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5122-35-01 Introduction and definitions.

- (A) Introduction: This chapter establishes the standards for certification of adult foster homes, the responsibilities of operators of adult foster homes, and the rights of residents of adult foster homes.
- (B) Definitions for this chapter:
- (1) "Abuse" has the same meaning as in section 5119.81 of the Revised Code.
 - (2) "Accommodations" means housing, three nutritious meals a day and meal preparation, laundry, housekeeping, arranging for transportation, social and recreational activities, maintenance, security, and similar services that are not personal care services or skilled nursing care.
 - (3) "Activity of daily living" ("ADL") has the same meaning as in rule 5101:3-3-06 of the Administrative Code.
 - (4) "Adult" means an individual who is at least eighteen years of age, and who is not related to the consumer.
 - (5) "Adult foster home" has the same meaning as in section 5119.69 of the Revised Code.
 - (6) "Applicant" means an individual seeking the certification of an adult foster home.
 - (7) "Area agency on aging" ("AAA") has the same meaning as in section 173.42 of the Revised Code.
 - (8) "Caregiver" means an adult who provides a personal care service or supervision in an adult foster home.
 - (9) "Chemical restraint" has the same meaning as in section 3721.10 of the Revised Code.
 - (10) "Exploitation" has the same meaning as in section 5119.81 of the Revised Code.
 - (11) "Home" means an adult foster home or a residence for which an operator is seeking certification as an adult foster home.
 - (12) "Neglect" has the same meaning as in section 5119.81 of the Revised Code.
 - (13) "ODMH" means "the Ohio department of mental health."
 - (14) "Operator" means the adult who provides administration, accommodations, a personal care service, or supervision in a home on a day-to-day basis.
 - (15) "Owner" means a person who holds title to a residence, or a person who leases the residence from the person who holds title.

*****TO BE RESCINDED *****

- (16) "Part-time, intermittent basis" means fewer than eight hours in a twenty-four hour day, or fewer than forty hours per week.
- (17) "PASSPORT administrative agency" ("PAA") means a public or non-profit entity that has entered into a contract with ODMH to provide administrative services on behalf of ODMH within a particular PSA for medicaid waiver programs under the authority of ODMH, the nonwaiver-funded PASSPORT program, and the RSS program.
- (18) "Personal care services" has the same meaning as in section 3721.01 of the Revised Code:
- (19) "Physical restraint" has the same meaning as in section 5119.81 of the Revised Code.
- (20) "Planning and service area" ("PSA") has the same meaning as in section 173.011 of the Revised Code.
- (21) "Resident" means a consumer who resides in an adult foster home of an unrelated adult for purposes of receiving accommodations, personal care services, or supervision in the adult foster home.
- (22) "Residential state supplement" ("RSS") means the program administered under section 5119.69 of the Revised Code and Chapter 5122-36 of the Administrative Code under which the state supplements the SSI payments received by aged, blind, or disabled adults under Title XVI of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A., as amended. RSS payments are used for the provision of accommodations, supervision, and personal care services to SSI recipients who ODMH determines are at risk of needing institutional care.
- (23) "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 nonprofit 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.
- (24) "Short-term illness" means a medical condition for which recovery can be expected to occur with not more than one hundred and twenty days of skilled nursing care or requiring skilled nursing care provided on periodic, scheduled basis not to exceed one hundred twenty days.
- (25) "Skilled nursing care" has the same meaning as in section 3721.01 of the Revised Code.
- (26) "Sponsor" has the same meaning as in section 173.14 of the Revised Code.
- (27) "Supervision" means the following:
- (a) Observing a resident to ensure the resident's health, safety and welfare while the resident engages in ADLs or other activities;

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

- (b) Reminding a resident to do or complete an activity (e.g., reminding a resident to engage in personal hygiene or other self-care activity); or,
 - (c) Assisting a resident in making or keeping an appointment.
- (28) "Topical medication" means a medication, such as a topical anti-infective, that is applied to a certain area of the skin and that only affects the area to which it is applied.
- (29) "Unrelated adult" means an adult resident of an adult foster home who is not related to the caregiver or the caregiver's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece, nephew, aunt, uncle, or as a child of an aunt or uncle.

