*Promoting Wellness and Recovery*

**John R. Kasich**, *Governor*
**Tracy J. Plouck**, *Director*

# 5122-30-22 Resident Rights and Grievance Procedure for Class One Facilities
# 5122-30-27 Transfer and Discharge Rights
# 5122-30-29 Provision of Mental Health Services in Class One Facilities

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1. Will not identify how a particular rule is different from current ACF, Type 1, Type 2, Type 3, AFoH rules
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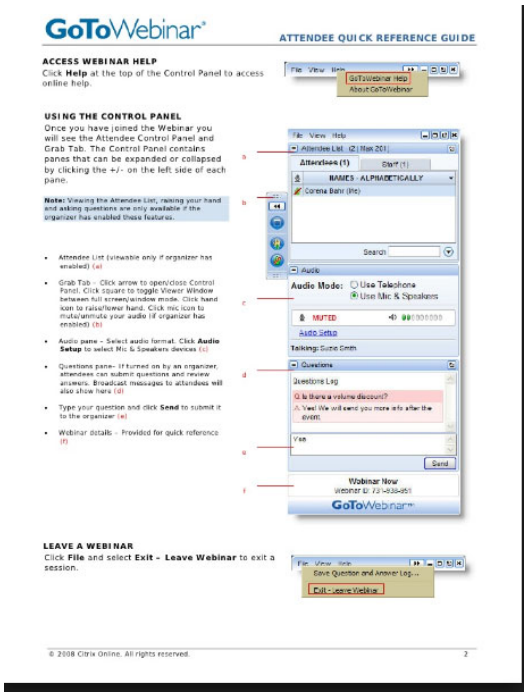

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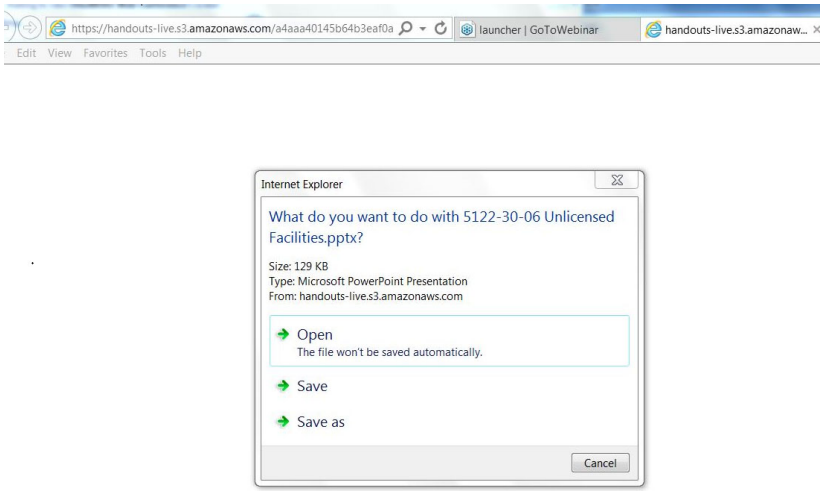


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- Yes, unless each needs to receive credit for attending training.

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- Type 1, Type 2, Type 3, ACF, Adult Foster Home providers
  - Currently licensed
  - Interested in obtaining licensure
- Interested stakeholders
  - Community ADAMH/MHRS Boards
  - Other stakeholders

**Are These Rules Applicable to Certified SUD Residential Providers:**

- NO!

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# 5122-30-22
# Resident Rights and Grievance Procedure for Class One Facilities

## 5122-30-22 (A)

(A) The operator shall be responsible for assuring the compliance by the facility with all resident rights. Facility violations of resident rights shall be regarded as sufficient cause to institute proceedings to deny or revoke the facility's license.

## 5122-30-22 (B)

(B) In addition to the definitions appearing in rule 5122-30-03 of the Administrative Code, the following definitions apply to this rule:
(1) "Grievance" means a written complaint initiated either verbally or in writing by a resident or by any other person or agency on behalf of a resident regarding denial or abuse of any resident's rights.
(2) "Reasonable" means a standard for what is fair and appropriate under usual and ordinary circumstances.

## 5122-30-22 (B) (continued)

(B) In addition to the definitions appearing in rule 5122-30-03 of the Administrative Code, the following definitions apply to this rule:

(3) "Resident rights advocate" means the residential facility staff, or a representative of the state long-term care ombudsman program, with responsibility for implementing the grievance procedure.

