

As Introduced

**136th General Assembly
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H. B. No. 811

Representative Lett

To amend section 5119.34 of the Revised Code 1
regarding residential facilities licensed by the 2
Department of Behavioral Health. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5119.34 of the Revised Code be 4
amended to read as follows: 5

Sec. 5119.34. (A) As used in this section and sections 6
5119.341 to 5119.344 of the Revised Code: 7

(1) "Accommodations" means housing, daily meal 8
preparation, laundry, housekeeping, arranging for 9
transportation, social and recreational activities, maintenance, 10
security, and other services that do not constitute personal 11
care services or skilled nursing care. 12

(2) "ADAMHS board" means a board of alcohol, drug 13
addiction, and mental health services. 14

(3) "Adult" means a person who is eighteen years of age or 15
older, other than a person described in division (A)(4) of this 16
section who is between eighteen and twenty-one years of age. 17

(4) "Child" means a person who is under eighteen years of 18
age or a person with a mental disability who is under twenty-one 19

years of age. 20

(5) "Operator" means the person or persons, firm, 21
partnership, agency, governing body, association, corporation, 22
or other entity that is responsible for the administration and 23
management of a residential facility and that is the applicant 24
for a residential facility license. 25

(6) "Personal care services" means services including, but 26
not limited to, the following: 27

(a) Assisting residents with activities of daily living; 28

(b) Assisting residents with self-administration of 29
medication in accordance with rules adopted under this section; 30

(c) Preparing special diets, other than complex 31
therapeutic diets, for residents pursuant to the instructions of 32
a physician or a licensed dietitian, in accordance with rules 33
adopted under this section. 34

"Personal care services" does not include "skilled nursing 35
care" as defined in section 3721.01 of the Revised Code. A 36
facility need not provide more than one of the services listed 37
in division (A) (6) of this section to be considered to be 38
providing personal care services. 39

(7) "Room and board" means the provision of sleeping and 40
living space, meals or meal preparation, laundry services, 41
housekeeping services, or any combination thereof. 42

(8) "Residential state supplement program" means the 43
program established under section 5119.41 of the Revised Code. 44

(9) "Supervision" means any of the following: 45

(a) Observing a resident to ensure the resident's health, 46

safety, and welfare while the resident engages in activities of 47
daily living or other activities; 48

(b) Reminding a resident to perform or complete an 49
activity, such as reminding a resident to engage in personal 50
hygiene or other self-care activities; 51

(c) Assisting a resident in making or keeping an 52
appointment. 53

(10) "Unrelated" means that a resident is not related to 54
the owner or operator of a residential facility or to the 55
owner's or operator's spouse as a parent, grandparent, child, 56
stepchild, grandchild, brother, sister, niece, nephew, aunt, or 57
uncle, or as the child of an aunt or uncle. 58

(B) (1) A "residential facility" is a publicly or privately 59
operated home or facility that falls into one of the following 60
categories: 61

(a) Class one facilities provide accommodations, 62
supervision, personal care services, and mental health services 63
for one or more unrelated adults with mental illness or one or 64
more unrelated children or adolescents with severe emotional 65
disturbances; 66

(b) Class two facilities provide accommodations, 67
supervision, and personal care services to any of the following: 68

(i) One or two unrelated persons with mental illness; 69

(ii) One or two unrelated adults who are receiving 70
payments under the residential state supplement program; 71

(iii) Three to sixteen unrelated adults. 72

(c) Class three facilities provide room and board for five 73

or more unrelated adults with mental illness.	74
(2) "Residential facility" does not include any of the following:	75 76
(a) A hospital subject to licensure under section 5119.33 of the Revised Code or an institution maintained, operated, managed, and governed by the department of behavioral health for the hospitalization of persons with mental illnesses pursuant to section 5119.14 of the Revised Code;	77 78 79 80 81
(b) A residential facility licensed under section 5123.19 of the Revised Code or otherwise regulated by the department of developmental disabilities;	82 83 84
(c) An institution or association subject to certification under section 5103.03 of the Revised Code;	85 86
(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;	87 88 89
(e) A nursing home, residential care facility, or home for the aging as defined in section 3721.02 of the Revised Code;	90 91
(f) A facility licensed under section 5119.37 of the Revised Code to operate an opioid treatment program;	92 93
(g) Any facility that receives funding for operating costs from the department of development under any program established to provide emergency shelter housing or transitional housing for the homeless;	94 95 96 97
(h) 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;	98 99 100

