



## Ohio Revised Code

### Section 5119.34 Inspecting and licensing of residential facilities.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

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(A) As used in this section and sections 5119.341 and 5119.342 of the Revised Code:

(1) "Accommodations" means housing, daily meal preparation, laundry, housekeeping, arranging for transportation, social and recreational activities, maintenance, security, and other services that do not constitute personal care services or skilled nursing care.

(2) "ADAMHS board" means a board of alcohol, drug addiction, and mental health services.

(3) "Adult" means a person who is eighteen years of age or older, other than a person described in division (A)(4) of this section who is between eighteen and twenty-one years of age.

(4) "Child" means a person who is under eighteen years of age or a person with a mental disability who is under twenty-one years of age.

(5) "Community mental health services provider" means a community mental health services provider as defined in section 5119.01 of the Revised Code.

(6) "Community mental health services" means any mental health services certified by the department pursuant to section 5119.36 of the Revised Code.

(7) "Operator" means the person or persons, firm, partnership, agency, governing body, association, corporation, or other entity that is responsible for the administration and management of a residential facility and that is the applicant for a residential facility license.

(8) "Personal care services" means services including, but not limited to, the following:

(a) Assisting residents with activities of daily living;



(b) Assisting residents with self-administration of medication in accordance with rules adopted under this section;

(c) Preparing special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian, in accordance with rules adopted under this section.

"Personal care services" does not include "skilled nursing care" as defined in section 3721.01 of the Revised Code. A facility need not provide more than one of the services listed in division (A)(8) of this section to be considered to be providing personal care services.

(9) "Residential facility" means a publicly or privately operated home or facility that provides one of the following:

(a) Accommodations, supervision, personal care services, and community mental health services for one or more unrelated adults with mental illness or severe mental disabilities or to one or more unrelated children and adolescents with a serious emotional disturbance or who are in need of mental health services who are referred by or are receiving community mental health services from a community mental health services provider, hospital, or practitioner.

(b) Accommodations, supervision, and personal care services to any of the following:

(i) One or two unrelated persons with mental illness or persons with severe mental disabilities who are referred by or are receiving mental health services from a community mental health services provider, hospital, or practitioner;

(ii) One or two unrelated adults who are receiving residential state supplement payments;

(iii) Three to sixteen unrelated adults.

(c) Room and board for five or more unrelated adults with mental illness or severe mental disability who are referred by or are receiving community mental health services from a community mental health services provider, hospital, or practitioner.



(10) "Residential facility" does not include any of the following:

(a) A hospital subject to licensure under section 5119.33 of the Revised Code;

(b) A residential facility licensed under section 5123.19 of the Revised Code or otherwise regulated by the department of developmental disabilities;

(c) An institution or association subject to certification under section 5103.03 of the Revised Code;

(d) A facility operated by a hospice care program licensed under section 3712.04 of the Revised Code that is used exclusively for care of hospice patients;

(e) A nursing home, residential care facility, or home for the aging as defined in section 3721.02 of the Revised Code;

(f) Alcohol or drug addiction services certified pursuant to section 5119.36 of the Revised Code;

(g) A facility licensed to provide methadone treatment under section 5119.391 of the Revised Code;

(h) Any facility that receives funding for operating costs from the development services agency under any program established to provide emergency shelter housing or transitional housing for the homeless;

(i) A terminal care facility for the homeless that has entered into an agreement with a hospice care program under section 3712.07 of the Revised Code;

(j) A facility approved by the veterans administration under section 104(a) of the "Veterans Health Care Amendments of 1983," 97 Stat. 993, 38 U.S.C. 630, as amended, and used exclusively for the placement and care of veterans.

(11) "Room and board" means the provision of sleeping and living space, meals or meal preparation, laundry services, housekeeping services, or any combination thereof.



(12) "Residential state supplement" means the program administered under section 5119.41 of the Revised Code and related provisions of the Administrative Code under which the state supplements the supplemental security income payments received by aged, blind, or disabled adults under Title XVI of the Social Security Act. Residential state supplement payments are used for the provision of accommodations, supervision, and personal care services to supplemental security income recipients the department of mental health and addition services determines are at risk of needing institutional care.

(13) "Supervision" means any of the following:

(a) Observing a resident to ensure the resident's health, safety, and welfare while the resident engages in activities of daily living or other activities;

(b) Reminding a resident to perform or complete an activity, such as reminding a resident to engage in personal hygiene or other self-care activities;

(c) Assisting a resident in making or keeping an appointment.

(14) "Unrelated" means that a resident is not related to the owner or operator of a residential facility or to the owner's or operator's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece, nephew, aunt, or uncle, or as the child of an aunt or uncle.