5122-35-02 Certification.

- (A) An AAA is authorized to certify a home located within its PSA. In order to provide assurance that state monies are used to support only suitable adult foster home placements, an AAA shall only certify a home as an adult foster home if it determines that home is compliant with all the standards set forth in rules 5122-35-03 to 5122-35-07 of the Administrative Code.
- (B) Once every two years after the initial certification, the AAA shall again determine whether a home is compliant with rules 5122-35-03 to 5122-35-07 of the Administrative Code.
- (C) The AAA may require a certified adult foster home to submit to a reinspection during the period in which the certification is in effect.
- (D) The department of mental health and the AAA shall exercise the right to conduct unannounced on-site reviews of certified adult foster homes at any time to evaluate any resident complaints, imminent health concerns, or safety issues.
- (E) The AAA may extend the certification period of an adult foster home two months past the expiration date of the issued certification if the adult foster home operator is in the process of recertification.
- (F) At least sixty days before the expiration date of certification, the AAA shall notify the operator by mail that the certification is due to expire. No more than sixty days after an initial certification or recertification visit, the AAA shall issue to the adult foster home operator a written report that includes a list of all non-compliance findings against the home. No more than sixty days after the date the report is mailed by the AAA, the adult foster home operator shall submit to the AAA a plan of action for correcting all of the non-compliance findings.

5122-35-03 Operator standards.

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

An AAA may only certify a home as an adult foster home if the operator (or, "operators") of that home meets the following standards:

- (A) The operator provides documentation to the AAA showing that the operator is free of any communicable diseases, unless efforts are made to minimize the likelihood that the disease will be transmitted to a resident;
- (B) The operator provides documentation to the AAA, every two years or upon request, verifying that the operator is not dependent upon income earned from a resident in order to support the operator's household;
- (C) The operator provides the AAA with proof of ownership of the residence; or, the operator provides the AAA with a signed agreement from the operator's landlord indicating that the landlord allows the operator to use the residence as an adult foster home for a minimum of two years;
- (D) The operator provides the AAA with documentation verifying the completion of at least six hours of continuing education relevant to resident care during each two-year certification period;
- (E) The operator demonstrates communication skills, including the ability to read, to write, and to make brief and accurate oral or written reports;
- (F) The operator complies with the background investigations check requirements of section 5119.34 of the Revised Code and rule 5122-35-11 of the Administrative Code; and,
- (G) The operator agrees to accept referrals from the RSS program.

5122-35-04 Caregiver standards.

An AAA may only certify a home as an adult foster home if the caregiver(s) in that home and any other person in that home who is providing services to a resident for more than six hours over a forty-hour period meet the following standards:

- (A) The caregiver provides documentation to the AAA showing that the caregiver is free of any communicable diseases, unless efforts are made to minimize the likelihood that the disease will be transmitted to a resident;
- (B) The caregiver provides the AAA with documentation from a licensed physician who examined the caregiver and certified that the caregiver is physically and mentally capable of providing care to residents; and,
- (C) The caregiver complies with the background investigations check requirements of section 5119.34 of the Revised Code and rule 5122-35-11 of the Administrative Code.

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

5122-35-05 Facility standards.

An AAA may only certify a home as an adult foster home if that home meets the following standards:

