33-06 of the Administrative Code; or
  - (c) Release that is required by law or rule or a third-party payment contract.
- (4) Each resident record shall contain all of the following items:
- (a) The resident's name, previous address, and date of birth; the date the resident began living at the facility; the names, addresses, and telephone numbers of any individuals designated by the resident; the name, address, and telephone number of any referring entity; and the resident's physician's name, address, and telephone number;
  - (b) Copies of the health assessments required by rule 5122-33-18 of the Administrative Code;
  - (c) Notations of significant change in physical health or behavioral status as required by paragraph (A)(2) of rule 5122-33-19 of the Administrative Code;
  - (d) Written emergency information which includes the name, address, and telephone number of the individual or individuals to be notified in the event of an emergency and of the physician to be called. This information will include specific providers to be contacted in emergency situations staff members believe to be related to a known diagnosis or disability;
  - (e) The written resident agreement required by rule 5122-33-16 of the Administrative Code; and
  - (f) For residents referred by or receiving services from a mental health agency, a mental health plan for ongoing mental health services required by rule 5122-33-18 of the Administrative Code.
- (B) Reports of the investigations of incidents required by paragraph (B)(3) of rule 5122-33-19 of the Administrative Code.
- (C) Fire and evacuation procedures and records of fire drills;
- (D) A current listing of the names and ages of all residents and dates of residence;
- (E) Copies of all current licenses, approvals, inspections, and plans of correction;
- (F) Procedures for obtaining general emergency assistance;
- (G) Records of heating system checks and, if applicable, smoke detector and sprinkler system checks;
- (H) Medical statements and documentation of training for staff members;
- (I) All records and reports required by Chapter 3701-13 of the Administrative Code to be maintained and made available in accordance with that chapter; and

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(J) All records and reports required by rules 5122-33-13 and 5122-33-14 of the Administrative Code.

### **5122-33-16 Resident agreement; other information to be provided upon admission.**

- (A) An ACF shall enter into a written resident agreement with each prospective resident prior to beginning residency in the facility. The agreement shall be signed and dated by the manager or owner and the prospective resident or, if the prospective resident is physically unable to sign and consents, another individual designated by the prospective resident. The facility shall provide both the prospective resident and any other individual signing on his or her behalf with a copy of the agreement and shall explain the agreement to them.
- (B) The agreement required by paragraph (A) of this rule shall include at least the following items:
- (1) An explanation of monthly charges to the resident including security deposits, if any are required, and a statement whether the facility or the resident will pay for the initial and annual assessments required by rule 5122-33-18 of the Administrative Code;
  - (2) A statement that no charges, fines, or penalties will be assessed against the resident other than those stipulated in the agreement;
  - (3) An explanation of the facility's policy for refunding monthly charges in the event of the resident's absence, discharge, or transfer from the facility and the facility's policy for refunding security deposits; and
  - (4) A written explanation of the extent and types of services the facility will provide to the resident.
- (C) In addition to executing and explaining the resident agreement under paragraph (A) of this rule, upon admission of a resident, the facility shall provide:
- (1) A copy of the facility's residents' rights policy and procedures required by paragraphs (D) and (E) of rule 5122-33-23 of the Administrative Code;
  - (2) The facility's smoking policy required by paragraph (I)(9) of rule 5122-33-22 of the Administrative Code;
  - (3) A copy of procedures to be used for the referral of residents for mental health evaluation and services and the role of the facility regarding the resident's receipt of appropriate services from mental health providers; and
  - (4) Any other facility policies that residents must follow to include "house rules" as may be applicable.

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### **5122-33-17 Personal care services; resident medications; home health care.**

- (A) For the purposes of this rule, personal care services or skilled nursing care shall be considered to be provided by a facility if they are provided by a person employed by or associated with the facility or by another person pursuant to an agreement to which neither the resident who receives the services nor his or her sponsor is a party.
- (B) An ACF shall provide personal care services to residents who require those services and may provide personal care services to other residents upon request. If a resident requires certain personal care services that the facility does not offer, the facility either shall arrange for the services to be provided or shall transfer the resident to an appropriate setting in accordance with section 5119.83 of the Revised Code and rule 5122-33-24 of the Administrative Code. Personal care services include, but are not limited to, the following:
- (1) Assistance with walking and moving, dressing, grooming, toileting, oral hygiene, hair care, dressing, eating, and nail care;
  - (2) Assistance with self-administration of medication, in accordance with section 5119.701 of the Revised Code and paragraph (C) of this rule; and
  - (3) Preparation of special diets, other than complex therapeutic diets, for residents who require them, pursuant to the instructions of a physician or a licensed dietitian and in accordance with paragraph (B) of rule 5122-33-20 of the Administrative Code.
  - (4) Nothing in this paragraph shall be construed to permit personal care services to be imposed upon a resident who is capable of performing the activity in question without assistance.
- (C) All medication taken by residents of an ACF shall be self-administered, except that medication may be administered to a resident as part of the skilled nursing care provided in accordance with division (B) of section 5119.86 of the Revised Code and paragraph (D) of this rule. Members of the staff of an ACF shall not administer medication to residents. No person shall be admitted to or retained by an ACF unless the person is capable of administering the person's own medications, as determined in writing by a physician, except that a person may be admitted to or retained by such a facility if his medication is administered as part of the skilled nursing care provided in accordance with division (B) of section 5119.86 of the Revised Code and paragraph (D) of this rule. Staff members of an ACF may do any of the following once they have received training in providing the services as required by paragraph (K)(2) of rule 5122-33-13 of the Administrative Code:
- (1) Remind a resident when to take medication, and watch to ensure that the resident follows the directions on the container;
  - (2) Assist a resident in self-administration of medication by taking the medication from the locked area where it is stored and handing it to the resident. The staff member shall check the name on the prescription label and verify that the resident's name on the prescription label

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corresponds to the resident requesting the medication before handing it to the resident. The staff member may read the label and directions on the medication container to the resident upon request. The staff member also may remind the resident and any other individual designated by the resident when prescribed medication needs to be refilled. Staff members shall not assist a resident with self-administration of a prescription medication that belongs to another resident. If the resident is physically unable to open the container, a staff member may open the container for the resident; and

- (3) Assist a physically impaired but mentally alert resident such as a resident with arthritis, cerebral palsy, or Parkinson's disease in removing oral or topical medication from containers and in consuming or applying the medication upon request by or with the consent of the resident. If the resident is physically unable to place a dose of medicine to his or her mouth without spilling it, a staff member may place the dose in a container and place the container to the mouth of the resident. As used in this paragraph, "topical medication" means a medication other than a debriding agent used in the treatment of a skin condition or minor abrasion, and eye, nose, or ear drops excluding irrigations.
- (D) No facility shall provide, or admit or retain any resident in need of skilled nursing care unless all of the following are the case:
- (1) The care will be provided on a part-time, intermittent basis for not more than a total of one hundred twenty days in any twelve-month period by an appropriately licensed employee or contract employee of one or more of the following:
    - (a) A home health agency certified under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended;
    - (b) A hospice care program licensed under Chapter 3712. of the Revised Code;
    - (c) A nursing home licensed under Chapter 3721. of the Revised Code and owned and operated by the same person and located on the same site as the ACF if the requirements of paragraph (E) of this rule are met;
    - (d) A mental health agency, or ADAMHS board.
  - (2) The staff of the home health agency, hospice care program, nursing home, mental health agency, or ADAMHS board does not train facility staff to provide the skilled nursing care; and
  - (3) The individual to whom the skilled nursing care is provided is suffering from a short-term illness. As used in this paragraph, "short-term illness" means either a medical condition for which recovery can be expected to occur with not more than thirty-five consecutive days of skilled nursing care or a medical condition requiring skilled nursing care provided on a periodic, scheduled basis.

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- (4) If a resident's condition requires more skilled nursing care than permitted under this paragraph, the facility shall transfer or discharge the resident in accordance with section 5119.83 of the Revised Code and rule 5122-33-24 of the Administrative Code.
- (E) If the skilled nursing care is to be provided by the nursing staff of a nursing home, the following requirements shall be met:
  - (1) The ACF shall evaluate the individual receiving the skilled nursing care at least once every seven days to determine whether the individual should be transferred to a nursing home;
  - (2) The ACF meets at all times the staffing requirements of rule 5122-33-13 of the Administrative Code;
  - (3) The nursing home does not include the cost of providing skilled nursing care to the ACF residents in a cost report filed under section 5111.26 of the Revised Code;
  - (4) The nursing home meets at all times the nursing home licensure staffing ratios established by rule 3701-17-08 of the Administrative Code;
  - (5) The nursing home staff providing skilled nursing care to ACF residents are registered nurses or licensed practical nurses licensed under Chapter 4723. of the Revised Code and meet the personnel qualifications for nursing home staff established by rule 3701-17-07 of the Administrative Code;
  - (6) The skilled nursing care is provided in accordance with the rules established for nursing homes under section 3721.04 of the Revised Code;
  - (7) The nursing home meets the skilled nursing care needs of the ACF residents; and
  - (8) Using the nursing home's nursing staff does not prevent the nursing home or ACF from meeting the needs of the nursing home and ACF residents in a quality and timely manner.
- (F) A home health agency or hospice care program that provides skilled nursing care pursuant to paragraph (D) of this rule shall not be associated with the ACF unless the facility is part of a home for the aged as defined in section 5701.13 of the Revised Code or the ACF is owned and operated by the same person and located on the same site as a nursing home licensed under Chapter 3721. of the Revised Code that is associated with the home health agency or hospice care program. In addition, the following requirements shall be met:
  - (1) The ACF shall evaluate the individual receiving the skilled nursing care not less than once every seven days to determine whether the individual should be transferred to a nursing home;
  - (2) If the costs of providing the skilled nursing care are included in a cost report filed pursuant to section 5111.26 of the Revised Code by the nursing home that is part of the same home for the aged, the home health agency or hospice care program shall not seek reimbursement for

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the care under the medical assistance program established under Chapter 5111. of the Revised Code.

