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**TO BE RESCINDED**

**5122-31-02 Mental health board/mental health agency accountability rule related to adult care facility (ACF) placements for persons with mental illness.**

(A) The purpose of this rule is to:

- (1) Set forth the duties and responsibilities of mental health boards and mental health agencies regarding effective placement, referral, and coordination of care processes for individuals with mental illness residing in adult care facilities (ACF) licensed by the Ohio department of health; and
- (2) Set forth the duties of mental health boards regarding abuse and neglect investigations and reports to the directors of the Ohio departments of health, mental health, aging and the Ohio legal rights service.

(B) The provisions of this rule are applicable to each mental health board and to mental health agencies certified by the Ohio department of mental health under Chapter 5122-25 of the Administrative Code to provide mental health services.

(C) For the purposes of this rule, the following definitions shall apply:

- (1) "Adult care facility (ACF)" means a facility licensed by the Ohio department of health as defined in rule 3701-20-01 of the Administrative Code.
- (2) "Community psychiatric supportive treatment (CPST)" means an array of services and activities that provides treatment, support and rehabilitation services as described in rule 5122-29-17 of the Administrative Code.
- (3) "Home county" means county of residence established under division (S) of section 5122.01 of the Revised Code.
- (4) "Incident" means 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.
- (5) "Individualized service plan (ISP)" means a service plan as described in rule 5122-27-05 of the Administrative Code.
- (6) "Lead mental health agency" means the mental health agency providing CPST services to an individual or, if CPST services are not provided, the lead mental health agency shall be the agency providing the majority of mental health services to that individual.
- (7) "Mental health agency" means a mental health agency, as defined in section 5119.22 of the Revised Code, under contract with a mental health board pursuant to division (A) of section 340.03 of the Revised Code.
- (8) "Mental health board" means an alcohol, drug addiction and mental health services board or community mental health board authorized by Chapter 340. of the Revised Code.
- (9) "Mental health plan for care" means the individualized plan required by this rule and rule 3701-20-18 of the Administrative Code, and entered into by the ACF owner or manager, a prospective resident, and the lead mental health agency.
- (10) "Mental health resident program participation agreement" ("MH participation agreement") means the

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written agreement entered into between an adult care facility and the mental health board with a service district encompassing the location of the adult care facility and under which the facility is authorized to admit residents who are receiving or are eligible for publicly funded mental health services, approved as to form and scope by the director.

- (11) "Mental health services" means those services specified in section 340.09 of the Revised Code and certified by the Ohio department of mental health in accordance with Chapter 5122-25 of the Administrative Code.
  - (12) "Passport administrative agencies (PAA)" means entities under contract with the Ohio department of aging to provide administrative services regarding the passport program created under section 173.40 of the Revised Code.
  - (13) "RSS" means residential state supplement.
- (D) A mental health board shall enter into a MH participation agreement with any adult care facility licensed by the department of health and located within the mental health board's service district that is willing to serve residents with mental illness and that meets all of the requirements set forth in the MH participation agreement form approved by the director.
- (E) Effective placement and referral process from the mental health system to adult care facilities within the home county board area.
- (1) In order to assure effective placements and referrals, the mental health agency(ies) shall do the following:
    - (a) Conduct a review of ACF and individual information to determine whether the proposed ACF is appropriate for the individual's needs. The mental health agency shall use existing procedures in combination with the following criteria to determine whether the ACF is appropriate for the individual:
      - (i) The ACF shall be licensed in accordance with Ohio department of health ACF rules and regulations and not under any sanction that would prohibit the admission of the individual;
      - (ii) The individual's preferences, personal care and mental health needs; and
      - (iii) The existence of a current valid MH participation agreement between the ACF and the mental health board with a service district encompassing the location of the ACF.
    - (b) If a mental health agency determines an ACF is not appropriate based on the criteria outlined in paragraph (D)(1) of this rule, then the mental health agency shall identify and document which criteria cannot be met and, as appropriate, communicate this to the referring entity. The mental health agency may suggest an alternative living arrangement that would be more appropriate.
  - (2) Develop a mental health plan for care as required in rule 3701-20-18 of the Administrative Code and in paragraph (F) of this rule, to provide ongoing monitoring of the resident and facilitate the availability of community support and other needed mental health services according to the individualized service plan (ISP).
  - (3) Provide discharge planning to ensure the earliest possible transition to a less restrictive environment.
- (F) Mental health plan for care for clients who intend to reside in adult care facilities (ACFs)

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- (1) If an individual is referred to an ACF by a mental health agency or a mental health board, then the lead mental health agency shall initiate and enter into a written, individualized mental health plan for care with the ACF owner or manager, and the potential resident prior to placement. The mental health plan for care shall:
  - (a) Specify the types of medication and possible adverse side effects of each medication and dangerous interactions with other medications and/or environmental conditions;
  - (b) Specify personal care services and/or other assistance needed to enhance or optimize the mental health services and the entity that is to provide each of these services;
  - (c) Include information regarding the prospective resident to promote appropriate admission to the facility and provide appropriate preparation of the ACF and staff to provide optimal care for the prospective resident;
  - (d) Include procedures for obtaining immediate assistance from the mental health board, mental health agency, or other authorized provider to appropriately address adverse changes or emergency mental health needs of the prospective resident;
  - (e) Include any advance directives;
  - (f) 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 3722.12 of the Revised Code, and rule 3701-20-23 of the Administrative Code; and
  - (g) 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 in accordance with rule 3701-20-18 of the Administrative Code, the mental health agency shall seek an alternative placement.
- (2) The mental health plan for care shall be updated annually or sooner, in accordance with rule 3701-20-18 of the Administrative Code, by the ACF owner or manager, the resident and the lead mental health agency, and shall be agreed to and signed by these persons.
- (3) For residents referred by or receiving services from a mental health agency and currently residing in the ACF on or before the effective date of this rule, the lead mental health agency shall work with the ACF owner or manager and resident to develop a mental health plan for care described in paragraph (F)(1) of this rule. Development of this mental health plan for care shall coincide with the resident's annual assessment required by rule 3701-20-18 of the Administrative Code.
- (4) After a lead mental health agency has participated in the development of a mental health plan for care as described in this rule, the mental health agency(ies) shall provide all services as stated in the terms of the plan, unless provision of such services is precluded by:
  - (a) Non-compliance of the resident, or
  - (b) Plan modification on the part of the resident, sponsor, the ACF owner or manager occurring after the effective date of the plan.

