

*****DRAFT - NOT FOR FILING*****

5122-30-27 **Transfer and discharge rights.**

(A) For purposes of this rule:

- (1) "Discharge" means a permanent movement of a resident to another 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 facility, if immediate action is not taken.
- (3) "Transfer" means a temporary or permanent movement of a resident between facilities under the jurisdiction of the owner or manager.

-(B) A residential 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;
- (4) The facility's license has been revoked or renewal has been denied pursuant to Chapter 5119.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) The resident is relocated as a result of a court's order issued under section 5119.34 of the Revised Code as part of the injunctive relief granted against a facility that is operating without a license; or
- (7) 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 facility owner or manager shall give a resident, 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), or (B)(3) of this rule.
- (3) The facility shall state in the written notice of proposed transfer or discharge the following information:
 - (a) The reason 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;

*****DRAFT - NOT FOR FILING*****

- (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.
- (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 facility 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), or (B)(3) 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, 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 facility 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), or (B)(3) 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 facility 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 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.