- (G) In addition to the requirements of paragraph (C) of this rule, ACFs shall handle residents' medications in accordance with this paragraph.
- (1) The facility shall ensure that residents' prescription medications are kept in locked storage areas, except that medications requiring refrigeration shall be refrigerated. All prescribed medications shall be clearly labeled with the resident's name, the name and strength of the medication and the prescription number, if any, the date dispensed, the name of the physician, and the instructions for use.
  - (2) The facility shall not remove and repackage medication from the pharmacy-dispensed container.
  - (3) The facility shall send a resident's medications with the resident upon permanent transfer or discharge, or dispose of the medications with the consent of the resident and in accordance with applicable state and federal laws, regulations, and rules.
  - (4) The facility shall not recommend over-the-counter medications to residents.
  - (5) The facility shall keep a written list of all medications prescribed for each resident and shall make a good-faith effort to keep the list current.
- (H) An ACF may assist a physically impaired, but mentally alert resident, by taking out and arranging equipment or supplies used for routine, self-monitoring tests relating to chronic conditions and assisting the resident in maintaining a record of test results, upon request of the resident. Nothing in this paragraph shall be construed to permit an ACF staff member, manager or operator to interpret routine, self-monitoring test results, or to provide treatment, or to modify currently prescribed treatment as the result of self-monitoring tests. An ACF staff member, manager or operator may encourage a resident to contact a licensed health care professional to report self-monitoring test results.
- (I) In the case of an ACF providing personal care services to one or more individuals with mental illness who are referred by or are receiving mental health services from a mental health agency, the facility shall commence providing personal care services to those residents in accordance with the mental health plan for care upon agreement to the plan by all necessary parties.

### **5122-33-18 Resident assessments; mental health plan for care.**

- (A) In accordance with this rule, an ACF shall require written initial and periodic health assessments of prospective and current residents. The health assessments shall be conducted by physicians or other licensed health professionals, acting within their scope of practice. The purpose of the assessments shall be to ensure that the residents do not require a level of care beyond that which

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is provided by the ACF, including assessment of the residents' capacity to self-administer the medications prescribed for them with or without assistance. The different components of the assessment may be performed by different health professionals, consistent with the type of information required and the professionals' scope of practice, as defined by applicable law.

(B) An initial health assessment shall be performed within the time frames and in the manner specified in this paragraph.

(1) The assessment shall be done upon admission but no later than fourteen days after the resident begins to reside in the facility. A resident is not required to obtain another initial assessment if the resident had an assessment meeting the requirements of paragraph (B)(2) of this rule no more than one year before beginning to reside in the facility.

(2) The initial health assessment shall include documentation of the following:

(a) Health history and physical;

(b) Tuberculosis testing and results in accordance with paragraph (C) of this rule;

(c) Prescription medications;

(d) Dietary requirements including any food allergies;

(e) Height and weight;

(f) Medical diagnoses;

(g) Diagnosis of mental illness, if applicable;

(h) Type of care or services required as determined by a licensed health professional in accordance with paragraph (B)(2) of this rule; and

(i) The resident's capability, as determined by the resident's personal physician, to self-administer medications. The documentation also shall specify what assistance with self-administration, as authorized by paragraph (C) of rule 5122-33-17 of the Administrative Code, if any, is needed.

(C) In addition to the requirements of paragraphs (A) and (B) of this rule, prior to or within forty-eight hours after admission, residents who have not had previous known significant blood assay for M. tuberculosis (BAMT) or Mantoux tests and who do not have a record of BAMT or two-step Mantoux testing within the twelve months preceding admission, shall have a single BAMT, or two-step Mantoux test using five tuberculin units of purified protein derivative. The first step should be read within forty-eight to seventy-two hours following application. Only a single Mantoux or BAMT is required if the resident has documentation of either the BAMT test, a single Mantoux test or a two-step Mantoux test within one year of admission.

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- (1) The first step of the Mantoux test should be read within forty eight to seventy two hours following application. If the first step in the Mantoux test is nonsignificant, the second step shall be performed no less than seven or more than twenty-one days from the date of the first step.
- (2) The ACF shall assure that residents with significant BAMT or Mantoux tests are reviewed for history and symptoms by a physician, or other appropriate licensed health care professional acting within their applicable scope of practice, and that they have had a chest x-ray within thirty days before admission or within forty-eight hours of notification of significant test results. If appropriate, the physician or applicable health care professional shall order a repeat x-ray. Additional tuberculosis testing is not required after one medically documented significant test. The ACF shall assure that a resident who exhibits signs and symptoms of tuberculosis is reassessed. A subsequent chest x-ray is not required unless the individual develops symptoms consistent with active tuberculosis.
- (3) Residents with nonsignificant BAMT or Mantoux tests shall receive a single BAMT or Mantoux test if they are exposed to a known case of tuberculosis. If Mantoux testing is used, a second Mantoux test shall be performed no less than ninety days after exposure. If either the BAMT or Mantoux tests reveal evidence of conversion, the resident shall have a chest x-ray unless the resident has had a chest x-ray no more than thirty days before the date of conversion and the physician or other appropriate licensed health professional determines another x-ray is not needed.
  - (a) If the chest x-ray does not reveal active pulmonary tuberculosis, the ACF shall document that the resident has been evaluated and considered for preventive treatment, or shall obtain a written statement from a physician that treatment is contraindicated. During the annual health assessment performed in accordance with this rule, the facility shall assure a physician or other licensed health professional, acting within their scope of practice, assesses the resident for signs and symptoms suggesting tuberculosis and shall document and report the presence or absence of symptoms in the resident's record.
  - (b) If the chest x-ray reveals active pulmonary tuberculosis, the ACF shall, in accordance with rule 5122-33-24 of the Administrative Code, immediately transfer the resident to a facility capable of appropriately caring for a resident with active pulmonary tuberculosis. The resident shall not be transferred back to an ACF until the appropriate local public health authority determines the resident is no longer infectious.
- (4) If a resident is transferred to the facility from another component of a retirement community and the other component had performed tuberculosis testing that complies with paragraph (C) of this rule, the facility need not perform any additional tuberculosis testing that otherwise would be required by this paragraph.

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- (5) Within thirty days of the anniversary date of the previous testing, each resident shall have a single BAMT or Mantoux test repeated annually unless the resident previously had a significant BAMT or Mantoux test.
- (D) An annual health assessment shall be performed within twelve months of the resident's last health assessment unless the owner or manager of the facility determines that an assessment should be performed sooner. This health assessment shall include documentation of at least the following:
- (1) Prescription medications;
  - (2) Updated dietary requirements;
  - (3) Weight;
  - (4) Any change in medical and/or mental health diagnosis since the most recent assessment;
  - (5) Type of care or services required as determined by a licensed health care professional in accordance with paragraph (D) of this rule; and
  - (6) If the resident is taking prescribed medication, the resident's capability, as determined by a physician, to self-administer medications. The documentation also shall specify what type of assistance with self-administration, as authorized by paragraph (C) of rule 5122-33-17 of the Administrative Code, if any, is needed.
- (E) If an adult care facility intends to serve or serves residents with mental illness or severe mental disability, the owner or manager of an adult care facility shall enter into a mental health resident program participation agreement with the ADAMHS board serving the alcohol, drug addiction, and mental health services district in which the adult care facility is located. This agreement shall be a standardized format as developed by the director of mental health under section 5119.613 of the Revised Code.
- (F) The owner or manager of the adult care facility shall comply with the requirements of the owner's or manager's mental health resident program participation agreement and any other process regarding referrals and effective arrangements for ongoing mental health services as may be established by the public health council in consultation with the director of health and the director of mental health.
- (G) When an individual diagnosed with mental illness is referred to an ACF by or is receiving services from a mental health agency, the ACF owner or manager shall work with the lead mental health agency and with the prospective resident, or sponsor if appropriate, to obtain a written, individualized mental health plan for care prior to admission. If there is a question regarding the identity of the lead mental health agency, the ACF owner or manager shall contact the ADAMHS board serving the area in which the facility is located for assistance in this matter. The mental health plan for care shall:

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- (1) Specify the types of medication and possible severe adverse side effects of each medication and dangerous interactions or possible reactions of medications to conditions of the prospective resident's environment;
  - (2) Specify each entity that is to provide special services including personal care and transportation services currently needed to enhance or optimize the mental health care of the prospective resident;
  - (3) Include information regarding the prospective resident to promote appropriate admission to the facility and allow appropriate preparation of the ACF and staff to provide optimal care for the prospective resident.
  - (4) Include a crisis plan which includes procedures for obtaining immediate assistance from the board, agency and any other authorized provider(s) to appropriately address adverse changes or emergency mental health needs of the prospective resident;
  - (5) Include any advanced directives;
  - (6) Include any specific instruction necessary for the optimal care of the prospective resident, so long as the implementation of such instruction(s) does not violate the rights of residents in the ACF, pursuant to section 5119.81 of the Revised Code and rule 5122-33-23 of the Administrative Code; and
  - (7) Be signed by the ACF owner or manager, the prospective resident or sponsor, if appropriate, and the lead mental health agency. If a mental health plan for care is not signed by all parties, the adult care facility shall not admit the prospective resident.
- (H) The ACF owner or manager shall review each mental health plan for care at least annually to assure that the duties, responsibilities, and obligations of the facility as specified in the mental health plan for care are continuing to be met by the facility or to determine any necessary revisions or changes required in accordance with paragraph (D) of this rule. It shall be the responsibility of the owner or manager to advise the resident, the resident's sponsor, and the resident's mental health case manager of any changes made or anticipated by the facility for the following year. Any revisions made by the facility will be annotated on the plan for care and the date of review and name of person conducting the review shall be annotated on the signature page of the plan for care.
- (I) After an adult care operator or manager has entered into a mental health plan for care, the operator or manager shall provide all services as stated in the terms of the plan unless provision of such services is precluded by non-compliance or plan modification on the part of the resident, sponsor, or mental health agency, after the effective date of the plan. The adult care facility operator or manager shall ensure that;
- (1) All staff involved with direct care of residents are trained in understanding and following the mental health plan for care; and

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- (2) All staff are retrained on the mental health plan for care if they do not understand or fail to follow the plan.
- (J) If a resident's condition requires care beyond that which an adult care facility is authorized to provide or beyond that which the specific facility provides, the facility shall transfer or discharge the resident in accordance with section 5119.83 of the Revised Code and rule 5122-33-04 of the Administrative Code.

### **5122-33-19 Changes in residents' physical health and behavioral status; incidents.**

- (A) In the event of a significant change in physical health or behavioral status, the facility shall do all of the following:
  - (1) Take immediate and proper steps to see that the resident receives necessary intervention including, if needed, medical attention or transfer to an appropriate health care facility;
  - (2) Make a notation of the significant change in physical health or behavioral status and any intervention taken in the resident's record;
  - (3) Provide pertinent resident information to the person providing the intervention as soon as possible; and
  - (4) Immediately notify the resident's case manager and sponsor of the significant change in physical health or behavioral status and actions taken.
- (B) As used in this paragraph, "incident" means any accident or episode involving a resident, staff member, or other individual in an ACF which presents a risk to the health, safety, or well-being of a resident of the facility. In the event of an incident, the facility shall do all of the following:
  - (1) Take immediate and proper steps to see that the resident or residents involved receive necessary intervention including, if needed, medical attention or transfer to an appropriate health care facility;
  - (2) As soon as possible, but no later than twenty-four hours after the incident, notify the resident's case manager(s) and sponsor(s) of the incident and subsequent actions taken;
  - (3) Investigate the incident and document the incident and the investigation. The documentation shall contain the names of individuals involved; the time, place, and date of the occurrence; a description of the incident; the probable cause; and the care provided or measures taken; and
  - (4) Notify the state department of mental health adult care facility program of the incident and results of the investigation within twenty-four hours if the incident resulted in actual harm to

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a resident or staff member or had significant impact on the facility's environmental or physical plant systems.

