

5122-30-04

Licensure application and procedures.

(A) The purpose of this rule is to state the licensure procedure, including application, renewal, correction of deficiencies or non-compliance and determination of the number of beds.

(1) The application shall consist of:

(a) Completed application form;

(b) Approved building inspection, upon initial application only, and when building modifications require appropriate building inspections per Ohio basic building code;

(c) Approved fire inspection;

(d) Non-refundable, non-waivable licensure fee of: one hundred and fifty dollars for type 1 facilities, and ~~fifty~~ seventy-five dollars for type 2 and 3 facilities;

(e) A line drawing showing location and function of all resident and staff areas; and

(f) For type 1 residential facilities only, copy of agency service plan specific to the proposed services in accordance with rules 5122-23 to 5122-29 of the Administrative Code.

(2) The proposed facility shall be subject to an on-site inspection by the department prior to occupancy to determine if the facility is in compliance with rules 5122-30-01 to 5122-30-30 of the Administrative Code.

(3) Every person operating or desiring to operate a residential facility shall apply for licensure of the facility to the department of mental health and shall send a copy of the application to the board of alcohol, drug addiction, and mental health services whose service district includes the county in which the person operates or desires to operate a residential facility. The board shall review such applications and recommend approval or disapproval to the department.

(B) The provisions of this rule are applicable to each residential facility licensed by the department.

(1) No person who has been convicted of or plead guilty to an offense listed in

paragraph (C) of this rule shall operate a residential facility on or after October 29, 1993, unless the affiliating agency or board finds and documents that person has met all the following conditions:

- (a) Where the offense was a misdemeanor, or would have been a misdemeanor if conviction had occurred under the current criminal code, at least three years have elapsed from the date the person was fully discharged from any imprisonment or probation arising from the conviction. A person who has had his record of misdemeanor conviction sealed by a court pursuant to section 2953.32 of the Revised Code shall be considered to have met this condition;
 - (b) Where the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation; and
 - (c) The victim of the offense was not one of the following:
 - (i) A person under the age of eighteen;
 - (ii) A functionally impaired person as defined in division (A) of section 2901.10 of the Revised Code;
 - (iii) A mentally retarded person as defined in division (K) of section 5123.01 of the Revised Code;
 - (iv) A developmentally disabled person as defined in division (Q) of section 5123.01 of the Revised Code;
 - (v) A person with a mental illness as defined in division (A) of section 5122.01 of the Revised Code; and
 - (vi) A person sixty years of age or older.
- (2) Neither operator nor staff of a residential facility will jeopardize in any way the health, safety or welfare of the person(s) the facility serves. The following factors shall be considered in determining the facility's licensure:
- (a) The person's age at the time of the offense;
 - (b) The nature and seriousness of the offense;

- (c) The circumstances under which the offense was committed;
 - (d) The degree in which the person participated in the offense;
 - (e) The time elapsed since the person was fully discharged from imprisonment or probation;
 - (f) The likelihood that the circumstance leading to the offense will reoccur;
 - (g) Whether the person is a repeat offender;
 - (h) The person's employment record;
 - (i) The person's efforts at rehabilitation and the results of those efforts;
 - (j) Whether any criminal proceedings are pending against the person;
 - (k) Whether the person has been convicted of or pleaded guilty to a felony contained in the Revised Code that is not listed in paragraph (D)(1) of this rule, if the felony bears a direct and substantial relationship to being an operator of a residential facility or household member; and
 - (l) Any other factors the affiliating agency or board considers relevant.
- (C) Except as provided in paragraph (B)(1) of this rule, an operator of a residential facility shall not have been convicted of or pleaded guilty to, any of the following offenses:
- (1) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.61, 2925.02, 2925.03, 2925.05, 2925.06, 2925.11, or 3716.11 of the Revised Code.
 - (2) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in paragraph (C)(1) of this rule.