- (A) It is safe, clean, and sanitary and the operator has implemented housekeeping procedures that ensure the continuation of a safe, clean, and sanitary living environment;
- (B) If the home does not use a public water supply, the operator provides the AAA with documentation from the local health department indicating that the water supply used by the home is safe;
- (C) A telephone is located within the home that is available for use by all residents;
- (D) Any stairways, inclines, ramps, and open porches that are part of the home have hand railings and lighting;
- (E) Any steps, hallways, and doorways that are part of the home are adequately lit to ensure the safe mobility of residents. If requested by the resident, other areas of the home are lit by night lights;
- (F) All indoor and outdoor passageways in the home are unobstructed;
- (G) Any scatter or throw rug that is used on a hard-finished floor in the home has a non-skid backing;
- (H) The home is free of rodent and/or insect infestation;
- (I) The home has enough bedrooms to accommodate all persons residing in the home. No more than two residents occupy a bedroom and no resident shares a bedroom with the operator, a caregiver, or the family members of an operator or caregiver;
- (J) The bedroom in the home that is assigned to the resident meets the following requirements:
 - (1) It is not used as a passageway to another room, unless the room is used as a passageway to a bathroom assigned for use solely by the resident;
 - (2) When the temperature outside the house is lower than seventy-two degrees Fahrenheit, it is able to be heated to at least seventy-two degrees Fahrenheit; and, when the temperature outside becomes hot, it is able to be cooled to avoid temperature extremes that are harmful to the health of the resident;
 - (3) It has sufficient space to accommodate the unobstructed passage of wheelchairs and walkers between beds and other items of furniture;
 - (4) It includes at least two sheets, a pillow, a pillow case, a bedspread, and, a sufficient number of blankets and towels, as required by the resident;

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

- (5) It has enough closet and drawer space to store the clothing and personal belongings of the resident;
 - (6) It has ceiling-to-floor walls and a door that can be closed;
 - (7) It has a separate bed for each resident that is not a bunk bed and has a sanitary mattress and includes box springs that provide adequate support to the resident. It may have a bed for more than one person, if the resident shares the bed with a spouse; and,
 - (8) Any window in it is operable and has removable screens.
- (K) The bathtub or shower in the home that is used by the resident has non-skid surfacing and handrails or grab bars.

5122-35-06 First aid standards.

An AAA may only certify a home as an adult foster home if that home meets the following standards:

- (A) The home has at least one first aid kit readily available on the premises of the home that contains the following items:
- (1) One two-inch gauze roller bandage;
 - (2) One pair of scissors;
 - (3) One flashlight with adequate, working batteries;
 - (4) One pair of tweezers;
 - (5) One emergency blanket;
 - (6) Antiseptic towelettes;
 - (7) Gauze pads;
 - (8) Adhesive tape;
 - (9) Antiseptic ointment;
 - (10) Disposable gloves;
 - (11) Plastic bags;
 - (12) One cold pack;
 - (13) One breathing barrier;

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

- (14) Activated charcoal for use as directed by a poison control center;
 - (15) Adhesive bandage strips in assorted sizes; and,
 - (16) Triangular bandages.
- (B) The home has a locked area for storage of medications.

5122-35-07 Fire safety standards.

An AAA may only certify a home as an adult foster home if that home meets the following standards:

- (A) The home passes a fire safety inspection completed by a certified fire safety inspector in advance of each initial certification and each recertification in accordance with the following process:
- (1) The operator shall submit a request for a fire safety inspection to the local fire department. In the event the local fire department is unable to conduct the requested fire safety inspection, or in the event there are no available certified fire safety inspectors located within the political subdivision in which a home is located, the operator of the home shall request a fire safety inspection from the division of the state fire marshal at the Ohio department of commerce;
 - (2) The AAA shall make the ODA 1102 fire safety inspection certification and recertification form or a comparable form available to all operators of, or applicants to operate, adult foster homes within the planning and service area served by the AAA.
 - (3) When an operator requests a fire safety inspection, the operator shall provide the certified fire safety inspector with a copy of the ODA 1102 fire safety inspection certification and recertification form or a comparable form available to all operators of, or applicants to operate, an adult foster home within the PSA. The certified fire safety inspector conducting an inspection of a home shall use the minimum fire safety inspection form, except that inspectors from the division of the state fire marshal may use forms created by the division of the state fire marshal in lieu of the form used by the AAA. The fire safety inspector shall indicate on the form whether the home meets the fire safety standards specified in this rule;
 - (4) In the event that a fire safety inspector determines that a home fails to comply with the fire safety standards specified in this rule, the AAA shall notify the operator of the violations, and the operator shall correct the violations before the home can be certified or recertified. The AAA shall provide a new fire safety inspection form to the operator to be used for reinspection purposes. Once an operator has corrected all violations, the operator shall request a new fire safety inspection. No AAA shall certify or recertify a home until the fire safety inspector determines and documents on a fire safety inspection form that the home meets the minimum fire safety standards specified in this rule.