## **5122-33-20 Dietary services.**

- (A) Each ACF shall specify in its facility policies and in resident agreements required by rule 5122-33-16 of the Administrative Code, the dietary service provided by the ACF, consistent with this rule.
- (B) Each ACF shall provide dietary services that meet at least the following standards:
  - (1) Each day, the facility shall make available at least three balanced, nourishing and appetizing meals to all residents.
  - (2) The facility shall have a choice of snacks available.
  - (3) All ACFs shall provide safe drinking water which shall be readily accessible to residents at all times. Bottled or similar packaged potable water shall be obtained only from appropriately regulated sources and shall be handled and stored in a manner that protects it from contamination. Bottled and packaged potable water shall be dispensed to residents only from the original container.
  - (4) If a resident is involved in programs, including vocational training or therapeutic day programs that require the resident to be absent from the facility during a scheduled meal time, the facility shall ensure the resident is provided with an adequate meal unless a meal is provided at no additional cost to the resident, as part of the program.
  - (5) The ACF shall prepare food for residents who have special dietary needs in accordance with dietary instructions from a physician or licensed dietitian. The ACF shall obtain the following information from the physician or dietitian:
    - (a) A written list of permitted and excluded foods;
    - (b) Recommended meal patterns and food preparation techniques where applicable; and
    - (c) A list of additional resources that the facility can consult for additional guidance.
  - (6) When obtaining this information the ACF shall inform the physician or the dietitian of the staff and equipment available for food preparation and of the dietary needs of all the residents.
- (C) ACFs shall have food, including snack items, reasonably available to meet the individual needs of all residents. Meals and snacks provided shall include a variety of seasonally available food

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accommodating religious restrictions and ethnic or cultural preferences of residents in accordance with the ACF's policy.

- (1) The facility shall maintain, at all times, a one-week supply of staple foods and a two-day supply of perishable foods, such as fresh milk, bread, eggs, fruits and vegetables adequate to provide for the number of residents accommodated in the ACF.
  - (2) The facility shall make available upon an individual resident's request, powdered milk for individual resident consumption. Powdered milk shall not be used as a substitute for fresh milk for all other residents.
  - (3) When home canned products are used in preparation of resident meals, the ACF shall label food containers with a minimum of the name of the food and date processed. Meal variety and resident food choices shall not be restricted due to the facility's efforts to use up certain home canning stocks.
- (D) The ACF shall ensure there is at least a four hour interval available between the scheduled breakfast meal and the scheduled mid-day meal and between the scheduled mid-day meal and the scheduled evening meal. There shall be no more than fourteen hours between the evening meal and the breakfast meal. The specific time of meals may take into consideration resident's preferences.
- (E) The ACF shall ensure all food shall be procured, stored, prepared, distributed and served in a manner that protects it against contamination and spoilage from the time of procurement to consumption.
- (1) The ACF shall ensure all foods intended for resident consumption shall be wholesome, in sound condition free from spillage, filth, or other contamination, and shall be safe for human consumption. All foods, either in storage or in the preparation or kitchen area, shall be labeled to assure unmistakable identity.
  - (2) At all times, including storage, thawing, preparation, display, and transport, the ACF shall ensure food is protected from contamination, including dust, insects, rodents, unclean utensils, unnecessary handling, coughs and sneezes, hair, flooding, drainage and overhead leakage or dripping.
  - (3) The ACF shall ensure food stored in the refrigerator or freezer is properly wrapped, covered, or in a closed container.
- (F) Each ACF shall have a kitchen, equipment and facilities that are appropriate and adequate for preparing and serving meals to residents to the extent stated in the facility policy and specified in paragraph (B) of this rule. The ACF shall also provide a dining area, consistent with paragraph (C) of rule 5122-33-22 of the Administrative Code.

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- (G) Each ACF shall have procedures in place that assure the kitchen area and dining area(s) are cleaned after each meal and that the following sanitation measures are observed and enforced in the facility:
- (1) The ACF shall provide hand washing facilities, including hot and cold water, soap and single use towels in the kitchen or any other food preparation area. All staff responsible for residents' food preparation or handling shall be instructed in proper hand washing techniques.
  - (2) The ACF shall provide and maintain clean and sanitary kitchen and dining areas and a clean and sanitary supply of eating and drinking utensils, pots, and pans for use in preparing, distributing, serving and eating meals and snacks;
  - (3) The ACF shall ensure that kitchen appliances and equipment shall be kept clean and free of food debris;
  - (4) Cloths provided by the ACF for wiping food spills in kitchenware and food preparation surfaces, and cloths, pads, or brushes supplied by the ACF and used for hand dish-washing shall be clean and used for no other purpose. These cloths shall be stored between uses.
  - (5) The ACF shall ensure that food scraps and trash are placed in garbage cans daily, or more often if needed. Non-disposable containers shall be cleaned frequently enough to maintain sanitary conditions. Disposable bags may be stored outside only in a non-absorbent container with a close-fitting cover. Liquid wastes resulting from compacting shall be disposed of as sewage.
  - (6) The ACF shall take measures to eliminate the presence of rodents, flies, cockroaches and other insects in the food preparation areas. The kitchen and other food preparation or storage areas shall be kept in such condition to prevent harborage or feeding of insects or rodents.
  - (7) The ACF shall maintain the kitchen area free of poisonous and toxic materials other than those necessary for maintaining the operations, cleaning and sanitizing of kitchen equipment and utensils or for controlling insects or rodents in the food areas.
- (H) The facility shall ensure all equipment, utensils, kitchenware, tableware and surfaces upon which food comes in contact while in preparation, including but not limited to, counter tops, cutting boards and thawing trays shall be easily cleanable. Single use containers shall not be reused, whether or not they are cleaned.
- (I) The facility shall observe, supervise and assist a resident in consuming meals if the resident requests or needs such services.
- (J) The facility shall ensure that food texture is appropriate to the individual needs of each resident or as may be required for that resident by a physician or licensed dietitian.

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- (K) ACF staff shall not administer tube or syringe feedings or parenteral nutrition. Such care may be provided in the facility only in accordance with provisions in rule 5122-33-17 of the Administrative Code.
- (L) A licensed ACF shall not be required to be licensed as a food service operation under Chapter 3717. of the Revised Code unless the facility is preparing food under one or both of the following conditions:
  - (1) An ACF preparing food for the residents of two or more licensed ACFs with a combined resident census exceeding sixteen residents shall be licensed as a food service operation by the appropriate licenser as defined by section 3717.01 of the Revised Code unless otherwise exempt.
  - (2) Any ACF preparing food for consumption by residents at a second ACF or multiple off-premise locations shall be licensed as a food service operation by the appropriate licenser defined by section 3717.11 of the Revised Code, unless otherwise exempt.
- (M) ACF staff shall ensure meals prepared in one ACF food preparation area for transport or distribution to another area will be transported in a safe and sanitary manner to prevent contamination.
- (N) Meals intended for consumption by residents of an ACF in that facility, but not prepared in that facility, shall be obtained by ACF staff only from a source licensed as a food service operation under Chapter 3717. of the Revised Code.
- (O) ACFs not required to be licensed as a food service operation in accordance with paragraph (L) of this rule shall comply with standards set forth herein for food procurement and protection to include storage, preparation, display and handling.

### **5122-33-21 Laundry services; activities; resident property.**

- (A) An adult care facility shall launder or arrange for the laundering of all clothing and bed and bath linen for residents who require laundry services. The facility may provide a washer and dryer in the facility for residents' use or may provide residents with transportation to and from a laundromat.
- (B) Each adult care facility shall encourage residents to participate in social, recreational, and leisure activities. The facility shall provide at least all of the following:
  - (1) One local daily newspaper, community weeklies, or current community activity brochures and advertisements;
  - (2) Transportation or information about the availability of transportation to community activities; and

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- (3) An opportunity for residents to engage in a variety of activities within the facility for residents. These activities may include, but shall not be limited to, television, crafts, reading, or games.
- (C) An adult care facility shall not coerce, induce, or prompt a resident to assign, transfer, give, or sign over to the facility money, valuables, insurance benefits, property, or anything of value other than payment for services rendered by the facility.
- (1) If a resident or his or her legal representative requests that the facility manage the resident's funds and the facility agrees to do so, the facility shall deposit any amount of money in excess of two hundred dollars in an interest-bearing account separate from the home's operating accounts. A resident's money amounting to two hundred dollars or less may be kept either in a petty cash fund or in an interest-bearing account for the resident. Interest shall be calculated and credited to the resident based upon the amount of the principal held for the resident. Interest shall be credited to the resident. Residents shall have access to their money at all times and shall be encouraged to manage their own money independently.
  - (2) A resident's valuables, other than money, given to the facility for safekeeping shall be kept in a separate envelope or container marked with the resident's name and shall be safeguarded against loss or theft. The resident shall have access to the valuables at all reasonable times.
  - (3) A facility may not charge a resident a fee for managing a resident's funds or safeguarding the resident's property or valuables unless the fee is agreed to and specified in the resident's written agreement with the facility and the agreement does not violate any of the resident's rights under section 5119.81 of the Revised Code. If the facility takes responsibility for a resident's money or other valuables, the facility shall provide the resident upon request, but at least quarterly, with a written statement regarding the status of his or her property. The facility shall provide a resident with a final accounting and return all of the resident's property to him or her at the time of permanent transfer or discharge. Upon the death of a resident, the facility shall return all of the resident's property to the individual administering the resident's estate.
  - (4) No owner, manager, or facility staff member shall be the legal guardian of a resident, unless the individual was appointed guardian prior to August 4, 1991.
  - (5) An owner, manager, or facility staff shall not hold a power of attorney for a resident.

### **5122-33-22 Space, equipment, safety, and sanitation.**

- (A) Each adult care facility shall provide a living area where residents may engage in social, recreational, and leisure activities on a daily basis. The living area shall be well-lighted and adequately heated and ventilated. It shall contain sufficient comfortable, safe, and functional

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furniture to ensure a seating place for at least fifty per cent of the total number of residents. The living area shall not be used as a bedroom by anyone.