(B) Nothing in division (A)(9) of this section shall be construed to permit personal care services to be imposed on a resident who is capable of performing the activity in question without assistance.

(C) Except in the case of a residential facility described in division (A)(9)(a) of this section, members of the staff of a residential facility shall not administer medication to the facility's residents, but may do any of the following:

(1) Remind a resident when to take medication and watch to ensure that the resident follows the directions on the container;



(2) Assist a resident in the self-administration of medication by taking the medication from the locked area where it is stored, in accordance with rules adopted pursuant to this section, and handing it to the resident. If the resident is physically unable to open the container, a staff member may open the container for the resident.

(3) Assist a physically impaired but mentally alert resident, such as a resident with arthritis, cerebral palsy, or Parkinson's disease, in removing oral or topical medication from containers and in consuming or applying the medication, upon request by or with the consent of the resident. If a resident is physically unable to place a dose of medicine to the resident's mouth without spilling it, a staff member may place the dose in a container and place the container to the mouth of the resident.

(D)(1) Except as provided in division (D)(2) of this section, a person operating or seeking to operate a residential facility shall apply for licensure of the facility to the department of mental health and addiction services. The application shall be submitted by the operator. When applying for the license, the applicant shall pay to the department the application fee specified in rules adopted under division (K) of this section. The fee is nonrefundable.

The department shall send a copy of an application to the ADAMHS board serving the county in which the person operates or seeks to operate the facility. The ADAMHS board shall review the application and provide to the department any information about the applicant or the facility that the board would like the department to consider in reviewing the application.

(2) A person may not apply for a license to operate a residential facility if the person is or has been the owner, operator, or manager of a residential facility for which a license to operate was revoked or for which renewal of a license was refused for any reason other than nonpayment of the license renewal fee, unless both of the following conditions are met:

(a) A period of not less than two years has elapsed since the date the director of mental health and addiction services issued the order revoking or refusing to renew the facility's license.

(b) The director's revocation or refusal to renew the license was not based on an act or omission at the facility that violated a resident's right to be free from abuse, neglect, or exploitation.



(E)(1) The department of mental health and addiction services shall inspect and license the operation of residential facilities. The department shall consider the past record of the facility and the applicant or licensee in arriving at its licensure decision.

The department may issue full, probationary, and interim licenses. A full license shall expire up to three years after the date of issuance, a probationary license shall expire in a shorter period of time as specified in rules adopted by the director of mental health under division (K) of this section, and an interim license shall expire ninety days after the date of issuance. A license may be renewed in accordance with rules adopted by the director under division (K) of this section. The renewal application shall be submitted by the operator. When applying for renewal of a license, the applicant shall pay to the department the renewal fee specified in rules adopted under division (K) of this section. The fee is nonrefundable.

(2) The department may issue an order suspending the admission of residents to the facility or refuse to issue or renew and may revoke a license if it finds the facility is not in compliance with rules adopted by the director pursuant to division (K) of this section or if any facility operated by the applicant or licensee has been cited for repeated violations of statutes or rules during the period of previous licenses. Proceedings initiated to deny applications for full or probationary licenses or to revoke such licenses are governed by Chapter 119. of the Revised Code.

(F) The department may issue an interim license to operate a residential facility if both of the following conditions are met:

(1) The department determines that the closing of or the need to remove residents from another residential facility has created an emergency situation requiring immediate removal of residents and an insufficient number of licensed beds are available.

(2) The residential facility applying for an interim license meets standards established for interim licenses in rules adopted by the director under division (K) of this section.

An interim license shall be valid for ninety days and may be renewed by the director no more than twice. Proceedings initiated to deny applications for or to revoke interim licenses under this



division are not subject to Chapter 119. of the Revised Code.

(G)(1) The department of mental health and addiction services may conduct an inspection of a residential facility as follows:

- (a) Prior to issuance of a license for the facility;
- (b) Prior to renewal of the license;
- (c) To determine whether the facility has completed a plan of correction required pursuant to division (G)(2) of this section and corrected deficiencies to the satisfaction of the department and in compliance with this section and rules adopted pursuant to it;
- (d) Upon complaint by any individual or agency;
- (e) At any time the director considers an inspection to be necessary in order to determine whether the facility is in compliance with this section and rules adopted pursuant to this section.

(2) In conducting inspections the department may conduct an on-site examination and evaluation of the residential facility and its personnel, activities, and services. The department shall have access to examine and copy all records, accounts, and any other documents relating to the operation of the residential facility, including records pertaining to residents, and shall have access to the facility in order to conduct interviews with the operator, staff, and residents. Following each inspection and review, the department shall complete a report listing any deficiencies, and including, when appropriate, a time table within which the operator shall correct the deficiencies. The department may require the operator to submit a plan of correction describing how the deficiencies will be corrected.

