



## Ohio Administrative Code

### Rule 5123-100-05 Placement and discharge of individuals from developmental centers into nursing facilities.

Effective: November 19, 2018

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#### (A) Purpose

This rule establishes procedures for placement and discharge of individuals from developmental centers under the managing responsibility of the Ohio department of developmental disabilities ("department") into nursing facilities as provided by the Sermak v. Brown consent decree, section 1919(e)(7) of the Social Security Act, and medicaid regulations.

#### (B) Definitions

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

(1) "Active treatment" means a continuous program which includes aggressive, consistent implementation of specialized and generic training, treatment, health services, and related services that is directed toward:

(a) The acquisition of behaviors necessary for an individual to function with as much self-determination and independence as possible; and

(b) The prevention or deceleration of regression or loss of current optimal functional status.

(2) "Comprehensive evaluation" means a study, including a sequence of observations and standardized examinations, of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by an interdisciplinary team, and which complies with 42 C.F.R. 483.440(c)(3).

(3) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.



(4) "Individual plan" means a written plan of interventions and specific objectives necessary to meet an individual's needs, developed by an interdisciplinary team including the individual. The individual shall be included in the development of his or her individual plan unless the individual chooses not to participate. The individual plan shall be based upon a comprehensive evaluation and shall identify sequential behavior objectives to increase the individual's level of social, physical, intellectual, emotional, and vocational effectiveness. The individual plan shall be developed without regard to the actual availability of the services needed. The individual plan shall meet the requirements set forth in 42 C.F.R. 483.440(c)(4).

(5) "Interdisciplinary team" means a group of persons with special training and experience in the diagnosis and support of people with developmental disabilities, representing the professions, disciplines, or service areas that are relevant to identifying an individual's needs and designing programs that meet the individual's needs. The interdisciplinary team shall include a qualified intellectual disability professional. The qualified intellectual disability professional shall be responsible for integrating, coordinating, and monitoring the individual's active treatment program. Whenever possible, the interdisciplinary team shall include a representative of the county board of developmental disabilities and the nursing facility.

(6) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.

(7) "Medical crisis" means a situation in which an individual's medical condition presents an imminent threat of loss of life or serious physical harm in the absence of appropriate care.

(8) "Nursing facility" means any long-term care facility (other than an intermediate care facility for individuals with intellectual disabilities) currently certified by the Ohio department of health as being in compliance with the nursing facility standards and conditions of participation.

(9) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430.

(C) Placement of an individual from a developmental center into a nursing facility



Potential placement of an individual from a developmental center into a nursing facility shall be performed in compliance with this rule.

(1) Except as otherwise provided in this rule, no individual shall be placed or discharged from a developmental center into a nursing facility.

(2) An individual shall be placed into a nursing facility only when the individual has a medical condition which is determined to be unstable, extreme, or complex and prevents the individual from participating in his or her health care program.

(3) Placement of an individual shall be subject to 42 C.F.R. 483.440(b)(4) and preadmission screening under section 1919(e)(7) of the Social Security Act.

(4) The department shall provide written notice to disability rights Ohio of the proposed placement fifteen calendar days prior to the intended placement date.

(5) If the developmental center's medical director or the department's medical director determines that an individual is in a medical crisis and the medical director believes that the medical crisis requires immediate placement into a nursing facility, the department shall provide oral notice to disability rights Ohio within twenty-four hours of the department's awareness of such medical crisis, with follow-up written notice within three business days.

(6) Except when an individual is in a medical crisis, the individual shall have a current individual plan, updated within thirty calendar days prior to the proposed placement, which includes the individual's active treatment and health care needs as defined in 42 C.F.R. 483.440. If the individual's active treatment needs or health care status have changed, the individual plan shall be updated to reflect these changes.

(7) When an individual in a medical crisis has been placed into a nursing facility, the individual's active treatment needs shall be evaluated by the department within thirty calendar days of the individual's placement.

(a) Whenever possible, the individual plan, including the comprehensive evaluation and post-



discharge plan of care, shall be developed jointly by the nursing facility and the developmental center.

(b) The individual shall be included in the development of his or her individual plan, including the comprehensive evaluation and post-discharge plan of care, unless the individual chooses not to participate.