(i) A facility approved by the veterans administration 101
under section 104(a) of the "Veterans Health Care Amendments of 102
1983," 97 Stat. 993, 38 U.S.C. 630, as amended, and used 103
exclusively for the placement and care of veterans; 104

(j) The residence of a relative or guardian of a person 105
with mental illness. 106

(C) Nothing in division (B) of this section shall be 107
construed to permit personal care services to be imposed on a 108
resident who is capable of performing the activity in question 109
without assistance. 110

(D) Except in the case of a residential facility described 111
in division (B) (1) (a) of this section, members of the staff of a 112
residential facility shall not administer medication to the 113
facility's residents, but may do any of the following: 114

(1) Remind a resident when to take medication and watch to 115
ensure that the resident follows the directions on the 116
container; 117

(2) Assist a resident in the self-administration of 118
medication by taking the medication from the locked area where 119
it is stored, in accordance with rules adopted pursuant to this 120
section, and handing it to the resident. If the resident is 121
physically unable to open the container, a staff member may open 122
the container for the resident. 123

(3) Assist a resident who is physically impaired but 124
mentally alert, such as a resident with arthritis, cerebral 125
palsy, or Parkinson's disease, in removing oral or topical 126
medication from containers and in consuming or applying the 127
medication, upon request by or with the consent of the resident. 128
If a resident is physically unable to place a dose of medicine 129

to the resident's mouth without spilling it, a staff member may 130
place the dose in a container and place the container to the 131
mouth of the resident. 132

(E) A person operating or seeking to operate a residential 133
facility shall apply for licensure of the facility to the 134
department of behavioral health. The application shall be 135
submitted by the operator. When applying for the license, the 136
applicant shall pay to the department the application fee 137
specified in rules adopted under division (N) of this section. 138
The fee is nonrefundable. 139

The department shall send a copy of an application to the 140
ADAMHS board serving the county in which the person operates or 141
seeks to operate the facility. The ADAMHS board shall review the 142
application and provide to the department any information about 143
the applicant or the facility that the board would like the 144
department to consider in reviewing the application. 145

(F) The department of behavioral health shall inspect and 146
license the operation of residential facilities. 147

The department may issue full, probationary, and interim 148
licenses. A full license shall expire up to three years after 149
the date of issuance, a probationary license shall expire in a 150
shorter period of time as specified in rules adopted by the 151
director of behavioral health under division (N) of this 152
section, and an interim license shall expire ninety days after 153
the date of issuance. A license may be renewed in accordance 154
with rules adopted by the director under division (N) of this 155
section. The renewal application shall be submitted by the 156
operator. When applying for renewal of a license, the applicant 157
shall pay to the department the renewal fee specified in rules 158
adopted under division (N) of this section. The fee is 159

nonrefundable. 160

(G) (1) If the department finds any of the following with 161
respect to a residential facility, the department ~~may~~shall 162
issue an order suspending the admission of residents to the 163
facility, refuse to issue or renew a license for the facility, 164
or revoke the facility's license: 165

(a) The facility is not in compliance with rules adopted 166
by the director pursuant to division (N) of this section; 167

(b) Any facility operated by the applicant or licensee has 168
been cited for a pattern of serious noncompliance or repeated 169
violations of statutes or rules during the period of current or 170
previous licenses; 171

(c) The applicant or licensee submits false or misleading 172
information as part of a license application, renewal, or 173
investigation. 174

(d) The facility is not managed and operated by qualified 175
persons or adequately staffed and equipped to operate. 176

(e) The department has been notified under section 177
5119.343 of the Revised Code or otherwise becomes aware that the 178
facility, any owner, operator, or manager of the facility, or 179
any subsidiary of the facility, owner, or operator has been the 180
subject of an adverse action, as defined in that section, taken 181
during the three-year period immediately preceding the date of 182
notification or date of becoming aware of the adverse action. 183

(f) The department has been notified under section 184
5119.343 of the Revised Code or otherwise becomes aware that the 185
facility, any owner, operator, or manager of the facility, or 186
any subsidiary of the facility, owner, or operator has been the 187
subject of an adverse action, as defined in that section, taken 188

at any time based on an act or omission that violated the right 189
of a residential facility resident to be free from abuse, 190
neglect, or exploitation. 191