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

- (B) The home has no combustible items stored within three feet of heat sources;
- (C) The home has a fire extinguisher with a minimum rating of 2A20BC, that is in working order, that is maintained in or near the cooking area of the home, and that is inspected and approved annually in accordance with the requirements of the Ohio Fire Code;
- (D) The home has an approved smoke detector that is kept and maintained in working order on each floor/level of the home;
- (E) The home has a furnace that has been inspected and approved by a heating contractor at least once no more than twelve months prior to the initial certification of the home or the recertification of the home;
- (F) The home has electrical wiring that is reasonably fire safe;
- (G) The home has a breaker box in working order; or, the home has a fuse box that contains working fuses that are of correct amperage;
- (H) The home does not utilize extension cords and flexible cords in the following manners: as a substitute for permanent wiring; affixed to structures; extended through walls, ceilings, floors, under doors or floor coverings; with evidence of environmental damage; with evidence of physical impact; or with the use of multiple plug adapters, such as cube adapters, unfused plug strips, or any other device that does not comply with NFPA 70;
- (I) The home does not use a portable kerosene heater nor keep one in storage in the home;
- (J) The home has an evacuation plan that is posted within the home; and,
- (K) The home has a fire drill that is held at least once each calendar year and also whenever a new resident moves into the home.

5122-35-08 Denial or revocation of certification.

- (A) Whenever an AAA proposes to deny or revoke the certification of an adult foster home, the AAA shall send a written notice of the proposed action to the applicant or operator whose certification is being denied or revoked and send a copy of the notice to ODMH. The AAA shall deliver the notice by certified mail, return receipt requested. The notice shall include the following:
 - (1) The name, address, and telephone number of the AAA proposing the revocation or denial of certification;
 - (2) A statement indicating the AAA's decision to deny or revoke certification;
 - (3) A statement indicating the reasons for the proposed denial or revocation of certification;

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

- (4) A reference to the administrative rule upon which the AAA's decision to deny or revoke the certification is based;
 - (5) A statement indicating that the applicant or operator may request a review of the proposed denial or revocation if the applicant or operator submits a written request for review to the AAA director within fifteen days of the date on which the AAA mailed the notice to the applicant or operator;
 - (6) A statement indicating that the applicant or operator may appear at the review hearing, may be represented in person or through an attorney, may present arguments against the proposed action in writing, and may present evidence and examine witnesses appearing for or against the applicant or operator;
 - (7) A statement that the rules governing applicant or operator requests for hearings are found in this rule; and,
 - (8) A copy of this rule.
- (B) An applicant or operator whose certification is proposed to be denied or revoked may request a review hearing of the proposed action. If an applicant makes such a request, the applicant shall do so in writing and shall address the director of the AAA proposing to deny or revoke the certification. The request will only be honored if the AAA receives the written request no later than the fifteenth business day following the date on which the notice from the AAA was mailed to the applicant or operator.
- (C) When an applicant or operator fails to request a review hearing, or the request is not timely received, the proposed action shall be implemented by the AAA.
- (D) If the request for review is received by the AAA within the stipulated period, the director of the AAA (or the director's designee) shall review the proposed action to deny or revoke certification no later than thirty days after receiving the request for a review hearing. The review procedure implemented by the AAA shall give the applicant or operator and/or the applicant's or operator's legal counsel an opportunity to appear before the AAA director (or the director's designee) and to present arguments against the proposed action.
- (E) The AAA director (or the director's designee) shall render a written decision adopting, rejecting, or modifying the proposed action and shall state the reasons for the decision. The AAA shall provide the decision by the AAA director (or the director's designee) to the applicant or operator no later than thirty days after the review hearing date.
- (F) An applicant or operator may appeal the decision by an AAA director (or the director's designee) by providing the director of ODMH with a written statement indicating why the applicant or operator believes the decision by the AAA director (or the director's designee) is inappropriate.