## 5122-30-22 (C)

(C) Each facility shall have the following:
(1) Written resident rights policy that lists all of the resident rights identified in this rule;
(2) Written resident grievance procedure, written in a manner that residents can understand and which allows for reasonable accommodation for residents with disabilities;

## 5122-30-22 (C) (continued)

(C) Each facility shall have the following:
(3) Policy for maintaining for at least three years from resolution, records of resident grievances that include, at a minimum, the following:
(a) Copy of the grievance;
(b) Documentation reflecting process used and resolution/remedy of the grievance; and,
(c) Documentation, if applicable, of extenuating circumstances for extending the time period for resolving the grievance beyond twenty-one calendar days.

## 5122-30-22 (D)

(D) Posting of resident rights.
The resident rights policy, the grievance procedure, and the name of the resident rights advocate shall be posted in a conspicuous location that is readily accessible to all residents.

## 5122-30-22 (E)

(E) Each resident has all of the following rights.
(1) The right to be verbally informed of all resident rights in language and terms appropriate for the resident's understanding, prior to or at the time of residency, absent a crisis or emergency.
(2) The right to request a written copy of all resident rights and the grievance procedure.
(3) The right to exercise one's own rights without reprisal, except that no right extends so far as to supersede health and safety considerations.
(4) The right to file a grievance.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(5) The right to be treated all times with courtesy and respect, and with consideration for personal dignity, autonomy and privacy.

(6) The right to receive services in the least restrictive, feasible environment.

(7) The right to receive humane services in a clean, safe, comfortable, welcoming, stable and supportive environment.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(8) The right to reasonable protection from physical, sexual and emotional abuse, and exploitation.

(9) The right to freedom from unnecessary or excessive medication, and the right to decline medication, except a class one facility which employs staff authorized by the Ohio Revised Code to administer medication and when there is imminent risk of physical harm to self or others.

(10) The right to be free from restraint or seclusion unless there is imminent risk of physical harm to self or others.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(11) The right to be advised and the right to refuse observation by others and by techniques such as one-way vision mirrors, tape recorders, video recorders, television, movies, photographs or other audio and visual technology. This right does not prohibit a facility from using closed-circuit monitoring to observe seclusion rooms or other areas in the facility, bathrooms or sleeping areas, or other areas where privacy is reasonably expected, e.g. a medical examination room.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(12) The right to confidentiality of communications and personal identifying information within the limitations and requirements for disclosure of resident information under state and federal laws and regulations.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(13) The right to have access to one's own record unless access to certain information is restricted for clear treatment reasons. If access is restricted, a treatment/service plan shall include the reason for the restriction, a goal to remove the restriction, and the treatment/service being offered to remove the restriction.

(14) The right to be informed of one's own condition.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(15) The right not to be discriminated against on the basis of race, ethnicity, age, color, religion, gender, national origin, sexual orientation, physical or mental disability, developmental disability, genetic information, human immunodeficiency virus status, or in any manner prohibited by local, state or federal laws.

(16) The right to practice a religion of his or her choice or to abstain from the practice of religion.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(17) 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.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(18) The right to reside in a class one residential facility, as available and appropriate to the type of care or services that the facility is licensed to provide, regardless of previous residency, unless there is a valid and specific necessity which precludes such residency. This necessity shall be documented and explained to the prospective resident.

30-22.1

*No comparable right*

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(19) The right to continued residency unless the facility is no longer able to meet the resident's care needs; the resident presents a documented danger to other residents, staff or visitors; or the monthly charges have not been paid for more than thirty days.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(20) The right not to be locked out of the facility at any time.

(21) The right of adult residents not to be locked in the facility at any time for any reason.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(22) The right to consent to or refuse treatment or services, or if the resident has a legal custodian, the right to have the legal custodian make decisions about treatment and services for the resident.

(23) The right to consult with an independent treatment specialist or legal counsel at one's own expense.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(24) The right to communicate freely with and be visited without staff present at reasonable times by private counsel and, unless prior court restriction has been obtained, to communicate freely with and be visited at reasonable times by a personal physician, psychologist or other health care providers, except that employees of a board, a provider, personnel of the Ohio protection and advocacy system, or representatives of the state long-term-ombudsman program may visit at any time when permitted by the Revised Code….

