

TO BE RESCINDED

5122-33-06

Inspections; access to facilities; standards of conduct.

(A)

- (1) The director shall make at least one unannounced inspection of an adult care facility during each licensure period in addition to inspecting the facility to determine whether a license should be issued or renewed. The director shall take all reasonable actions to avoid giving notice of an unannounced inspection by the manner in which the inspections is scheduled or performed. The director may make additional unannounced inspections as he or she considers necessary. Other inspections may be made at any time that the director considers appropriate. In accordance with paragraph (A) of rule 5122-33-10 of the Administrative Code, the state fire marshal or fire prevention officer of a municipal, township, or other legally constituted fire department approved by the fire marshal shall inspect each adult group home prior to issuance of a license or renewal, at least once annually thereafter, and at any other time requested by the director; and
- (2) Where an inspection is for the purpose of investigating an allegation or allegations of noncompliance in a facility that serves residents who have been referred or are receiving services from an ADAMHS board or mental health agency or are recipients of residential state supplement funds, the onsite inspection visit shall be coordinated with the mental health entity or PASSPORT administration agency and conducted as a joint venture as may be appropriate.

(B) The following persons may enter any adult care facility at any time:

- (1) Employees designated by the director;
- (2) Employees designated by the director of aging;
- (3) Employees designated by the director of mental health;
- (4) Employees designated by the attorney general;
- (5) Employees designated by the director of the Ohio legal rights service;
- (6) Employees designated by a county department of human services to implement sections 5101.60 to 5101.72 of the Revised Code pertaining to adult protective services;

- (7) Employees of a mental health agency, under any of the following circumstances;
- (a) When the agency has a client residing in the facility;
 - (b) When the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract; or
 - (c) When there is a mental health resident program participation agreement between the facility and the ADAMHS board with which the agency is under contract.
- (8) Employees of an ADAMHS board under any of the following circumstances:
- (a) When authorized by section 340.05 of the Revised Code;
 - (b) When a resident of the facility is receiving mental health services provided by that ADAMHS board or another board pursuant to division (A)(8)(b) of section 340.03 of the Revised Code;
 - (c) When a resident of the facility is receiving services from a mental health agency under contract with that ADAMHS board or another ADAMHS board; or
 - (d) When there is a mental health resident program participation agreement between the facility and that ADAMHS board.
- (9) Persons employed pursuant to division (M) of section 173.01 of the Revised Code in the long-term care facilities ombudsperson program.

The employees specified in paragraphs (B)(1) to (B)(8) of this rule shall be afforded access to all records of the facility, including records pertaining to residents, and may copy the records. Representatives of the state long-term care ombudsperson program shall be afforded access to resident and facility records in accordance with section 173.20 of the Revised Code. Neither the employees specified in this paragraph nor the director shall release, without consent, any information obtained from the records of an adult care facility that reasonably would tend to identify a specific resident of the facility, except as ordered by a court of competent jurisdiction.

- (C) The following persons may enter any adult care facility during reasonable hours:

- (1) A resident's sponsor;
 - (2) Residents' rights advocates;
 - (3) A resident's attorney;
 - (4) A minister, priest, rabbi, or other person ministering to a resident's religious needs;
 - (5) A physician or other person providing health care services to a resident;
 - (6) Employees authorized by county departments of human services and local boards of health or health departments to enter adult care facilities;
 - (7) A prospective resident and prospective resident's sponsor;
 - (8) A case manager providing case management services to a resident in the facility;
- (D) The manager of a facility may require a person seeking to enter the facility to present identification sufficient to identify him or her as an authorized person under this rule.
- (E) Any employee of the state or any political subdivision of the state authorized by Chapter 5119. of the Revised Code and this rule to inspect the facility or to enter for any other purpose shall respect the residents' privacy and dignity, cooperate with the residents, behave in a congenial manner toward the residents, protect the residents' rights, and behave in a cooperative and professional manner toward individuals working in the facility. Such an employee shall do all of the following:
- (1) Refrain from using language or behavior that is derogatory, insulting, intimidating, or threatening;
 - (2) Not harass or coerce residents or otherwise attempt to influence residents' responses to inquiries;
 - (3) Not make remarks or comparisons, positive or negative, about another facility or other residents.
 - (4) Not solicit, accept, or agree to accept from the facility or a resident of the

facility compensation, gratuities, gifts, or any other thing of value that is of such character as to manifest a substantial and improper influence upon the state or local employee with respect to his or her duties;

- (5) Conduct inspections authorized under sections 5119.70 to 5119.88 of the Revised Code in accordance with that chapter and Chapter 5122-33 of the Administrative Code; and
- (6) Obtain the resident's consent prior to conducting an examination of a resident unless a court has issued a search warrant or other order authorizing such an examination. When requesting the resident's consent to examine him or her, the employee shall explain that the resident has the option to consent or not to consent to the examination, that the employee will not examine the resident without the resident's consent, and that the resident will not suffer any adverse consequences if he or she refuses to consent.

Effective: 01/01/2018

Five Year Review (FYR) Dates: 01/20/2017

CERTIFIED ELECTRONICALLY

Certification

04/05/2017

Date

Promulgated Under: 119.03
Statutory Authority: 5119.34
Rule Amplifies: 5119.34
Prior Effective Dates: 5-6-1991 (Emer.), 8-4-1991, 12-16-1993 (Emer.),
2-25-1994, 9-5-1997, 10-15-2000, 6-1-2006,
10-1-2010