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

- (1) The applicant's or operator's written statement must be received by the director of ODMH no more than five days after the date the decision by the AAA director or the director's designee was rendered.
 - (2) The director of ODMH shall review the applicant's or operator's written statement and shall render a decision.
 - (3) The decision by the director of ODMH shall be binding.
- (G) The AAA shall notify the residents of an adult foster home and/or their sponsors if certification of the home is denied or revoked.
- (H) An applicant or operator whose certification is denied or revoked shall not be given an opportunity to apply for adult foster home certification for a period of at least two years after the denial or revocation took place, and then only when all violations have been corrected.
- (I) An AAA may refuse to certify any applicant that voluntarily surrendered its license or certification for any type of residential care facility, or that had its license or certification revoked or denied by the responsible licensing or certifying agency.
- (J) An AAA shall refuse to certify any applicant that it knows has a history of abuse, neglect, or exploitation.

5122-35-09 Responsibilities of operators.

The operator of a certified adult foster home shall comply with all of the following:

- (A) The operator shall provide accommodations, personal care services, and supervision, as needed by residents;
- (B) The operator shall provide snacks and three nutritious, well-balanced meals, in accordance with the resident's dietary needs;
- (C) Upon request by the AAA, the operator shall provide a written description of the previous week's meals to the AAA;
- (D) The operator shall provide a laundry service, as needed, for the bed linens, towels, and clothing of the resident;
- (E) In the event of acute illness, accident, nursing facility admission, or hospitalization of a resident, the operator shall contact the resident's physician and/or source of medical care immediately. The operator shall also notify any emergency contact pre-designated by the resident, and the resident's RSS case manager, if applicable, as soon as possible, but not later than twenty-four

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

hours after the emergency occurs. The operator shall document the occurrence and contacts in the resident's record;

- (F) The operator shall maintain on the premises, for each resident, a medical statement certifying that the resident is free from communicable disease, as defined by rule 3701-3-02 of the Administrative Code, that is signed and dated by a licensed physician, and is updated annually;
- (G) The adult foster home operator shall enter into a resident agreement with each prospective resident that is signed and dated by the operator and the resident (or the resident's legal representative) prior to the date on which the resident moves into the home. The operator shall maintain the resident agreement on the premises of the home. The agreement shall include at least the following:
 - (1) An explanation of monthly charges for which the resident is financially responsible;
 - (2) A statement that no charges, fines, or penalties other than those stipulated in the agreement will be assessed against the resident;
 - (3) An explanation of the operator's policies for refunding monthly charges in the event of the resident's absence, discharge, or transfer from the home;
 - (4) An explanation of the extent and types of services the operator will provide to the resident;
 - (5) An explanation of residents' rights; and,
 - (6) A clause that outlines how the agreement may be terminated by either party.
- (H) The operator shall not provide, admit, or retain any resident in need of skilled nursing care, unless all of the following apply:
 - (1) The care is provided on a part-time, intermittent basis for not more than a total of one hundred twenty days in any twelve-month period by 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, or a hospice care program licensed under Chapter 3712. of the Revised Code;
 - (2) The home health agency does not train the caregiver 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.
- (I) The operator shall discharge the resident if the resident's condition requires more skilled nursing care than permitted under paragraph (H) of this rule;
- (J) An operator may not admit or retain any resident who is not capable of taking care of the resident's own medication and biologicals, as determined and documented by the resident's personal physician, unless the medication is administered by a home health agency or hospice home care

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

program. The operator shall keep all medication in a locked area. The caregiver may do any of the following after the caregiver has received training:

- (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. Prior to handing the medication to the resident, the caregiver shall check the name on the prescription label and verify that it is the name of the resident requesting the medication. The caregiver may read the label and directions to the resident upon request. The caregiver may remind the resident when the prescribed medication needs to be refilled. Caregivers shall not assist a resident with a prescription that belongs to another resident. If the resident is physically unable to open the container, a caregiver may open the container for the resident; and,
 - (3) Assist a physically impaired, but mentally alert resident 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 in the resident's mouth without spilling it, a caregiver may place the dose in a container and place the container in the mouth of the resident.
- (K) If the adult foster home operator agrees to manage a resident's funds, the operator shall do the following:
- (1) Deposit any amount over two hundred dollars in an interest-bearing account separate from the home's operating accounts;
 - (2) Deposit any amount less than two hundred dollars in either a petty cash fund or an interest bearing account;
 - (3) Ensure that all interest earned on funds belonging to a resident is credited to the resident;
 - (4) Provide the resident with access to the resident's money at all times and encourage the resident to manage the resident's own money independently; and,
 - (5) Limit any purchases on behalf of the resident by the operator or a caregiver using a resident's funds to only those purchases that are requested by the resident and for which a receipt can be produced.
- (L) Upon the request of the resident, the operator shall provide a written statement regarding the status of the resident's property. The operator shall provide the resident with a final accounting and return all of the resident's property to the resident at time of permanent transfer or discharge. Upon the death of the resident, the operator shall release all of the resident's property to the individual administering the resident's estate;

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

- (M) No operator, caregiver, or staff person of an adult foster home, or the family member of an operator, caregiver, or staff person, may serve as the legal guardian of a resident, unless the individual was appointed guardian prior to July 13, 2003;
- (N) The operator shall notify the AAA of any incidents or issues of the physical facility that may have an impact on provider certification;
- (O) The operator shall reside in the home and shall be present in the home a sufficient amount of time to meet the needs of residents;
- (P) The operator shall notify each resident's PAA case manager and sponsor of the caregiver's planned absences from the home. The operator shall also document this in the resident's records. An alternative caregiver shall be designated to carry out the duties of the primary caregiver when the caregiver is on vacation or absent for more than six continuous hours; and,
- (Q) The operator shall submit to the AAA for review, contingency plans covering the unexpected absence, vacation, or disability of the caregiver. The AAA shall review the contingency plans and shall disapprove the plans if determined to be insufficient to protect the residents in the home and shall require the applicant to submit new plans. These plans shall be approved by the AAA before the home is certified or recertified.

5122-35-10 Resident rights.

A resident of an adult foster home has the right to the following:

- (A) To temporarily leave and return to the adult foster home;
- (B) To receive visitors at times mutually agreeable to the resident and adult foster home operator;
- (C) To have access to a telephone in the home to make local calls in privacy and without charge; and, to make toll calls, as specified in a written agreement with the caregiver;
- (D) To participate in the family environment and not be confined to a specific area of the home;
- (E) To write and to send uncensored mail; and, to receive unopened mail on the date of delivery by the United States post office or other mail carrier;
- (F) To participate in religious, cultural, and community activities, according to the resident's wishes and abilities;
- (G) To privacy of self and possessions;
- (H) To have access to residents' rights advocates, to have information from the operator about how to contact a residents' rights advocate, and to meet with residents' rights advocates in the home;

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

- (I) To live in an environment where the resident shall receive kind and considerate treatment, be treated with dignity, and be free from verbal and physical abuse, neglect, and exploitation;
- (J) To be free from physical and chemical restraint;
- (K) To not be discriminated against because of race, creed, national origin, or sexual orientation;
- (L) To be provided written notice at least thirty days in advance of a proposed permanent discharge from the home;
- (M) To receive a complete list of the residents' rights provided by this rule;
- (N) To receive a copy of any written agreement or contract between the home and the resident regarding the terms and the provision of services;
- (O) To have a resident's physician and/or source of medical care contacted immediately in the event of an acute illness, nursing facility admission, or hospitalization; to have the resident's relatives (or designated person) contacted in accordance with the resident's wishes in the event of an acute illness; and, to have the event documented in the resident's record; and,
- (P) To have all personal information about the resident that is maintained by the home treated in a confidential manner.

5122-35-11 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.

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

- (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.
- (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

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

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 applicant or continue to employ an employee if the applicant or employee is included in one or more of the databases described in paragraphs (C)(2)(a) to (C)(2)(e) 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 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.

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

- (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.
- (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.

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

(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);
- (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);

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

- (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);
 - (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)(xxxi) 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.

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

- (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);
- (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);

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

- (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);
 - (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)(xxx) 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

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

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);
- (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);

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

- (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 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);

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

- (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);
- (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);

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

(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.

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.

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

- (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;
 - (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:

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

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