

3701-61-04

Written decision, impartial hearing and appeal.

- (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 ~~shallis obligated to~~ conduct hearings under this rule in accordance with 42 C.F.R. 431, subpart E (~~May 6, 2016~~ 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 ~~shallis obligated to~~ employ or contract with an attorney to serve as a hearing officer. The hearing officer ~~shallwill~~ conduct a hearing in the home. The date and time of the hearing ~~shallwill~~ be determined by the hearing officer, ~~but shalland~~ 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 ~~shallwill~~ be recorded ~~on audiotape~~, but neither the recording nor a transcript of the recording ~~shallwill~~ 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 ~~shallwill~~ be sent by electronic mail and certified mail to the administrator, resident, and any sponsor. This notice ~~shallwill also~~ 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 ~~shallwill~~ 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 ~~shallwill~~ also have-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 ~~shallwill~~ be informal in nature but all parties ~~shallare obligated to~~ respect directives of the hearing officer for the orderly conduct of the hearing. The evidence ~~shallis obligated to~~ be presented under oath.

- (E) Unless the parties otherwise agree, the hearing officer ~~shall~~ is obligated to issue a decision within five days of the date the hearing concludes. In all cases, a decision ~~shall~~ 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 ~~shall~~ is governed by section 119.12 of the Revised Code, except for all of the following:
- (1) A resident, resident's sponsor or home ~~shall file~~ 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 ~~may apply~~ applies to the court for designation as an indigent and, if the court grants the application, the resident or resident's sponsor ~~shall~~ will not be ~~required~~ obligated to furnish the costs of the appeal.
 - (3) The appeal ~~shall be~~ is filed with the department and the court within thirty days after the hearing officer's decision is served. The appealing party ~~shall~~ 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 ~~shall~~ 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 ~~shall~~ will not file a transcript of the hearing with the court unless the court orders it to do so. The court ~~shall~~ 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 ~~shall~~ is obligated to do so not later than thirty days ~~after the~~ after the day the court issues the order.
- (G) The court ~~shall~~ will not ~~require~~ 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 ~~shall~~ is obligated to enjoin the violation and order other appropriate relief, including attorney's fees.

Effective: 2/1/2024

Five Year Review (FYR) Dates: 11/6/2023 and 02/01/2029

CERTIFIED ELECTRONICALLY

Certification

01/22/2024

Date

Promulgated Under: 119.03

Statutory Authority: 3721.11

Rule Amplifies: 3721.13, 3721.16

Prior Effective Dates: 10/12/1979, 10/14/1999, 03/20/2005, 08/05/2012,
06/16/2017