- (B) To foster a home-like environment, residents shall be permitted to bring personal items to the facility, so long as the personal items do not create a safety hazard or infringe upon the rights of other residents.
- (C) The facility shall provide a dining area where meals are served to residents. The dining area, table, and seating places shall be of sufficient size and number to allow at least fifty per cent of all residents to eat comfortably together at one time. All furniture shall be comfortable, safe, and functional.
- (D) Each facility shall provide, for each resident, bedroom space separate and distinct from that of the owner, operator, manager, or live-in staff which meets all of the following criteria:
  - (1) The location of forced air furnaces is prohibited on sleeping floors unless fire and smoke protection separations are in place. Fire and smoke protection separations must be maintained by the facility;
  - (2) A single-occupancy room shall have a minimum of eighty square feet and a multiple-occupancy room shall have a minimum of sixty square feet per occupant of wall-to-wall floor space, exclusive of closets and adjoining bathrooms.
  - (3) No facilities licensed on or before December 31, 2006 shall provide sleeping space for more than three residents in a bedroom. Facilities licensed after December 31, 2006 shall provide sleeping space for no more than two residents per bedroom;
  - (4) There shall be at least three feet between beds. No furniture shall block any doorway;
  - (5) Bedrooms shall be separated from halls, corridors, and other rooms by permanent floor-to-ceiling walls. Rooms shall not be divided into sleeping areas or bedrooms by use of temporary partitions.
  - (6) A bedroom shall not be used as a passageway to other rooms. Any room utilized as a resident room must be accessible by a door opening into a hallway or common use area;
  - (7) A bedroom shall not be located in any room that contains a furnace;
  - (8) A bedroom shall not be more than fifty per cent below average grade level in an adult family home. A bedroom shall not be in a basement of an adult group home unless the basement meets the applicable requirements of Chapters 3781. and 3791. of the Revised Code and the rules adopted under them;
  - (9) When assigning bedrooms, the facility shall take into account the mobility of residents and their ability to evacuate the facility readily and easily in case of emergency and shall ensure

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compliance with paragraph (C)(6) of rule 5122-33-09 of the Administrative Code, if applicable;

- (10) The facility shall provide a bed for each resident consisting of springs and a clean, comfortable mattress. The bed shall be sturdy, safe, and in good condition. Rollaway beds, cots, double-deck beds, stacked bunk beds, hide-a-bed couches, and studio couches shall not be provided as beds for residents by the facility. Residents may bring their own beds and furnishings of any type they choose, if the beds and furnishings are safe, sturdy, and functional and there is sufficient space in the facility;
  - (11) The facility shall provide bed linen for each resident, which shall include at least two sheets, a pillow and pillow case, a bedspread, and one blanket. All bed linen must be free of tears, holes, and excessive fraying or wear. Additional blankets and pillows shall be provided to each resident upon request. A minimum of two sets of linen shall be available for each bed at all times. Bed linen shall be changed at least weekly and more often if soiled. Residents may provide and maintain their own bed linen;
  - (12) The facility shall provide each resident with closet or wardrobe space in his or her bedroom for storage of his or her personal clothing and other items. Each resident also shall have adequate bureau, dresser, or equivalent space, and a mirror appropriate for grooming;
  - (13) Each resident bedroom shall have a minimum of one window capable of being easily opened and remaining open without the use of egress-restricting props. Each window shall be equipped with a screen and a curtain, shade, or other appropriate covering to assure privacy; and
  - (14) All bedrooms shall be well-lighted and dry; and
  - (15) All bedrooms shall have doors that are capable of being closed and latched.
- (E) As used in this paragraph, "bathroom" means a room or rooms including at least one toilet, one shower or bathtub, and one sink. The facility shall provide at least one bathroom for each eight individuals living in the facility, including both residents and other individuals. The bathroom facilities shall meet the following requirements:
- (1) The bathroom facilities shall be kept clean, sanitary, and in good repair and shall be accessible to residents at all times;
  - (2) There shall be nonskid surfacing and handrails or grab bars in each bathtub or shower for the safety of the residents;
  - (3) There shall be a sufficient supply of soap and toilet paper in each bathroom to meet the needs of the residents;

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- (4) Clean bath towels and washcloths shall be provided to each resident. Bath towels and wash cloths shall be free of tears, holes, and excessive fraying or wear. The towels and washcloths shall be changed at least twice weekly and more often if soiled;
  - (5) Each bathtub, shower, and sink shall have hot and cold running water. The hot water shall have a temperature of at least one hundred five degrees Fahrenheit but no more than one hundred twenty degrees Fahrenheit at the point of use;
  - (6) The bathroom shall be accessible to all users from a corridor, hallway, or common area; and
  - (7) Residents may provide and maintain their own bath and shower supplies.
- (F) Each facility shall provide at least one non-pay telephone to which residents shall have reasonable access at all times for making local calls and is immediately available to any resident of the facility for use in case of an emergency. The telephone shall be provided in a location or manner which affords privacy. The facility also shall arrange for a method by which residents can make long-distance calls from the facility at the residents' expense. The facility shall maintain a record of billing, charging, and collecting the costs of long distance calls made by individual residents to ensure that residents are charged for only the actual costs of calls made.
- (G) Each facility shall assure a safe clean, healthy environment by doing at least the following:
- (1) Eliminating any existing insects and rodents and taking effective measures to prevent the presence of insects and rodents in and around the facility;
  - (2) Avoiding temperature extremes within the facility which may be a health hazard to the residents;
  - (3) Providing durable garbage and refuse receptacles to accommodate wastes. Outdoor garbage and refuse receptacles shall be kept covered with tight-fitting lids at all times;
  - (4) Promptly and thoroughly cleaning toilets, bathrooms, and other obvious sources of odors;
  - (5) Establishing and implementing housekeeping and maintenance procedures to assure a clean, safe, sanitary environment and a home-like appearance to the facility; and
  - (6) Protecting the drinking water supply against contaminating sources.
- (H) Each facility shall develop and implement appropriate procedures to prevent and control the development and transmission of infections and disease which, at minimum, shall provide for the following:
- (1) Individuals working in the facility shall wash their hands before beginning work and upon completing work, before and after eating, after using the bathroom, after covering their mouth when sneezing and coughing, before and after providing personal care for a resident

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when there has been physical contact, after contact with contaminated materials, before handling food, and at other appropriate times;

- (2) The facility shall keep clean and soiled linen separate. Individuals handling linen shall hold both dirty and clean linen away from the body to avoid contamination to the linen or the individual handling the linen. Soiled laundry shall be handled as little as possible and with minimum agitation. The facility shall use normal laundry cycles according to the washer and detergent manufacturers' recommendations; and
- (3) Individuals providing personal care services that may result in exposure to blood, body fluids, or feces, shall wear disposable gloves made of latex or other impervious material as a protective barrier and shall change gloves and dispose of the used gloves and wash hands before contact with another resident. If exposed to blood, another body fluid, or feces, the individual who has been exposed shall wash his or her hands and other exposed skin surfaces immediately and thoroughly with soap and hot water. The facility shall provide follow-up consistent with the guidelines issued by the U.S. centers for disease control and prevention for the prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers in effect at the time. Individuals providing personal care services shall wash their hands before and after providing the services even if they used gloves.

(I) Each facility shall meet the following safety and maintenance requirements:

- (1) The facility shall provide sturdy and securely fastened handrails for exterior and interior stairways;
- (2) The facility shall provide railings on the open sides of any porch and on the open sides of interior and exterior stairways;
- (3) The facility shall keep floors in good repair. Any rugs used in the home shall be securely fastened to the floor, or shall have non-skid padding, and otherwise shall be used in a manner that does not create a safety hazard;
- (4) The facility shall keep corridors, entrances, exits, and outside pathways free of obstacles and in good repair;
- (5) The facility shall keep sidewalks, escape routes, and entrances free of ice and snow;
- (6) The facility shall maintain all wiring, electrical outlets, permanent fixtures and electrical systems including appliances, cords, switches, lighting fixtures, and lamps in good, safe operating condition. Extension cords, where appropriate for use, shall be underwriter's laboratories (UL) approved, of the appropriate load carrying capacity, and placed so as not to create a hazard for tripping and falling. Extension cords shall not be run under rugs or carpeting;

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- (7) The facility shall have its central heating system checked annually no later than the first day of the fall season, september twenty-second, by a qualified heating contractor. If the primary heating source is electric baseboard heating, the system shall be checked by a qualified electrical contractor or electrician. If applicable, the facility boilers shall be inspected by a qualified, contracted boiler inspector. The facility shall maintain the heating system in safe operating condition;
- (8) The facility may use fireplaces and firestoves only in areas other than resident bedrooms in accordance with the requirements of this paragraph.
  - (a) The facility shall ensure that fireplaces and firestoves are used safely. Use of fireplaces with exposed gas flames is prohibited. The facility shall equip fireplaces with fireplace enclosures.
  - (b) The facility shall ensure that fireplaces and firestoves are installed properly in accordance with the manufacturer's instructions and are cleaned and inspected every two years by a qualified independent fireplace or firestove cleaning company unless the qualified heating contractor, when performing the inspection required by paragraph (I)(7) of this rule, indicates in writing that the fireplace or firestove does not need to be checked or cleaned until a later date.
  - (c) A staff member shall supervise the use of a firestove.
  - (d) In deciding whether or not to maintain an operable fireplace or firestove, the facility shall consider the capabilities and needs of its residents, the likelihood of resident accidents, and the need for safety precautions or guards in addition to the requirements of this paragraph.
- (9) The facility shall establish and enforce an appropriate smoking policy. If smoking is permitted, the policy, at minimum, shall address smoking hours, smoking areas, and requirements for supervision, if any;
- (10) The facility shall assure that common areas and exits are well-lighted;
- (11) The facility shall store poisonous and hazardous materials in clearly labeled containers and away from foodstuffs and medication. The facility shall store gasoline, kerosene, lighter fluid, paints, thinners, and all other flammable materials and liquids in a safe manner. Combustible materials shall be stored in accordance with the manufacturer's label and not within two feet of any heater;
- (12) Any locks on bedroom doors shall meet both of the following requirements:
  - (a) All locks to residents' bedroom entrance doors shall be capable of being opened from the inside without the use of a key, such as by pushing a panic bar, releasing a deadbolt, or using similar means. The locks also shall be capable of being opened by a key from the

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outside. The facility shall provide each resident with a key to his or her bedroom if it has a lock. Bedroom closet doors shall be equipped with an appropriate closet door knob set and be capable of locking when shut; and

- (b) If resident bedrooms have locks, the facility shall have duplicate keys or a master key available and accessible to the staff members on duty at all times for use in cases of emergency;
- (13) If the facility has an unoccupied basement, it shall install and maintain a lock on the basement door which can be opened easily from the upstairs, such as a safety chain or deadbolt. For adult group homes, a lock on the basement door shall be installed when approved by the appropriate building department and shall be maintained in accordance with the applicable rules adopted by the state fire marshal under section 3737.83 of the Revised Code. The facility shall determine when the basement door must be locked to prevent resident accidents. In making this determination, the facility shall take into consideration all residents' conditions and habits and the residents' need to have access to the basement;
- (14) The facility shall maintain first-aid supplies in a closed but unlocked container which is easily accessible to the manager, staff, and residents; and
- (15) The facility shall prominently display the telephone numbers of the fire and police departments, crisis center and other emergency numbers at each telephone in the home. The home shall not require residents or staff members to obtain approval from the manager or owner prior to telephoning for assistance in the event of an emergency.
- (16) Each home shall maintain all interior and exterior doors in safe operating condition and shall ensure that they are capable of latching securely when closed.