The lead mental health agency will then work with the resident and ACF owner or manager to

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renegotiate the mental health plan for care or seek alternative placement.

(G) Effective placement and referral process from the mental health system to placements in adult care facilities outside the board service area.

(1) Prior to referring an individual to an ACF outside the home county:

(a) The mental health agency from the individual's home county shall contact the individual's home county board to discuss alternative placement and service opportunities which have been explored within the home county;

(b) The individual's home county mental health board shall advise the mental health board where the ACF is located of the proposed referral for placement;

(c) The mental health agency from the individual's home county shall work with the mental health agency serving the county where the ACF is located to share information necessary for the agency to conduct the review required in paragraph (E) of this rule.

(d) The mental health agency from the county where the ACF is located shall conduct the review required in paragraph (E) of this rule and shall advise the mental health agency from the individual's home county and the home county board of the placement recommendation; and

(e) The mental health agency from the individual's home county and the lead mental health agency shall work out matters of service coordination and continuity of care.

(2) Prior to placement the lead mental health agency shall initiate the mental health plan for care required under paragraph (F) of this rule.

(3) Payment for mental health services shall be governed by division (S) of section 5122.01 of the Revised Code and Ohio department of mental health residency guidelines.

(H) Referral process for ACF residents seeking public mental health services.

(1) When an ACF resident, who has not been or is not currently receiving publicly funded mental health services, makes a request to the ACF operator for access to the publicly funded mental health system, the mental health board in the area where the ACF is located shall check to see if the ACF resident is enrolled in the publicly funded mental health system.

(a) If the resident is enrolled in the publicly funded mental health system, the mental health board shall provide the ACF operator with the resident's home board and contact phone number.

(b) The individual's home county mental health board shall provide to the ACF operator names and phone numbers of the mental health agency(ies) that may be able to provide mental health services within two working days of the request.

(c) If the person is not enrolled in the publicly funded mental health system, the mental health board will provide the ACF operator with the names and phone numbers of the mental health agency(ies) in the mental health board service area that provide(s) mental health services.

(d) The information required in paragraph (H)(1) of this rule shall be provided by the mental health board to the ACF operator within two working days of the request.

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- (2) Pending the outcome of the diagnostic assessment required in rule 5122-29-04 of the Administrative Code, the mental health agency may work with the resident and the ACF operator to develop the mental health plan for care within thirty calendar days from receipt of the request for mental health services.
- (3) If there is not a current valid MH participation agreement, the mental health board with a service area encompassing the location of the adult care facility shall work with the facility to execute a MH participation agreement.

### **(I) Reporting of incidents**

When a CPST worker or other mental health staff is notified of an incident pursuant to paragraph (B) of rule 3701-20-19 of the Administrative Code, the individual notified shall immediately notify the mental health board in which the ACF is located.

- (J) Abuse/neglect investigations; reports to the directors of the Ohio departments of health, mental health and aging and the Ohio legal rights service.

Mental health boards shall be responsible for reporting to the director or the director's designee of the Ohio departments of health, mental health and aging, and to the Ohio legal rights service, any alleged neglect or abuse of any ACF resident with a mental illness. Such reporting shall occur within twenty-four hours of a board's receipt of such information and shall be for the purpose of requesting an investigation by the Ohio department of health pursuant to section 3722.17 of the Revised Code.

- (1) If the health and safety of the resident is in immediate danger, the mental health board may enter the ACF with or without the director of the Ohio department of health, to investigate the situation and take whatever action is necessary to protect the health and safety of the resident. The mental health board's actions shall not violate any resident's rights under section 3722.12 of the Revised Code. The mental health board/mental health agency shall report actions taken within twenty-four hours to the Ohio department of mental health, the Ohio department of aging ombudsperson, and to the director or the director's designee of the Ohio department of health.
  - (2) The mental health board shall notify the director of the Ohio department of mental health or the director's designee of all matters reported to the Ohio department of health. If the actions taken involve relocating a RSS recipient, the mental health board/mental health agency shall immediately notify the PAA in that area.
- (K) For ACFs serving individuals with a mental illness, mental health boards and/or mental health agencies shall provide access for ACF operators and staff to attend training/continuing education events that would better prepare the operator to meet the special needs of residents requiring mental health services.
- (L) Prior to referring an individual who is receiving services from a mental health agency for placement in an ACF, the mental health agency or mental health board making the referral shall ensure that a current and approved MH participation agreement has been executed between the ACF and the mental health board in the area where the ACF is located.