- (D) It is the prospective operator's duty to provide verification to the affiliating agency or board that the conditions specified in paragraph (B)(1) of this rule are met for that person and if requested for all staff members of the facility. If the prospective operator fails to provide such proof or if the affiliating agency, board or department determines that the proof offered by the person is inconclusive or insufficient, the facility shall be denied licensure pursuant to Chapter 119. of the Revised Code.
- (E) To determine whether a prospective facility is qualified to be licensed pursuant to paragraph (B)(1) of this rule, a criminal records check shall be conducted for the operator and may be conducted for each staff member of the facility.
- (F) The department shall not approve a prospective operator on a conditional basis awaiting the results of the criminal records check required by this rule. The required criminal records check must be completed prior to the issuance of a license.
- (G) The provisions of paragraph (B)(1) of this rule must be considered for any prospective operator and may be considered for any staff member of the facility who has been convicted of, or pleaded guilty to, one or more of the offenses listed in paragraph (C) of this rule, even if the person's record has been sealed by a court pursuant to section 2953.32 of the Revised Code because the information contained in the sealed record bears a direct and substantial relationship to the care to be provided to any resident who may be placed in the facility.
- (H) A conviction of, or plea of guilty to, an offense listed in paragraph (C) of this rule shall not prevent a facility's licensure if a staff member of the household has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction of guilty plea has been set aside pursuant to law. Unconditional pardon includes a conditional pardon with respect to which all conditions have been performed or transpired.
- (I) If an operator or a member of the facility or staff, is convicted of any offense listed in paragraph (C) of this rule, the operator shall immediately notify the affiliating agency and adamhs board; and the agency/adamhs board shall evaluate whether the residential facility should continue to be recommended for licensure or be recommended for denial or revocation of licensure. The evaluation shall include, but not limited to:
 - (1) The health/safety of the residents;
 - (2) Whether there are residents in placement and the impact of disruption on the residents if moved;

- (3) The length of time of licensure prior to this conviction; and
 - (4) The factors of paragraph (B)(1) of this rule.
- (J) An operator shall not operate the facility as a boarding or rooming house.
- (K) Each residential facility shall obtain written approval from the department prior to conducting any business, and allowing any business to operate, including baby-sitting services, in the home.
- (L) Type 2 and 3 residential facilities shall obtain an adamhs/cmh board approved, signed, and dated affiliation agreement according to division (G) of section 5119.22 of the Revised Code between the operator and a mental health agency that is certified to provide or make provision for crisis intervention service in accordance with Chapters 5122-23 to 5122-29 of the Administrative Code.
- (M) The affiliation agreement may also be between a residential facility and a mental health board. The provision of crisis intervention services must be available through a mental health agency(s), certified to provide crisis intervention services, and that agency(s) must be a party to the affiliation agreement.
- (1) In the event that a facility has residents receiving services from more than one mental health agency, or the organization of the board area is such that one agency or the board itself assumes administrative responsibilities with regard to residential facilities, the facility may affiliate with the board or the administrating agency. The affiliation agreement may be modified as necessary to include appropriate provisions and procedures concerning administrative and service delivery matters, but shall include all of the information specified in paragraph (M)(2) of this rule, and shall ensure the provision of crisis intervention service as specified in this section, to mental health residents of the facility by a certified provider of the service.
 - (2) The affiliation agreement shall include, but may not be limited to, specification of:
 - (a) The provisions for delivery of crisis intervention and additional mental health services as appropriate and necessary, to mental health residents;
 - (b) The provisions and procedures for emergency medical care;
 - (c) The provisions and criteria for referrals, admissions to, non-admissions to

and discharges from the facility;

- (d) The procedure for major unusual incident reporting;
 - (e) The handling of mental health resident funds;
 - (f) The procedure for resolving disputes between the affiliating agency and the residential facility;
 - (g) The provision for monitoring the terms of the agreement;
 - (h) The procedure for termination of affiliation agreement, and written assurance of due process;
 - (i) A copy of the residential agreement as specified in rule 5122-30-24 of the Administrative Code;
 - (j) Copies of all inspection reports, licenses or certificates as required in this chapter;
 - (k) The board's written recommendation to the department for approval or disapproval of the license application, as consistent with the community plan, and/or other information the board may possess about the facility relevant to licensure. A recommendation for disapproval of the license shall be accompanied by clear and specific documentation of facility deficiencies with regard to the requirements specified in these rules; and
 - (l) The staffing pattern of the facility.
- (N) In the event of the denial or revocation of an affiliation agreement the affiliating agency/board shall provide clear and specific documentation of the facility's deficiencies with regard to the requirements of this chapter and submit it to the department within thirty days of the decision.
- (O) Prior to the licensure renewal date, each operator shall obtain an affiliation agreement.
- (P) The affiliation agreement, as authorized by section 5119.22(G) of the Revised Code, shall indicate the written approval by the community mental health board as being consistent with the residential portion of the community plan.