### **5122-33-23 Residents' rights.**

(A) As used in this rule:

- (1) "Abuse" means the unreasonable confinement or intimidation of a resident, or the infliction of injury or cruel punishment upon a resident, resulting in physical harm, pain, or mental anguish.
- (2) "Exploitation" means the unlawful or improper utilization of an adult resident or his or her resources for personal or monetary benefit, profit, or gain.
- (3) "Neglect" means failure to provide a resident with the goods or services necessary to prevent physical harm, mental anguish, or mental illness.

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- (4) "Physical restraint" includes, but is not limited to, the locked door of a room or any article, device, or garment that interferes with the free movement of the resident and that he or she is unable to remove easily.
- (B) As specified in division (B) of section 5119.81 of the Revised Code, the facility must assure the rights of a resident of an ACF include all of the following:
- (1) The right to a safe, healthy, clean, and decent living environment;
  - (2) The right to be treated at all times with courtesy and respect, and with full recognition of personal dignity and individuality;
  - (3) The right to practice a religion of his or her choice or to abstain from the practice of religion;
  - (4) The right to manage personal financial affairs;
  - (5) The right to retain and use personal clothing;
  - (6) The right to ownership and reasonable use of personal property so as to maintain personal dignity and individuality;
  - (7) The right to participate in activities within the facility and to use the common areas of the facility;
  - (8) The right to engage in or refrain from engaging in activities of the resident's own choosing within reason;
  - (9) The right to private and unrestricted communications, including the right to receive, send, and mail sealed, unopened correspondence, the right to reasonable access to a telephone for private communications, and the right to private visits at any reasonable hour;
  - (10) The right to initiate and maintain contact with the community, including the right to participate in the activities of community groups at the resident's initiative or at the initiative of community groups;
  - (11) The right to state grievances to the owner or the manager of the facility, to any governmental agency, or to any other person without reprisal;
  - (12) Prior to becoming a resident, the right to visit the facility alone or with the individual's sponsor;
  - (13) The right to retain the services of any health or social services practitioner at the resident's own expense;
  - (14) The right to refuse medical treatment or services, or if the resident has been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code and has not been restored to

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legal capacity, the right to have the resident's legal guardian make decisions about medical treatment and services for the resident;

- (15) The right to be free from abuse, neglect, or exploitation;
  - (16) The right to be free from physical restraints;
  - (17) The right not to be deprived of any legal rights solely by reason of residence in an ACF;
  - (18) The right to examine records maintained by the ACF concerning the resident, upon request;
  - (19) The right to confidential treatment of the resident's personal records, and the right to approve or refuse the release of these records to any individual outside the facility, except upon transfer to another ACF or a nursing home, residential care facility, home for the aging, hospital, or other health care facility or provider, and except as required by law or rule or as required by a third-party payment contract;
  - (20) The right to be informed in writing of the rates charged by the facility as well as any additional charges, and to receive thirty days notice in writing of any change in the rates and charges;
  - (21) The right to have any significant change in the resident's physical health or behavioral status reported to the resident's case manager and sponsor; and
  - (22) The right to share a room with a spouse, if both are residents of the facility.
- (C) In addition to the residents' rights enumerated in division (B) of section 5119.81 of the Revised Code and paragraph (B) of this rule, residents of adult care facilities also shall have the following rights:
- (1) The right not to be locked out of the facility. If the facility is locked during any portion of the day, each resident shall be provided with a key or a staff member shall be immediately available on the premises to open the door;
  - (2) The right not to be locked in the facility at any time for any reason. All lockable doors shall be capable of being opened by residents from the inside without using a key; and
  - (3) The right not to be isolated or to have food or other services withheld for punishment, incentive, convenience, or due to the ACF manager or staff member exceeding instructions contained in a mental health plan for care.
- (D) Each ACF shall establish a written residents' rights policy containing:
- (1) The text of sections 5119.81 and 5119.83 of the Revised Code and paragraph (C) of this rule;
  - (2) A discussion of the rights and responsibilities of residents under those provisions; and

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- (3) The text of any additional rule for residents developed by the facility.
- (E) The facility shall establish procedures for facilitating residents' exercise of their rights.
- (F) At the time of admission, the manager shall give a copy of the residents' rights policy to the resident and the resident's sponsor, if any, and shall explain the contents of the policy to them.
- (G) Each ACF shall post prominently within the facility a copy of the residents' rights listed in division (B) of section 5119.81 of the Revised Code and paragraph (C) of this rule and the addresses and telephone numbers of the state long-term care facilities ombudsperson and the regional ombudsperson for the area in which the facility is located and of the central and district offices of the department.
- (H) A sponsor, the director of mental health, the director of aging, or a residents' rights advocate registered under section 3701.07 of the Revised Code and any of the following entities, acting within their respective scope of statutory authority, may assert on behalf of a resident any of the rights enumerated under section 5119.81 or 5119.83 of the Revised Code, this rule, or rule 5122-33-24 of the Administrative Code:
  - Employees of a mental health agency, or mental health board.

### **5122-33-24 Transfer and discharge rights.**

- (A) For purposes of this rule:
  - (1) "Discharge" means a permanent movement of an ACF resident to another residence or facility that is not under the jurisdiction of the owner or manager.
  - (2) "Emergency" means a situation which creates an imminent risk of substantial harm to the individual or others in the ACF, if immediate action is not taken.
  - (3) "Transfer" means a temporary or permanent movement of an ACF resident between facilities under the jurisdiction of the owner or manager.
- (B) An adult care facility shall not transfer or discharge a resident, in the absence of a request from the resident, unless one of the following reasons exist:
  - (1) Charges for the resident's accommodations and services have not been paid within thirty days after the date on which they became due;
  - (2) The mental, emotional, or physical condition of the resident requires a level of care that the facility is unable to provide;
  - (3) The health, safety, or welfare of the resident or of another resident requires a transfer or discharge;

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- (4) The facility's license has been revoked or renewal has been denied pursuant to Chapter 5119. of the Revised Code and this chapter;
  - (5) The owner closes the facility;
  - (6) In the case of an adult family home, a resident also may be transferred or discharged if the transfer or discharge is required for the health, safety, or welfare of an individual who resides in the home but is not a resident for whom supervision or personal services are provided;
  - (7) The resident is relocated as a result of a court's order issued under section 5119.78 of the Revised Code as part of the injunctive relief granted against a facility that is operating without a license; or
  - (8) The resident is receiving publicly funded mental health services and the facility's mental health resident program participation agreement is terminated by the facility or ADAMHS board.
- (C) A facility shall not discharge or transfer a resident from one facility to another for non-emergency reasons without complying with the requirements of this paragraph. In the event of a non-emergency resident transfer or discharge, the following shall occur:
- (1) The ACF owner or manager shall give a resident and sponsor, and a resident's case manager, if applicable, thirty days' advance notice, in writing, of a proposed transfer or discharge.
  - (2) The resident may request and the director shall conduct a hearing if the transfer or discharge is based upon paragraph (B)(1), (B)(2), (B)(3), or (B)(6) of this rule.
  - (3) The facility shall state in the written notice of proposed transfer or discharge the following information:
    - (a) The reason(s) for the proposed transfer or discharge;
    - (b) The anticipated effective date of the proposed transfer or discharge;
    - (c) A summary of actions taken by the facility to resolve issues with the resident, prior to the notice;
    - (d) If the resident is entitled to a hearing, the written notice shall outline the procedure for the resident to follow in requesting a hearing;
    - (e) Appropriate telephone numbers and addresses of the long-term care ombudsman office;  
and
    - (f) Information to facilitate future placement of the resident, if future placement becomes necessary.

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- (g) The ACF owner or manager shall maintain copies of information enumerated in this paragraph.
- (4) If the resident desires a hearing, he or she shall submit a request to the director not later than ten days after receiving the written notice given under this paragraph of the rule. The director shall provide written notification to the manager, the resident, the resident's case manager, and, if applicable, the person who requested the hearing on behalf of the resident. The notification shall include the date, time, and place of the hearing and shall be provided at least five days before the scheduled hearing. The director shall hold the hearing not later than ten days after receiving the request. If the resident desires a hearing, the ACF shall hold the bed open until a decision is rendered.
- (D) In the event of an emergency resident transfer or discharge, the following shall occur:
- (1) If the transfer or discharge is for a reason given in paragraph (B)(1), (B)(2), (B)(3), or (B)(6) of this rule and an emergency exists, the notice need not be given thirty days in advance. In such a case, the notice shall be given as soon as possible to the resident and the resident's sponsor, case manager, emergency contact, long-term care ombudsman, or other entity identified in the resident's record. The resident shall not be forced to vacate the ACF premises in the absence of one of the aforementioned entities, or a public authority which will assume responsibility for the individual.
- (2) The hearing for an emergency transfer or discharge based upon paragraph (B)(1), (B)(2), (B)(3) or (B)(6) of this rule may be conducted subsequent to the transfer or discharge.
- (3) If the resident desires a hearing, he or she shall submit a request to the director and notify the facility of the appeal request within ten days after the transfer or discharge. The director shall provide written notification to the manager, the resident, the resident's case manager, and, if applicable, the person who requested the hearing on behalf of the resident. The notification shall include the date, time, and place of the hearing and shall be provided at least five days before the scheduled hearing. The director shall hold the hearing not later than ten days after receiving the request. If the resident desires a hearing, the ACF shall hold the resident's bed open until a decision is rendered.
- (E) A representative of the director shall preside over the hearing, which shall be conducted informally. The facility and the resident may appear in person or by their attorneys or other representatives and may provide oral statements and written materials supporting their respective positions. If oral statements are given, the director's representative shall make a tape recording of the hearing. If only one party appears or is represented at the hearing, the director's representative shall proceed with the hearing on an ex parte basis. The hearing is not subject to section 121.22 of the Revised Code.
- (F) The director's representative shall issue a written recommendation of action to be taken by the director not later than three days after the hearing. The director shall issue an order regarding the

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transfer or discharge not later than two days after receipt of the recommendation. The order may prohibit or place conditions on the discharge or transfer. In the case of a transfer, the order may require that the transfer be to an institution or facility specified by the director.