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(24) …

The right to communicate includes receiving written communications, which may be opened and inspected by facility staff in the presence of the resident recipient so long as the communication is then not read by the staff and given immediately to the resident.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(25) The right to meet with staff from the Ohio department of mental health and addiction services in private.

(26) The right not to be deprived of any legal rights solely by reason of residence in the facility.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(27) The right to personal property and possessions:
(a) The right of an adult resident to retain personal property and possessions.
(b) The right of a child resident to personal property and possessions in accordance with one's health and safety considerations, and developmental age, and as permitted by his/her parent or guardian.
(28) The right of an adult resident to manage his/her own financial affairs, and to possess a reasonable sum of money.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(29) The right to use the common areas of the facility.

Adult residents shall have right of access to common areas at all times.

Children and adolescent residents shall have the right of access to common areas in accordance with the facility's program schedule.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(30) The right to engage in or refrain from engaging in activities:

(a) The right of an adult to engage in or refrain from engaging in cultural, social or community activities of the resident's own choosing in the facility and in the community.

(b) The right of a child or adolescent to access cultural and social activities.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(31) The right to meet or communicate with family or guardians, and visitors and guests:

(a) The right of an adult:

(i) To reasonable privacy and the freedom to meet with visitors and guests at reasonable hours.

(ii) To make and/or receive confidential phone calls, including free local calls.

(iii) To write or receive uncensored, unopened correspondence subject to the facility's rules regarding contraband….

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(31) The right to meet or communicate with family or guardians, and visitors and guests:

(b) The right of a minor:

(i) To visitors and to communicate with family, guardian, custodian, friends and significant others outside the facility in accordance with instructions from the minor's parent or legal guardian.

(ii) To write or receive mail subject to the facility's rules regarding contraband and directives from the parent or legal guardian, when such rules and directives do not conflict with federal postal regulations.

## 5122-30-22 (E) (continued)

(E) Each resident has all of the following rights.

(32) The right to be free from conflicts of interest; no residential facility employee may be a resident's guardian, custodian, or representative.

## 5122-30-22 (F)

(F) Provision of client rights.
(1) The provider shall explain and maintain documentation in the resident's record an explanation of rights to each person served prior to or when beginning residency.
(2) In a crisis or emergency situation, the provider may verbally advise the resident of at least the immediately pertinent rights only, such as the right to consent to or to refuse the offered treatment and the consequences of that agreement or refusal. Full verbal explanation of the resident rights policy shall be provided at the first appropriate occasion, based upon the resident's functioning.

## 5122-30-22 (F) (continued)

(F) Provision of client rights.
(3) Explanations of rights shall be in a manner appropriate for the person's understanding.

## 5122-30-22 (G)

(G) All staff shall be trained on and follow the resident rights policy and resident grievance procedure. There shall be documentation in each employee's personnel file, including contract staff, volunteers and student interns that each staff member has received a copy of the resident rights policy and the resident grievance procedure and has agreed to abide by them.

## 5122-30-22 (H)

(H) The resident rights advocate, or designee, shall:
(1) Be promptly accessible; and,
(2) Have their name, title, location, hours of availability, and telephone number included with the posting of resident rights as required by paragraph (D) of this rule.

## 5122-30-22 (I)

(I) The resident grievance procedure shall have provisions for at least the following:
(1) Statement to whom the resident is to give the grievance;
(2) Designation of staff who will be available to assist a resident in filing of a grievance;
(3) Requirement that the grievance must be put into writing; the grievance may be made verbally and the resident rights advocate shall be responsible for preparing a written text of the grievance;

## 5122-30-22 (I) (continued)

(I) The resident grievance procedure shall have provisions for at least the following:
(4) Requirement that the written grievance must be dated and signed by the resident, the individual filing the grievance on behalf of the resident, or have an attestation by the resident rights advocate that the written grievance is a true and accurate representation of the resident's grievance;
Grievances may not be made anonymously, but grievance procedure shall provide method for confidential submission of grievance. Resident rights advocate shall keep such submissions and subsequent investigations confidential.