(2) Proceedings initiated to deny applications for full or 192
probationary licenses, to refuse to renew full or probationary 193
licenses, or to revoke full or probationary licenses are 194
governed by Chapter 119. of the Revised Code. If an order has 195
been issued suspending the admission of residents to the 196
facility, the order remains in effect during the pendency of 197
those proceedings. 198

Proceedings initiated to suspend the admission of 199
residents to a facility are governed by Chapter 119. of the 200
Revised Code, except as provided in division (H) of this 201
section. 202

(3) In a proceeding initiated to suspend the admission of 203
residents to a facility, to deny an application for a full or 204
probationary license, to refuse to renew a full or probationary 205
license, or to revoke a full or probationary license, the 206
department may order the suspension, denial, refusal, or 207
revocation regardless of whether some or all of the deficiencies 208
that prompted the proceedings have been corrected at the time of 209
the hearing. 210

(4) When the department issues an order suspending the 211
admission of residents to a facility, denies an application for 212
a full or probationary license, refuses to renew a full or 213
probationary license, or revokes a full or probationary license, 214
the department shall not grant an opportunity for submitting a 215
plan of correction. 216

(H) (1) If a suspension of admissions of residents to a 217

facility is proposed because the director has determined that 218
the licensee has demonstrated a pattern of serious noncompliance 219
or that a violation creates a substantial risk to the health and 220
safety of residents, the director may issue an order imposing 221
the suspension of admissions before providing an opportunity for 222
an adjudication under Chapter 119. of the Revised Code. The 223
director shall lift the order for the suspension of admissions 224
if the director determines that the violation that formed the 225
basis for the order has been corrected. 226

(2) Appeals from proceedings initiated to order the 227
suspension of admissions to a facility shall be conducted in 228
accordance with Chapter 119. of the Revised Code, unless the 229
order was issued before providing an opportunity for an 230
adjudication, in which case all of the following apply: 231

(a) The licensee may request a hearing not later than ten 232
days after being served in accordance with sections 119.05 and 233
119.07 of the Revised Code. 234

(b) If a timely request for a hearing that includes the 235
licensee's current address is made, the hearing shall commence 236
not later than thirty days after the department receives the 237
request. 238

(c) After commencing, the hearing shall continue 239
uninterrupted, except for Saturdays, Sundays, and legal 240
holidays, unless other interruptions are agreed to by the 241
licensee and the director. 242

(d) If the hearing is conducted by a hearing examiner, the 243
hearing examiner shall file a report and recommendations with 244
the department not later than ten days after the last of the 245
following: 246

(i) The close of the hearing;	247
(ii) If a transcript of the proceedings is ordered, the hearing examiner receives the transcript;	248 249
(iii) If post-hearing briefs are timely filed, the hearing examiner receives the briefs.	250 251
(e) The hearing examiner shall send a written copy of the report and recommendations, by certified mail, to the licensee, or the licensee's attorney, if applicable, not later than five days after the report is filed with the department.	252 253 254 255
(f) Not later than five days after receiving the report and recommendations, the licensee may file objections with the department.	256 257 258
(g) Not later than fifteen days after the hearing examiner files the report and recommendations, the department shall issue an order approving, modifying, or disapproving the report and recommendations.	259 260 261 262
(h) Notwithstanding the pendency of the hearing, the department shall lift the order for the suspension of admissions if the department determines the violation that formed the basis for the order has been corrected.	263 264 265 266
(I) The department may issue an interim license to operate a residential facility if both of the following conditions are met:	267 268 269
(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.	270 271 272 273 274

(2) The residential facility applying for an interim license meets standards established for interim licenses in rules adopted by the director under division (N) of this section. 275
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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. 279
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(J) (1) The department of behavioral health may conduct an inspection of a residential facility as follows: 284
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(a) Prior to issuance of a license for the facility; 286

(b) Prior to renewal of the license; 287

(c) To determine whether the facility has completed a plan of correction required pursuant to division (J) (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; 288
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(d) Upon complaint by any individual or agency; 293

(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. 294
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(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 298
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the residential facility, including records pertaining to 303
residents, and shall have access to the facility in order to 304
conduct interviews with the operator, staff, and residents. 305
Following each inspection and review, the department shall 306
complete a report listing any deficiencies, and including, when 307
appropriate, a time table within which the operator shall 308
correct the deficiencies. The department may require the 309
operator to submit a plan of correction describing how the 310
deficiencies will be corrected. 311