### **5122-33-25 Waivers.**

- (A) The director may waive any of the licensing requirements established by this chapter, unless the requirement is specified by statute.
- (B) Upon written request of the facility, the director may grant a waiver if he or she determines that the strict application of the licensing requirement would cause undue hardship to the facility and that granting the waiver would not jeopardize the health or safety of any resident. In granting a waiver, the director may stipulate a time period for which the waiver is to be effective or may establish conditions that the facility must meet for the waiver to be operative. The director may provide a facility with an informal hearing concerning the denial of a waiver request, but the facility shall not be entitled to a hearing under Chapter 119. of the Revised Code unless the director takes an action that requires a hearing to be held under section 5119.74 of the Revised Code.

### **5122-33-26 Imposition of civil penalties.**

- (A) If the director determines that an adult care facility is in violation of Chapter 5119. of the Revised Code or this chapter, the director may impose a civil penalty, pursuant to this rule, on the owner of the facility. The director shall determine the classification and amount of the penalty by considering the following factors:
  - (1) The gravity of the violation, the severity of the actual or potential harm, and the extent to which the provisions of Chapter 5119. of the Revised Code or this chapter were violated;
  - (2) Actions taken by the owner or manager to correct the violation; and
  - (3) The number, if any, of previous violations of the same rule provision by the adult care facility.
- (B) The director shall give written notice of the order imposing a civil penalty to the adult care facility by certified mail, return receipt requested, or shall provide for delivery of the notice in person. The notice shall specify the classification of the violation as determined under paragraph (C) of this rule, the amount of the penalty and the rate of interest, the action that is required to be taken to correct the violation, the time within which it is to be corrected as specified in paragraph (D) of this rule, and the procedures for the facility to follow to request a conference on the order imposing a civil penalty.
- (C) For purposes of imposing civil penalties, violations shall be classified as follows:

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- (1) Class I violations are conditions or occurrences that present an immediate and serious threat to the physical or emotional health, safety, or security of residents of an adult care facility. Whoever is determined to have committed a class I violation is subject to a civil penalty of not less than seven hundred dollars nor more than one thousand dollars for each violation. Examples of class I violations include, but are not limited to, the following:
- (a) The facility does not have adequate food, fuel, or electricity;
  - (b) At least one staff member is not physically present in the facility, in accordance with the applicable provisions of paragraphs (C) and (E) of rule 5122-33-13 of the Administrative Code;
  - (c) There are unqualified, untrained, or underage individuals managing the facility or providing services, or the number of staff members is insufficient to meet the needs of the residents, in violation of paragraphs (B) and (J) of rule 5122-33-13 of the Administrative Code;
  - (d) The temperature of hot water in the facility is over one hundred twenty degrees Fahrenheit or scalds a resident;
  - (e) There is abuse or neglect of a resident, including use of physical restraints on residents, in violation of paragraph (A)(4) of rule 5122-33-23 of the Administrative Code;
  - (f) The bedroom of a nonambulatory resident is located on a floor that does not exit to ground level, in violation of paragraph (C)(6) of rule 5122-33-09 of the Administrative Code;
  - (g) There are insufficient, inadequate, inoperable, or malfunctioning smoke detectors or fire extinguishers in violation of paragraphs (C)(2) and (C)(3) of rule 5122-33-09 of the Administrative Code, or the fire protection systems are not in compliance with the rules adopted under Chapters 3781. and 3791. of the Revised Code or maintained in accordance with rules adopted by the state fire marshal under section 3737.83 of the Revised Code, as applicable;
  - (h) The facility admits or retains a resident who needs skilled nursing care in excess of what is permitted under paragraph (D) of rule 5122-33-17 of the Administrative Code or who needs personal care services beyond what the facility provides;
  - (i) The facility provides skilled nursing care;
  - (j) The facility is in danger of building collapse;
  - (k) There are temperature extremes in the facility resulting in health hazards to residents, in violation of paragraph (G)(2) of rule 5122-33-22 of the Administrative Code; or
  - (l) The facility admits or retains a resident diagnosed with mental illness and the manager or staff are not in compliance with rule 5122-33-14 of the Administrative Code.

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- (2) Class II violations are conditions or occurrences, other than class I violations, that directly threaten the physical or emotional health, safety, or security of residents of an adult care facility. Whoever is determined to have committed a class II violation is subject to a civil penalty of not less than five hundred dollars nor more than seven hundred dollars for each violation. Examples of class II violations include, but are not limited to, the following:
- (a) An individual is working in the facility under the influence of illegal drugs or is using alcohol to the extent that the individual's performance of job duties is adversely affected or the health and safety of any resident is jeopardized, in violation of paragraph (P)(2) of rule 5122-33-13 of the Administrative Code;
  - (b) The facility is violating a resident's right under rule 5122-33-23 of the Administrative Code and the violation directly results in physical or emotional harm;
  - (c) The facility is providing personal care services otherwise than in accordance with acceptable standards of care;
  - (d) The facility fails to make available three nourishing meals a day in violation of paragraph (B) of rule 5122-33-20 of the Administrative Code;
  - (e) The facility fails to adhere to special diets for residents who require them in violation of paragraph (B) of rule 5122-33-20 of the Administrative Code;
  - (f) The facility fails to have a resident's physical or mental health assessed, as required by rule 5122-33-18 of the Administrative Code;
  - (g) There are unsanitary or unsafe living conditions within the facility;
  - (h) There is contaminated food or water in the facility, in violation of paragraph (E) of rule 5122-33-20 of the Administrative Code and paragraph (G)(6) of rule 5122-33-22 of the Administrative Code;
  - (i) The facility fails to obtain prompt health care services for residents, in violation of rule 5122-33-19 of the Administrative Code;
  - (j) The facility misappropriates or mishandles resident funds, in violation of paragraph (C) of rule 5122-33-21 of the Administrative Code;
  - (k) The facility fails to follow appropriate infection control procedures, in violation of paragraph (H) of rule 5122-33-22 of the Administrative Code;
  - (l) The facility fails to maintain its electrical or heating system in good, safe operating condition, in violation of paragraphs (I)(6) and (I)(7) of rule 5122-33-22 of the Administrative Code, to an extent which directly threatens the health and safety of the residents;

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- (m) The facility fails to obtain a mental health plan for care in violation of paragraph (C) of rule 5122-33-12 of the Administrative Code; or
  - (n) The facility fails to comply with a mental health plan for care in violation of paragraph (G) of rule 5122-33-18 of the Administrative Code.
- (3) Class III violations are conditions or occurrences, other than class I or class II violations, that indirectly or potentially threaten the physical or emotional health, safety, or security of residents of a facility. Whoever is determined to have committed a class III violation is subject to a civil penalty of not less than one hundred dollars nor more than five hundred dollars for each violation. Examples of class III violations include, but are not limited to the following:
- (a) The facility interferes with an authorized inspection of the facility conducted pursuant to section 5119.71 or 5119.73 of the Revised Code and rule 5122-33-06 of the Administrative Code;
  - (b) The facility maintains an incorrect health assessment record for a resident, in violation of rule 3701-20-18 of the Administrative Code;
  - (c) The facility has missing or inadequate furnishings, supplies, or food in violation of paragraph (D)(10), (D)(11) or (D)(12) of rule 5122-33-22 of the Administrative Code or paragraph (C) of rule 5122-33-20 of the Administrative Code;
  - (d) The facility admits or retains more residents than the number authorized in the facility's license, in violation of paragraph (B) of rule 5122-33-02 of the Administrative Code;
  - (e) The facility fails to conduct fire drills and smoke detector checks as required, in violation of paragraph (C)(1)(a) or paragraph (C)(2)(c) of rule 5122-33-09 of the Administrative Code, or the fire protection systems are not in compliance with the rules adopted under Chapters 3781. and 3791. of the Revised Code or maintained in accordance with rules adopted by the state fire marshal under section 3737.83 of the Revised Code, as applicable;
  - (f) The facility fails to maintain its electrical or heating system in safe operating condition, in violation of paragraphs (I)(6) and (I)(7) of rule 5122-33-22 of the Administrative Code, to an extent which indirectly threaten the health and safety of the residents;
  - (g) The facility fails to enter into a resident agreement with each resident, in violation of paragraph (A) of rule 5122-33-16 of the Administrative Code;
  - (h) The facility fails to provide proper notification of transfer and discharge, in violation of paragraph (C) of rule 5122-33-24 of the Administrative Code;
  - (i) The facility fails to post emergency information, in violation of paragraph (I)(15) of rule 5122-33-22 of the Administrative Code; and

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- (j) The facility fails to have a current mental health plan(s) for care as prescribed by rule 5122-33-18 of the Administrative Code, if applicable.
- (D) The director shall order that the condition or practice constituting a class I violation be abated or eliminated within twenty-four hours or any longer period the director considers reasonable. The notice for a class II or a class III violation shall specify a time within which the violation is required to be corrected.
- (E) If the facility requests a conference in a letter mailed or delivered not later than two working days after it has received the notice, the director shall hold a conference with representatives of the facility concerning the civil penalty. The conference shall be held not later than seven days after the director receives the request. The director shall provide written notification to the facility of the time, place, and date of the conference at least three days before the scheduled conference.
- (F) At the conference the director shall discuss with the representatives of the facility the violation cited in the notice provided for in paragraph (B) of this rule and shall advise the representatives in regard to correcting the violations. If the director issues an order upholding the civil penalty, the facility may request an adjudication hearing pursuant to Chapter 119. of the Revised Code but the order of the director shall be in effect during proceedings instituted pursuant to that chapter until a final adjudication is made. Not later than five days after the conference, the director shall issue another order either upholding or terminating the penalty.
- (G) If the facility does not request a conference or if, after a conference, it fails to take action to correct a violation in the time prescribed, the director shall issue an order upholding the penalty, plus interest at the rate specified in section 1343.03 of the Revised Code for each day beyond the date set for payment of the penalty. The director may waive the interest payment for the period prior to the conference if he or she concludes that the conference was necessitated by a legitimate dispute.
- (H) The director may cancel or reduce the penalty for a class I violation if the facility corrects the violation within the time specified in the notice except that the director shall impose the penalty even though the facility has corrected the violation if a resident suffers physical harm because of the violation or the facility has been cited previously for the same violation. The director may cancel the penalty for a class II or class III violation if the facility corrects the violation within the time specified in the notice and the facility has not been cited previously for the same violation. Each day of a violation of any class, after the date the director sets for abatement or elimination, constitutes a separate and additional violation.
- (I) If an adult care facility fails to pay a penalty imposed under section 5119.77 of the Revised Code and this rule, the director may commence a civil action to collect the penalty. The license of an adult care facility that has failed to pay a penalty imposed under section 5119.77 of the Revised Code and this rule shall not be renewed until the penalty has been paid.

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- (J) If a penalty is imposed under this rule, a fine shall not be imposed under section 5119.99 of the Revised Code for the same violation.