## 5122-30-22 (I) (continued)

(I) The resident grievance procedure shall have provisions for at least the following:

(5) Requirement that the grievance include, if available, the date, approximate time, description of the incident and names of individuals involved in the incident or situation being grieved;

(6) Statement that the program will make a resolution decision on the grievance within twenty-one business days of receipt of the grievance. Any extenuating circumstances indicating that this time period will need to be extended must be documented in the grievance file and written notification given to the resident;

## 5122-30-22 (I) (continued)

(I) The resident grievance procedure shall have provisions for at least the following:

(7) Statement that a resident has the option to file a grievance with outside organizations, that include, but are not limited to, the following, with the mailing address and telephone numbers for each stated:

(a) Applicable board for residents receiving mental health services;

(b) Ohio department of mental health and addiction services;

(c) Disability rights Ohio; or,

(d) U.S. department of health and human services, civil rights regional office in Chicago.

## 5122-30-22 (I) (continued)

(I) The resident grievance procedure shall have provisions for at least the following:

(8) Requirement that a written acknowledgment of receipt of the grievance be provided to each grievant. Such acknowledgment shall be provided within three business days from receipt of the grievance. The written acknowledgment shall include, but not be limited to, the following:

(a) Date grievance was received;

(b) Summary of grievance;

(c) Overview of grievance investigation process;

(d) Timetable for completion of investigation and notification of resolution; and,

(e) Treatment provider contact name, address and telephone number.

## To Do List

1. Develop and post resident rights (OK to use the rights verbatim, or re-word, but keeping absolute same intent and meaning from rule language).
2. Identify resident rights advocate.
3. Develop and post grievance procedure.
4. Train existing staff, train future staff, and provide annual training.
5. Verbally explain rights to each new resident. Have copies available if resident requests.
6. Investigate grievances if applicable.
7. Maintain grievance documentation.

## To Do List

# Make Sure All Staff are Trained in and Respectful of Resident Rights!

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## 5122-30-27
## Transfer and Discharge Rights

## 5122-30-27 (A)

(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 other household members 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.

## 5122-30-27 (B)

(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;

## 5122-30-27 (B) (continued)

(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:

(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; or,

(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.

## 5122-30-27 (C)

(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) A facility owner or manager shall give the resident thirty day's advance notice, in writing, of a proposed transfer or discharge.

(2) A class one or two facility owner or manager shall give the resident's county community board of residence and case manager, if applicable, thirty day's advance notice, in writing, of a proposed transfer or discharge.

## 5122-30-27 (C) (continued)

(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:

(3) 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.

## 5122-30-27 (C) (continued)

(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:

(4) 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;

## 5122-30-27 (C) (continued)

(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:
(4) The facility shall state in the written notice of proposed transfer or discharge the following information:

(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.

## 5122-30-27 (C) (continued)

(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:

(5) The facility shall maintain copies of information enumerated in this paragraph as required by rule 5122-30-23 of the Administrative Code.

## 5122-30-27 (C) (continued)

(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:

(6) 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.

## 5122-30-27 (D)

(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, county community board of residence, 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.

## 5122-30-27 (D) (continued)

(D) In the event of an emergency resident transfer or discharge, the following shall occur:

(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.

## 5122-30-27 (D) (continued)

(D) In the event of an emergency resident transfer or discharge, the following shall occur:

(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.

## 5122-30-27 (E)

(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 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.

## 5122-30-27 (F)

(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.

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# 5122-30-29
# Provision of Mental Health Services in Class One Facilities

## 5122-30-29 (A)

(A) A class one residential facility shall provide mental health services that are certified in accordance with Chapters 5122-24 to 5122-29 of the Administrative Code.
(1) In a class one facility, the primary purpose shall be to provide room and board, personal care, and mental health services either to meet a temporary need, or as long-term assistance. The provision of room and board and personal care shall be secondary or ancillary to the primary purpose of the facility to provide mental health services, but the provision of room and board, or personal care for an individual resident need not terminate in the event that mental health services are no longer needed by and being provided for the individual resident. Additionally, the facility may admit a person not in need of personal care and mental health services, but shall be required to be licensed as a class one facility if the facility provides mental health services to at least one resident.

## 5122-30-29 (A) (continued)

(A) A class one residential facility shall provide mental health services that are certified in accordance with Chapters 5122-24 to 5122-29 of the Administrative Code.

(2) The role and function of crisis stabilization units is to provide better intensive residential support with treatment in an appropriate setting less restrictive than that of inpatient care. Crisis stabilization units may appropriately accept individuals placed by probate court order, including individuals under court order to take their medications. However, crisis stabilization units may not forcibly administer medications (except in emergencies). Individuals whose care and supervision requires these steps should be hospitalized, where higher standards of care apply.