(H) No person shall do any of the following:

- (1) Operate a residential facility unless the facility holds a valid license;
- (2) Violate any of the conditions of licensure after having been granted a license;



(3) Interfere with a state or local official's inspection or investigation of a residential facility;

(4) Violate any of the provisions of this section or any rules adopted pursuant to this section.

(I) The following may enter a residential facility at any time:

(1) Employees designated by the director of mental health and addiction services;

(2) Employees of an ADAMHS board under either of the following circumstances:

(a) When a resident of the facility is receiving services from a community mental health services provider under contract with that ADAMHS board or another ADAMHS board;

(b) When authorized by section 340.05 of the Revised Code.

(3) Employees of a community mental health services provider under either of the following circumstances:

(a) When the services provider has a person receiving services residing in the facility;

(b) When the services provider is acting as an agent of an ADAMHS board other than the board with which it is under contract.

(4) Representatives of the state long-term care ombudsman program when the facility provides accommodations, supervision, and personal care services for three to sixteen unrelated adults or to one or two unrelated adults who are recipients under the residential state supplement program.

The persons specified in division (I) of this section shall be afforded access to examine and copy all records, accounts, and any other documents relating to the operation of the residential facility, including records pertaining to residents.

(J) Employees of the department of mental health and addiction services may enter, for the purpose





of investigation, any institution, residence, facility, or other structure which has been reported to the department as, or that the department has reasonable cause to believe is, operating as a residential facility without a valid license.

(K) The director shall adopt and may amend and rescind rules pursuant to Chapter 119. of the Revised Code governing the licensing and operation of residential facilities. The rules shall establish all of the following:

- (1) Minimum standards for the health, safety, adequacy, and cultural competency of treatment of and services for persons in residential facilities;
- (2) Procedures for the issuance, renewal, or revocation of the licenses of residential facilities;
- (3) Procedures for conducting criminal records checks for prospective or current operators, employees, and volunteers who may have direct access to facility residents;
- (4) The fee to be paid when applying for a new residential facility license or renewing the license;
- (5) Procedures for the operator of a residential facility to follow when notifying the ADAMHS board serving the county in which the facility is located when the facility is serving residents with mental illness or severe mental disability, including the circumstances under which the operator is required to make such a notification;
- (6) Procedures for the issuance and termination of orders of suspension of admission of residents to a residential facility;
- (7) Measures to be taken by residential facilities relative to residents' medication;
- (8) Requirements relating to preparation of special diets;
- (9) The maximum number of residents who may be served in a residential facility;
- (10) The rights of residents of residential facilities and procedures to protect such rights;



(11) Procedures for obtaining an affiliation agreement approved by the board between a residential facility and a community mental health services provider;

(12) Standards and procedures under which the director may waive the requirements of any of the rules adopted.

(L)(1) The department may withhold the source of any complaint reported as a violation of this section when the department determines that disclosure could be detrimental to the department's purposes or could jeopardize the investigation. The department may disclose the source of any complaint if the complainant agrees in writing to such disclosure and shall disclose the source upon order by a court of competent jurisdiction.

(2) Any person who makes a complaint under division (L)(1) of this section, or any person who participates in an administrative or judicial proceeding resulting from such a complaint, is immune from civil liability and is not subject to criminal prosecution, other than for perjury, unless the person has acted in bad faith or with malicious purpose.

(M)(1) The director of mental health and addiction services may petition the court of common pleas of the county in which a residential facility is located for an order enjoining any person from operating a residential facility without a license or from operating a licensed facility when, in the director's judgment, there is a present danger to the health or safety of any of the occupants of the facility. The court shall have jurisdiction to grant such injunctive relief upon a showing that the respondent named in the petition is operating a facility without a license or there is a present danger to the health or safety of any residents of the facility.

(2) When the court grants injunctive relief in the case of a facility operating without a license, the court shall issue, at a minimum, an order enjoining the facility from admitting new residents to the facility and an order requiring the facility to assist with the safe and orderly relocation of the facility's residents.

(3) If injunctive relief is granted against a facility for operating without a license and the facility continues to operate without a license, the director shall refer the case to the attorney general for



further action.

(N) The director may fine a person for violating division (H) of this section. The fine shall be five hundred dollars for a first offense; for each subsequent offense, the fine shall be one thousand dollars. The director's actions in imposing a fine shall be taken in accordance with Chapter 119. of the Revised Code.