### **5122-33-27 Suspending admission of residents to an adult care facility.**

- (A) If the director determines that an adult care facility is in violation of Chapter 5119. of the Revised Code, he or she may immediately issue an order suspending the admission of residents to the facility. This order shall be effective immediately without prior hearing, and no residents shall be admitted to the facility until termination of the order. The director shall send a copy of the order to each organization known by the director to have placed residents in the facility and upon termination of the order shall send written notice of the termination to each of these organizations. Upon inquiry by any person about the licensure status of the facility, the director shall disclose the existence of an order of suspension. If the director discloses the existence of such an order to any person pursuant to this division, he or she shall also notify that person, and any other person upon inquiry, of any subsequent termination of the order of suspension. The facility shall post the notice provided for in paragraph (B) of this rule prominently and shall inform any person who inquires about residence or placement in the facility of the order
- (B) The director shall give written notice of the order of suspension to the facility by certified mail, return receipt requested, or shall provide for delivery of the notice in person. If requested by the facility in a letter mailed or delivered not later than two working days after it has received the notice, the director shall hold a conference with representatives of the facility concerning the suspension. The conference shall be held not later than seven days after the director receives the request.
- (C) The notice sent by the director shall contain all of the following:
- (1) A description of the violation;
  - (2) A citation of the statute or rule violated;
  - (3) A description of the corrections required for termination of the order of suspension; and
  - (4) Procedures for the facility to follow to request a conference on the order of suspension.
- (D) At the conference the director shall discuss with the representatives of the facility the violation cited in the notice provided for in paragraph (B) of this rule and shall advise the representatives in regard to correcting the violations. Not later than five days after the conference, the director shall issue another order either upholding or terminating the suspension. If the director issues an order upholding the suspension, the facility may request an adjudication hearing pursuant to Chapter 119. of the Revised Code, but the notice and hearing under that chapter shall be provided after the order is issued, and the suspension shall remain in effect during the hearing

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process unless terminated by the director or until ninety days have elapsed after a timely request for an adjudication hearing is received by the director, whichever is sooner.

## **5122-33-28 Background investigations for employment.**

- (A) The purpose of this rule is to establish procedure for conducting criminal records checks for owners, operators, prospective operators, managers, staff, and other individuals who, if employed by a residential facility, would have unsupervised access to facility residents.
- (B) Definitions.
- (1) "Applicant" means a person who is under final consideration for employment with a residential facility.
  - (2) "Criminal records check" has the same meaning as is section 109.572 of the Revised Code.
  - (3) "Department" means the Ohio department of mental health and addiction services.
  - (4) "Direct services position" means an employment position in which the employee has the opportunity to be alone with or exercises supervision or control over one or more individuals.
  - (5) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.
  - (6) "Employee" means a person employed in a direct services position by a residential facility.
  - (7) "Individual" means a resident of a residential facility.
  - (8) "Manager" or "operator" means the person responsible for the daily operation of an adult care facility. the manager and the owner of a facility may be the same person.
  - (9) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.
  - (10) "Multiple disqualifying offenses" means two or more convictions or guilty pleas to disqualifying offenses. Convictions or guilty pleas resulting from or connected with the same act, or resulting from offenses committed at the same time, shall be counted as one conviction or guilty plea.
  - (11) "Owner" means the person who owns the business of and who ultimately controls the operation of an adult care facility and to whom the manager or operator, if different from the owner, is responsible.
  - (12) "Residential facility" has the same meaning as found in section 5119.34 of the Revised Code.

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### (C) Requirements for owners, operators, managers, and prospective operators.

- (1) All requirements of this rule applicable to applicants shall also be applicable to owners, operators, and managers.
- (2) An owner, operator, manager or prospective operator shall:
  - (a) Require an applicant to complete an employment application and provide the names and addresses of present and former employers; and
  - (b) Attempt to obtain references from the applicant's present and former employers and maintain written evidence that reference checks were attempted and/or completed.
- (3) An owner, operator, manager, or prospective operator shall check each of the following databases to determine if the applicant is included:
  - (a) The list of excluded persons and entities maintained by the office of inspector general in the United States department of health and human services pursuant to section 1128 of the Social Security Act, 94 Stat. 2619 (1980), 42 U.S.C. 1320a-7, and section 1156 of the Social Security Act, 96 Stat. 388 (1982), 42 U.S.C. 1320c-5;
  - (b) The abuser registry established pursuant to section 5123.52 of the Revised Code;
  - (c) The nurse aide registry established pursuant to section 3721.32 of the Revised Code, and if there is a statement detailing finding by the director of the Ohio department of health that the applicant or employee neglected or abused a resident of a long-term care facility or residential care facility or misappropriated property of such a resident;
  - (d) The sex offender and child-victim offender database established pursuant to division (A)(11) of section 2950.13 of the Revised Code;
  - (e) The United States general services administration system for award management database; and,
  - (f) The database of incarcerated and supervised offenders established pursuant to section 5120.066 of the Revised Code.

The owner, operator, manager or prospective operator shall maintain written evidence of the results of these database checks.
- (4) A residential facility shall not employ an application or continue to employ an employee if the applicant or employee is included in one or more of the databases described in paragraphs (C)(3)(a) to (C)(3)(f) of this rule.
- (5) A residential facility shall verify that an applicant has a valid motor vehicle operator's license and obtain a driving record prepared by the bureau of motor vehicles if the duties of the

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position for which the applicant has applied require the applicant to transport individuals or to operate the responsible entity's vehicles for any other purpose. A person having six or more points on his or her driving record is prohibited from transporting individuals.

- (6) Prior to employing an applicant, a residential facility shall require an applicant to:
- (a) Submit a statement to the residential facility with the applicant's signature attesting that he or she has not been convicted of or pleaded guilty to a disqualifying offense. An applicant or employee shall disclose to the residential facility a conviction for any offense that has been sealed; and,
  - (b) Sign an agreement under which the applicant agrees to notify the residential facility within fourteen calendar days if, while employed by the residential facility, the applicant is formally charged with, is convicted of, or pleads guilty to a disqualifying offense. The agreement shall provide that failure to make the notification may result in termination of the applicant's employment.
- (7) A residential facility shall request the bureau of criminal identification and investigation to conduct a criminal records check of an applicant.
- (a) If an applicant does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the residential facility shall request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check.
  - (b) If an applicant presents proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the residential facility may request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check.

For purposes of this paragraph, an applicant may provide proof of Ohio residency by presenting, with a notarized statement asserting that he or she has been a resident of Ohio for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the residential facility considers acceptable.

- (8) A residential facility may conditionally employ an applicant, for a period not to exceed sixty days, pending receipt of information concerning the applicant's criminal records check once the applicant submits to the responsible entity the statement required by paragraph (C)(5)(a) of this rule. The residential facility shall terminate the applicant's employment if it is informed that the applicant has been convicted of or pleaded guilty to a disqualifying offense.

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(9) A residential facility shall, at a frequency of no less than once every five years, check the databases specified in paragraph (C)(2) of this rule and request the bureau of criminal identification and investigation to conduct a criminal records check for each employee in a direct services position.

(a) If an employee in a direct services position does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the residential facility shall request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check.

(b) If an employee in a direct services position presents proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the residential facility may request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check.

For purposes of this paragraph, an employee in a direct services position may provide proof of Ohio residency by presenting, with a notarized statement asserting that he or she has been a resident of Ohio for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the employee's permanent residence, or any other document the residential facility considers acceptable.

(10) A residential facility that has not been required, prior to the effective date of this rule, to request post-hire criminal records checks of its employees shall check the databases specified in paragraph (C)(2) of this rule and ensure a criminal records check for each employee in a direct services position is conducted in accordance with paragraph (C)(9) of this rule by December 31, 2014. Thereafter, the residential facility shall comply with paragraph (C)(9) of this rule.

(D) Disqualifying offenses.

(1) There are five tiers of disqualifying offenses with corresponding time periods that preclude an applicant from being employed or an employee from remaining employed by a residential facility.

(a) Tier one: permanent exclusion.

No residential facility shall employ an applicant or continue to employ an employee if the applicant or employee has been convicted of or pleaded guilty to any of the following sections of the Revised Code:

(i) 2903.01 (aggravated murder);

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- (ii) 2903.02 (murder);
- (iii) 2903.03 (voluntary manslaughter);
- (iv) 2903.11 (felonious assault);
- (v) 2903.15 (permitting child abuse);
- (vi) 2903.16 (failing to provide for a functionally impaired person);
- (vii) 2903.34 (patient abuse and neglect);
- (viii) 2903.341 (patient endangerment);
- (ix) 2905.01 (kidnapping);
- (x) 2905.02 (abduction);
- (xi) 2905.32 (human trafficking);
- (xii) 2905.33 (unlawful conduct with respect to documents);
- (xiii) 2907.02 (rape);
- (xiv) 2907.03 (sexual battery);
- (xv) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);
- (xvi) 2907.05 (gross sexual imposition);
- (xvii) 2907.06 (sexual imposition);
- (xviii) 2907.07 (importuning);
- (xix) 2907.08 (voyeurism);
- (xx) 2907.12 (felonious sexual penetration);
- (xxi) 2907.31 (disseminating matter harmful to juveniles);
- (xxii) 2907.32 (pandering obscenity);
- (xxiii) 2907.321 (pandering obscenity involving a minor);
- (xxiv) 2907.322 (pandering sexually-oriented matter involving a minor);
- (xxv) 2907.323 (illegal use of minor in nudity-oriented material or performance);
- (xxvi) 2909.22 (soliciting/providing support for act of terrorism);

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- (xxvii) 2909.23 (making terrorist threat);
  - (xxviii) 2909.24 (terrorism);
  - (xxix) 2913.40 (medicaid fraud);
  - (xxx) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (D)(1)(a)(i) to (D)(1)(a)(xxix) of this rule;
  - (xxxi) A conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, excluding the disqualifying offenses set forth in section 2913.46 of the Revised Code (illegal use of supplemental nutrition assistance program or women, infants, and children program benefits); or
  - (xxxii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (D)(1)(a)(i) to (D)(1)(a)(xxxii) of this rule.
- (b) No residential facility shall employ an applicant or continue to employ an employee, if the applicant or employee has been convicted of an offense, where the victim of the offense was one of the following:
- (i) A person under eighteen years of age.
  - (ii) A functionally impaired person as defined in section 2903.10 of the Revised Code.
  - (iii) A mentally retarded person as defined in section 5123.01 of the Revised Code.
  - (iv) A developmentally disabled person as defined in section 5123.01 of the Revised Code.
  - (v) A person with a mental illness as defined in section 5122.01 of the Revised Code.
  - (vi) A person sixty years of age or older.
- (c) Tier two: ten-year exclusion.
- No residential facility shall employ an applicant or continue to employ an employee, for a period of ten years from the date the applicant or employee was fully discharged from imprisonment, probation, and parole, if the applicant or employee has been convicted of or pleaded guilty to any of the following sections of the Revised Code:
- (i) 2903.04 (involuntary manslaughter);