## 5122-30-29 (B)

(B) All facilities licensed as providing accommodations, supervision, personal care, and mental health services shall, in addition to being licensed as a residential facility, be certified by the department in accordance with Chapters 5122-24 to 5122-29 of the Administrative Code to provide mental health services at the residential facility location…

## 5122-30-29 (B) (continued)

(B) … A facility licensed to provide services to children or adolescents, at a minimum, shall be certified for the general services as described by rule 5122-29-03 of the Administrative Code and make available as described in that rule the following activities:
(1) Assessments;
(2) Counseling and therapy; and,
(3) Medical activities.

## 5122-30-29 (C)

(C) Each class one facility shall specify, in policy and procedures, the role and responsibilities of qualified providers in identifying and meeting the mental health needs of persons, in relation to the goals and program of the treatment facility. Each class one facility shall assure and provide for the staffing of qualified provider(s) to meet each resident's individualized treatment plan requirements twenty-four hours a day seven days a week.

## 5122-30-29 (D)

(D) A crisis stabilization unit shall ensure the ability to adjust staffing levels according to the number and intensity of need of the persons being served at any given point in time.

## Where Can I Find All of the New Rules?

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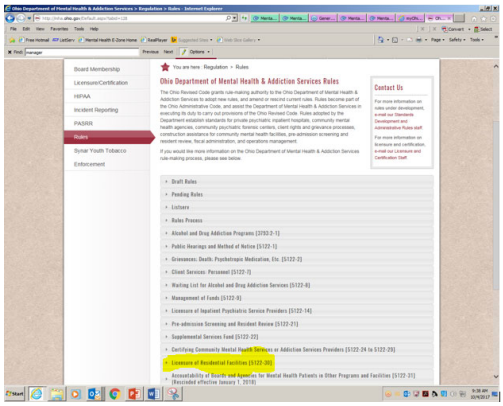

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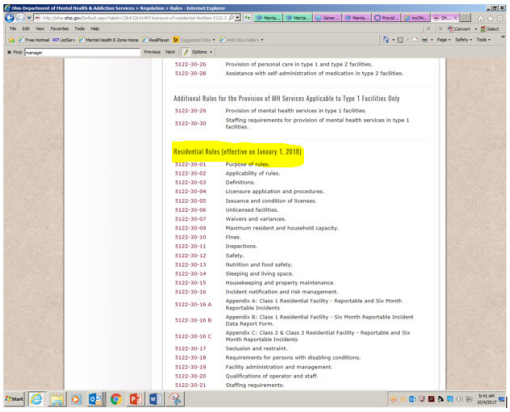


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# Webinar Information

- Current Webinar Schedule (and link to registration) is available at:

http://mha.ohio.gov/Portals/0/assets/Regulation/LicensureAndCertification/LC-Communications/Residential-Rules-Webinar-Training-Schedule-Registration.pdf

# Final Three Webinars

| Session # | Date (2017) | Time | Rule Numbers 5122-30 | Rule Titles | Who Should Attend | Registration Link |
|---|---|---|---|---|---|---|
| 7 | 11/7 | 1:00 pm – 2:30 pm | 30-25<br>30-26<br>30-28<br>30-30 | Skilled Nursing Care and Changes in a Resident's Health Status<br>Provisions of Personal Care in Class One and Two Facilities<br>Medication<br>Social, Recreational and Leisure Activities | All | https://attendee.gotowebinar.com/register/1707548540197355521 |
| 8 | 11/9 | 9:30 am – 11:00 am | 30-31 | Background Investigations for Employment | All | https://attendee.gotowebinar.com/register/3822904458433781249 |
| Q & A | 11/14 | 1:30 pm – 3:30 pm | N/A | Final Q & A | All | https://attendee.gotowebinar.com/register/7784907747706148097 |

# Questions?

Note: For future questions, each facility has an assigned lead surveyor, who can also answer questions.

Reminder: November 14 Session is dedicated only for Q & A. This will provide an opportunity to answer new or previously unanswered questions.

If there is any question that is not answered during the webinar, or you think of later, you can submit them to me in advance of the webinar, or if you have not yet registered for the webinar, you can submit the questions during the webinar registration process.

E-mail questions to Janel.Pequignot@mha.ohio.gov with a subject line titled "Residential Webinar Question"