(8) In no case shall the individual be placed unless the individual has stayed at least seventy-two continuous hours at the receiving nursing facility and the interdisciplinary team has met to consider information gathered during the stay.

(9) The department is responsible for ensuring that the individual's active treatment needs are provided for during the time the individual resides in the nursing facility.

(10) The department shall ensure that the individual's continued need for services in the nursing facility and active treatment needs are reviewed within the first one hundred twenty calendar days by the interdisciplinary team. A review shall be conducted at least every one hundred eighty calendar days thereafter, as long as the individual resides in the nursing facility.

(11) An individual placed into a nursing facility shall be maintained on the rolls of the developmental center for at least thirty calendar days, after which time the individual may be discharged from the developmental center unless the individual has indicated, in any manner, dissatisfaction with the placement.

(12) Prior to discharge from the developmental center, the department shall notify the county board of developmental disabilities in the county where the individual is to reside of the individual's placement and service needs.

(D) Placement of an individual from a hospital into a nursing facility

Potential placement of an individual from a developmental center who is hospitalized and for whom the hospital recommends placement into a nursing facility shall be performed in compliance with this rule.



- (1) Except as otherwise provided in this rule, no individual from a developmental center who has been hospitalized shall be placed from the hospital or discharged into a nursing facility.
- (2) The department shall provide written notice to disability rights Ohio and the Ohio department of medicaid of a hospital's recommendation to place an individual into a nursing facility within three business days of the department's awareness of such recommendation. The notice shall include the individual's diagnosis and medical needs as specified by the hospital medical staff, the name of the receiving nursing facility, and the date of proposed placement.
- (3) Placement of an individual shall be subject to preadmission screening under section 1919(e)(7) of the Social Security Act.
- (4) The department is responsible for ensuring that within thirty calendar days of placement, the individual's active treatment needs are evaluated.
- (5) The individual shall have a current individual plan, updated within thirty calendar days prior to the proposed placement, which includes the individual's active treatment and health care needs as defined in 42 C.F.R. 483.440. If the individual's active treatment needs or health care status have changed, the individual plan shall be updated to reflect these changes.
  - (a) Whenever possible, the individual plan, including the comprehensive evaluation and post-discharge plan of care, shall be developed jointly by the nursing facility and the developmental center.
  - (b) The individual shall be included in the development of his or her individual plan, including the comprehensive evaluation and post-discharge plan of care, unless the individual chooses not to participate.
- (6) In no case shall the individual be placed unless the individual has stayed at least seventy-two continuous hours at the receiving nursing facility and the interdisciplinary team has met to consider information gathered during the stay.



(7) The department is responsible for ensuring that the individual's active treatment needs are provided for during the time the individual resides in the nursing facility.

(8) The department shall ensure that the individual's continued need for services in the nursing facility and active treatment needs are reviewed within the first one hundred twenty calendar days by the interdisciplinary team. A review shall be conducted at least every one hundred eighty calendar days thereafter, as long as the individual resides in the nursing facility.

(9) If it is determined through the review process that discharge is appropriate, the department shall provide written notice of the intent to discharge to disability rights Ohio.

(10) An individual placed into a nursing facility will be maintained on the rolls of the developmental center unless discharge is deemed appropriate by the department. If the individual has indicated, in any manner, dissatisfaction with the placement, the individual shall not be discharged.

(11) Prior to discharge from the developmental center, the department shall notify the county board of developmental disabilities in the county where the individual is to reside of the individual's placement and service needs.

(E) Designation of a coordinator

The managing officer of each developmental center shall designate an employee who shall be responsible for:

(1) Ensuring that all of the requirements of this rule are met including provision of notice to disability rights Ohio, the Ohio department of medicaid, and the county board of developmental disabilities;

(2) Coordinating joint development wherever possible by the nursing facility and the developmental center of the individual's comprehensive evaluation and individual plan, including quarterly updates;

(3) Ensuring quarterly visits by appropriate developmental center staff to meet with and observe the individual; and



(4) Coordinating the individual's return to the developmental center or subsequent placement and discharge from the nursing facility.