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- (ii) 2903.041 (reckless homicide);
- (iii) 2905.04 (child stealing) as it existed prior to July 1, 1996;
- (iv) 2905.05 (criminal child enticement);
- (v) 2905.11 (extortion);
- (vi) 2907.21 (compelling prostitution);
- (vii) 2907.22 (promoting prostitution);
- (viii) 2907.23 (enticement or solicitation to patronize a prostitute, procurement of a prostitute for another);
- (ix) 2909.02 (aggravated arson);
- (x) 2909.03 (arson);
- (xi) 2911.01 (aggravated robbery);
- (xii) 2911.11 (aggravated burglary);
- (xiii) 2913.46 (illegal use of supplemental nutrition assistance program or women, infants, and children program benefits);
- (xiv) 2913.48 (worker's compensation fraud);
- (xv) 2913.49 (identity fraud);
- (xvi) 2917.02 (aggravated riot);
- (xvii) 2923.12 (carrying concealed weapon);
- (xviii) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);
- (xix) 2923.123 (illegal conveyance, possession, or control of deadly weapon or dangerous ordnance into courthouse);
- (xx) 2923.13 (having weapons while under disability);
- (xxi) 2923.161 (improperly discharging a firearm at or into a habitation or school);
- (xxii) 2923.162 (discharge of firearm on or near prohibited premises);
- (xxiii) 2923.21 (improperly furnishing firearms to minor);

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- (xxiv) 2923.32 (engaging in pattern of corrupt activity);
- (xxv) 2923.42 (participating in criminal gang);
- (xxvi) 2925.02 (corrupting another with drugs);
- (xxvii) 2925.03 (trafficking in drugs);
- (xxviii) 2925.04 (illegal manufacture of drugs or cultivation of marihuana);
- (xxix) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs);
- (xxx) 3716.11 (placing harmful objects in food or confection);
- (xxxi) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (D)(1)(c)(i) to (D)(1)(c)(xxx) of this rule; or
- (xxxii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (D)(1)(c)(i) to (D)(1)(c)(xxxi) of this rule.

(d) Tier three: seven-year exclusion.

No residential facility shall employ an applicant or continue to employ an employee, for a period of seven years from the date the applicant, or employee was fully discharged from imprisonment, probation, and parole, if the applicant or employee has been convicted of or pleaded guilty to any of the following sections of the Revised Code:

- (i) 959.13 (cruelty to animals);
- (ii) 959.131 (prohibitions concerning companion animals);
- (iii) 2903.12 (aggravated assault);
- (iv) 2903.21 (aggravated menacing);
- (v) 2903.211 (menacing by stalking);
- (vi) 2905.12 (coercion);
- (vii) 2909.04 (disrupting public services);
- (viii) 2911.02 (robbery);
- (ix) 2911.12 (burglary);

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- (x) 2913.47 (insurance fraud);
  - (xi) 2917.01 (inciting to violence);
  - (xii) 2917.03 (riot);
  - (xiii) 2917.31 (inducing panic);
  - (xiv) 2919.22 (endangering children);
  - (xv) 2919.25 (domestic violence);
  - (xvi) 2921.03 (intimidation);
  - (xvii) 2921.11 (perjury);
  - (xviii) 2921.13 (falsification, falsification in theft offense, falsification to purchase firearm, or falsification to obtain a concealed handgun license);
  - (xix) 2921.34 (escape);
  - (xx) 2921.35 (aiding escape or resistance to lawful authority);
  - (xxi) 2921.36 (illegal conveyance of weapons, drugs, or other prohibited items onto grounds of detention facility or institution);
  - (xxii) 2925.05 (funding of drug or marihuana trafficking);
  - (xxiii) 2925.06 (illegal administration or distribution of anabolic steroids);
  - (xxiv) 2925.24 (tampering with drugs);
  - (xxv) 2927.12 (ethnic intimidation);
  - (xxvi) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (D)(1)(d)(i) to (D)(1)(d)(xxv) of this rule; or
  - (xxvii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (D)(1)(d)(i) to (D)(1)(d)(xxvi) of this rule.
- (e) Tier four: five-year exclusion.

No residential facility shall employ an applicant or continue to employ an employee, for a period of five years from the date the applicant or employee was fully discharged

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from imprisonment, probation, and parole, if the applicant or employee has been convicted or pleaded guilty to any of the following sections of the Revised Code:

- (i) 2903.13 (assault);
- (ii) 2903.22 (menacing);
- (iii) 2907.09 (public indecency);
- (iv) 2907.24 (soliciting after positive human immunodeficiency virus test);
- (v) 2907.25 (prostitution);
- (vi) 2907.33 (deception to obtain matter harmful to juveniles);
- (vii) 2911.13 (breaking and entering);
- (viii) 2913.02 (theft);
- (ix) 2913.03 (unauthorized use of a vehicle);
- (x) 2913.04 (unauthorized use of property, computer, cable, or telecommunication property);
- (xi) 2913.05 (telecommunications fraud);
- (xii) 2913.11 (passing bad checks);
- (xiii) 2913.21 (misuse of credit cards);
- (xiv) 2913.31 (forgery, forging identification cards);
- (xv) 2913.32 (criminal simulation);
- (xvi) 2913.41 (defrauding a rental agency or hostelry);
- (xvii) 2913.42 (tampering with records);
- (xviii) 2913.43 (securing writings by deception);
- (xix) 2913.44 (personating an officer);
- (xx) 2913.441 (unlawful display of law enforcement emblem);
- (xxi) 2913.45 (defrauding creditors);
- (xxii) 2913.51 (receiving stolen property);
- (xxiii) 2919.12 (unlawful abortion);

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- (xxiv) 2919.121 (unlawful abortion upon minor);
- (xxv) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (xxvi) 2919.23 (interference with custody);
- (xxvii) 2919.24 (contributing to unruliness or delinquency of child);
- (xxviii) 2921.12 (tampering with evidence);
- (xxix) 2921.21 (compounding a crime);
- (xxx) 2921.24 (disclosure of confidential information);
- (xxxi) 2921.32 (obstructing justice);
- (xxxii) 2921.321 (assaulting/harassing police dog or horse/service animal);
- (xxxiii) 2921.51 (impersonation of peace officer);
- (xxxiv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using any dangerous veterinary drug);
- (xxxv) 2925.11 (drug possession other than a minor drug possession offense);
- (xxxvi) 2925.13 (permitting drug abuse);
- (xxxvii) 2925.22 (deception to obtain dangerous drugs);
- (xxxviii) 2925.23 (illegal processing of drug documents);
- (xxxix) 2925.36 (illegal processing of drug samples);
- (xl) 2925.55 (unlawful purchase of pseudoephedrine product);
- (xli) 2925.56 (unlawful sale of pseudoephedrine product);
- (xlii) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (D)(1)(e)(i) to (D)(1)(e)(xli) of this rule; or
- (xliii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (D)(1)(e)(i) to (D)(1)(e)(xlii) of this rule.

(f) Tier five: no exclusion.

## **\*\*\*TO BE RESCINDED\*\*\***

A residential facility may employ an applicant or continue to employ an employee, if the applicant or employee has been convicted of or pleaded guilty to any of the following sections of the Revised code:

- (i) 2925.11 (drug possession that is minor drug possession offense);
- (ii) 2925.14 (illegal use or possession of drug paraphernalia);
- (iii) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or
- (iv) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (D)(1)(f)(i) to (D)(1)(f)(iii) of this rule.

(2) Multiple disqualifying offenses.

- (a) If an applicant or employee has been convicted of or pleaded guilty to multiple disqualifying offenses listed in paragraph (D)(1)(c) of this rule, and offenses listed in paragraph (D)(1)(d) of this rule, and paragraph (D)(1)(e) of this rule, the applicant or employee is subject to a fifteen-year exclusion period.
- (b) If an applicant or employee has been convicted of or pleaded guilty to multiple disqualifying offenses listed in paragraph (D)(1)(d) of this rule and offenses listed in paragraph (D)(1)(e) of this rule, the applicant or employee is subject to a ten-year exclusion period.
- (c) If an applicant or employee has been convicted of or pleaded guilty to multiple disqualifying offenses listed in paragraph (D)(1)(e) of this rule, the applicant or employee is subject to a seven-year exclusion period.

(E) A conviction of or plea of guilty to a disqualifying offense listed or described in paragraph (D)(1) of this rule shall not preclude an applicant from being employed or an employee from remaining employed by a responsible entity under the following circumstances:

- (1) The applicant or employee has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (2) The applicant or employee has been granted an unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code;
- (3) The applicant's or employee's conviction or guilty plea has been overturned pursuant to law;

## **\*\*\*TO BE RESCINDED\*\*\***

- (4) The applicant or employee has been granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code and the conditions under which the pardon was granted have been satisfied;
  - (5) The applicant's or employee's conviction or guilty plea is not for an offense listed or described in paragraph (D)(1)(a) of this rule and the applicant or employee has a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code; or
  - (6) The applicant's or employee's conviction or guilty plea is not for an offense listed or described in paragraph (D)(1)(a) of this rule and the applicant or employee has a certificate of achievement and employability in a home and community-based services-related field, issued by the Ohio department of rehabilitation and correction pursuant to section 2961.22 of the Revised Code.
- (F) A residential facility may continue to employ a person who is excluded by paragraph (D)(1)(d) of this rule if the conviction for a tier four offense occurred prior to the effective date of this rule, the employee was hired prior to the effective date of this rule, and if the residential facility has considered the nature and seriousness of the offense and attests in writing to the character and fitness of the person based on the person's demonstrated work performance. The residential facility shall make this determination within three months after the effective date of this rule and shall maintain the written attestation in the employee's personnel record. The determination shall be subject to review by the department.
- (G) Any report obtained pursuant to this rule is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person other than:
- (1) The applicant or employee who is the subject of the report or the applicant's, or employee's representative;
  - (2) The residential facility that requested the report or its representative;
  - (3) The department, if the department requests the residential facility to provide a copy of the report to the department;
  - (4) A court, hearing officer, or other necessary person involved in a case dealing with the denial of employment to the applicant or employee, or a civil or criminal action regarding the medicaid program or a program the department administers.
- (H) For purposes of this rule, reports from the bureau of criminal identification and investigation, or any other state or federal agency regarding a person's criminal record, and records supplied by the bureau of motor vehicles regarding a person's record of convictions for violations of motor vehicle laws are valid for a period of one year from the date of the report.

**\*\*\*TO BE RESCINDED\*\*\***

(I) A residential facility shall ensure the safety of residents in any situation in which a non-employee is living in the facility.