(K) No person shall do any of the following: 312

(1) Operate a residential facility unless the facility 313
holds a valid license; 314

(2) Violate any of the conditions of licensure after 315
having been granted a license; 316

(3) Interfere with a state or local official's inspection 317
or investigation of a residential facility; 318

(4) Violate any of the provisions of this section or any 319
rules adopted pursuant to this section. 320

(L) The following may enter a residential facility at any 321
time: 322

(1) Employees designated by the director of behavioral 323
health; 324

(2) Employees of an ADAMHS board under either of the 325
following circumstances: 326

(a) When a resident of the facility is receiving services 327
from a community mental health services provider under contract 328
with that ADAMHS board or another ADAMHS board; 329

(b) When authorized by section 340.05 of the Revised Code.	330
(3) Employees of a community mental health services provider under either of the following circumstances:	331 332
(a) When the provider has a person receiving services residing in the facility;	333 334
(b) When the provider is acting as an agent of an ADAMHS board other than the board with which it is under contract.	335 336
(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 receiving payments under the residential state supplement program.	337 338 339 340 341
The persons specified in division (L) 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.	342 343 344 345 346
(M) Employees of the department of behavioral health 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.	347 348 349 350 351 352
(N) The director of behavioral health 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:	353 354 355 356
(1) Minimum standards for the health, safety, adequacy,	357

and cultural competency of treatment of and services for persons in residential facilities;	358 359
(2) Procedures for the issuance, renewal, or revocation of the licenses of residential facilities;	360 361
(3) Procedures for conducting background investigations for prospective or current operators, employees, volunteers, and other non-resident occupants who may have direct access to facility residents;	362 363 364 365
(4) The fee to be paid when applying for a new residential facility license or renewing the license;	366 367
(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;	368 369 370 371 372 373
(6) Procedures for the issuance and termination of orders of suspension of admission of residents to a residential facility;	374 375 376
(7) Measures to be taken by residential facilities relative to residents' medication;	377 378
(8) Requirements relating to preparation of special diets;	379
(9) The maximum number of residents who may be served in a residential facility;	380 381
(10) The rights of residents of residential facilities and procedures to protect such rights;	382 383
(11) Standards and procedures under which the director may	384

waive the requirements of any of the rules adopted. 385

(O) (1) The department of behavioral health may withhold 386
the source of any complaint reported as a violation of this 387
section when the department determines that disclosure could be 388
detrimental to the department's purposes or could jeopardize the 389
investigation. The department may disclose the source of any 390
complaint if the complainant agrees in writing to such 391
disclosure and shall disclose the source upon order by a court 392
of competent jurisdiction. 393

(2) Any person who makes a complaint under division (O) (1) 394
of this section, or any person who participates in an 395
administrative or judicial proceeding resulting from such a 396
complaint, is immune from civil liability and is not subject to 397
criminal prosecution, other than for perjury, unless the person 398
has acted in bad faith or with malicious purpose. 399

(P) (1) The director of behavioral health may petition the 400
court of common pleas of the county in which a residential 401
facility is located for an order enjoining any person from 402
operating a residential facility without a license or from 403
operating a licensed facility when, in the director's judgment, 404
there is a present danger to the health or safety of any of the 405
occupants of the facility. The court shall have jurisdiction to 406
grant such injunctive relief upon a showing that the respondent 407
named in the petition is operating a facility without a license 408
or there is a present danger to the health or safety of any 409
residents of the facility. 410

(2) When the court grants injunctive relief in the case of 411
a facility operating without a license, the court shall issue, 412
at a minimum, an order enjoining the facility from admitting new 413
residents to the facility and an order requiring the facility to 414

assist with the safe and orderly relocation of the facility's 415
residents. 416

(3) If injunctive relief is granted against a facility for 417
operating without a license and the facility continues to 418
operate without a license, the director shall refer the case to 419
the attorney general for further action. 420

(Q) The director of behavioral health may fine a person 421
for violating division (K) of this section. The fine shall be 422
five hundred dollars for a first offense; for each subsequent 423
offense, the fine shall be one thousand dollars. The director's 424
actions in imposing a fine shall be taken in accordance with 425
Chapter 119. of the Revised Code. 426

Section 2. That existing section 5119.34 of the Revised 427
Code is hereby repealed. 428