(Q) The affiliation agreement shall be consistent with local, state and federal law and the local systems performance agreement. If any provision of the affiliation agreement is inconsistent, or in violation of any local, state, federal law, or administrative rule, such provision shall be void and unenforceable.

(R) An application for the renewal of a full license shall contain the materials specified in paragraphs (A)(1) and (B) of this rule.

(S) Licensure procedure

- (1) Every person operating or desiring to operate a residential facility shall forward the application of the residential facility and related application materials specified in paragraphs (A)(1) and (B) of this rule to the department. In accordance with section 5119.22 of the Revised Code the department shall review the materials to determine if they are complete, including all of the content requirements. If incomplete, the department shall notify the board and residential facility of necessary corrections or additions, or return the materials to the residential facility. Incomplete materials shall not be considered an application for licensure, and return of the materials or failure to issue a license shall not constitute a denial of an application for licensure.
- (2) For renewal of a license, complete materials for an application must be received by the department ninety days prior to the expiration date of the current license.
- (3) Following receipt by the department of a complete application, the department shall review the application materials for consistency and compliance with the requirements of these rules. The department shall provide the applicant, affiliating agency, and the board with a written statement citing areas of non-compliance, and specifying a time-frame for correction, if the department determines that the areas of non-compliance are amenable or subject to correction. Failure to accomplish corrections within the time frame established may constitute grounds for denial of the application for licensure. If the complete application is in compliance with the requirements of these rules, the department may schedule and conduct an on-site survey of the facility.
- (4) If the department determines that deficiencies observed during the on-site survey, if any, are amenable to correction within a particular time period, the operator shall be provided a copy of the deficiencies and a time frame for correction.

- (5) The department may require the operator to submit a written plan of correction, describing how deficiencies will be corrected in the time-frame specified by the department. Failure of an operator to comply with the plan of correction may constitute grounds for licensure revocation.
- (6) The department shall obtain assurance that deficiencies have been corrected within the time specified, either by an on-site visit or by the receipt of written documentation, as relevant and appropriate, within the discretion of the department. The facility will be notified in writing of the approval of the plan of correction.
- (7) The department, at its discretion, may consider any other information which it deems appropriate in making licensure determinations.

(T) Interim licensure procedure

- (1) The interim license may be issued only in emergency situations, as specified in rule 5122-30-05 of the Administrative Code. The perceived need for the interim licensure shall be reported immediately to the department by telephone in accordance with procedures in place for reporting major unusual incidents to the department.
- (2) The department shall be provided such information concerning the nature and extent of the emergency, as is relevant and necessary, to determining the need for the interim license. In the event the department determines that an emergency need exists, the department may authorize, by telephone, the immediate placement of residents in the facility to be licensed. The department may conduct an on-site inspection to determine compliance of the facility with the requirements of this chapter.
- (3) In the event of deficiencies, the department may:
 - (a) Authorize a variance, with regard to necessary square footage requirements, or require the relocation of one or more residents to reduce the degree of non-compliance with square footage requirements;
 - (b) Require the immediate correction of deficiencies which are amenable to such immediate correction; and/or
 - (c) Require the immediate relocation of one or more or all residents, in the event of deficiencies which cannot be immediately corrected and which

constitute a threat to the health or safety of one or more residents.

- (4) Nothing stated herein shall be construed to require interim licensing for facilities which are not subject to licensure as residential facilities, as specified in section 5119.22 of the Revised Code.
- (U) Any facility that is required to have a license in accordance with section 5119.22 of the Revised Code shall apply for and receive the license prior to the admission of mental health residents.

Effective:

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Certification

Date

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