



## Ohio Administrative Code

### Rule 3701-61-04 Written decision, impartial hearing and appeal.

Effective: February 1, 2024

---

(A) Upon receiving a request pursuant to section 3721.161 of the Revised Code and paragraph (E) of rule 3701-61-03 of the Administrative Code, the department of health is obligated to conduct hearings under this rule in accordance with 42 C.F.R. 431, subpart E ( January 20, 2017), to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code and paragraphs (A)(1) to (A)(7) of rule 3701-61-02 of the Administrative Code.

(B) The department is obligated to employ or contract with an attorney to serve as a hearing officer. The hearing officer will conduct a hearing in the home. The date and time of the hearing will be determined by the hearing officer, and will be conducted no later than ten days after the date the department receives a request pursuant to section 3721.161 of the Revised Code and paragraph (E) of rule 3701-61-03 of the Administrative Code, unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree otherwise. The hearing will be recorded , but neither the recording nor a transcript of the recording will be part of the official record of the hearing. A hearing conducted under this rule is not subject to section 121.22 of the Revised Code.

(C) Notice of the date, time, and place of the hearing will be sent by electronic mail and certified mail to the administrator, resident, and any sponsor. This notice will inform the administrator, resident, and any sponsor that they have a right to appear at the hearing in person or by their attorneys or other representatives. No scheduled hearings may be postponed except by agreement of both parties.

(D) The administrator will have the opportunity to present to the hearing officer any oral testimony or written materials to show by a preponderance of the evidence just cause why the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code and paragraphs (A)(1) to (A)(7) of rule 3701-61-02 of the Administrative Code. The resident and any sponsor will also be provided an opportunity to present to the hearing officer any oral testimony or written



material to show just cause why the transfer or discharge does not comply with division (A)(30) of section 3721.13 of the Revised Code and paragraphs (A)(1) to (A)(7) of rule 3701-61-02 of the Administrative Code. The hearing officer, administrator, resident, any sponsor and any representatives of the foregoing may ask questions of any person participating in the hearing. The hearing will be informal in nature but all parties are obligated to respect directives of the hearing officer for the orderly conduct of the hearing. The evidence is obligated to be presented under oath.

(E) Unless the parties otherwise agree, the hearing officer is obligated to issue a decision within five days of the date the hearing concludes. In all cases, a decision is obligated to be issued not later than thirty days after the department receives a request pursuant to section 3721.161 of the Revised Code and paragraph (E) of rule 3701-61-03 of the Administrative Code.

(F) A resident, resident's sponsor or home may appeal the decision of the department to the court of common pleas pursuant to section 119.12 of the Revised Code. The appeal is governed by section 119.12 of the Revised Code, except for all of the following:

(1) A resident, resident's sponsor or home files the appeal in the court of common pleas of the county in which the home is located.

(2) The resident or resident's sponsor applies to the court for designation as an indigent and, if the court grants the application, the resident or resident's sponsor will not be obligated to furnish the costs of the appeal.

(3) The appeal is filed with the department and the court within thirty days after the hearing officer's decision is served. The appealing party is obligated to serve the opposing party a copy of the notice of appeal by hand delivery or certified mail, return receipt requested and electronic mail. If the home is the appealing party, it is obligated to provide a copy of the notice of appeal to the resident and the resident's sponsor or attorney, if known.

(4) The department will not file a transcript of the hearing with the court unless the court orders it to do so. The court is obligated to issue such an order only if it finds that the parties are unable to stipulate to the facts of the case and that the transcript is essential to the determination of the appeal. If the court orders the department to file the transcript, the department is obligated to do so not later



than thirty days after the day the court issues the order.

(G) The court will not obligate an appellant to pay a bond as a condition of issuing a stay pending its decision.

(H) The resident, resident's sponsor, home, or department may commence a civil action in the court of common pleas of the county in which the home is located to enforce the decision of the department or the court. If the court finds that the resident or home has not complied with the decision, it is obligated to enjoin the violation and order other appropriate relief, including attorney's fees.