



Health & Safety Alert #5-1-02

Moving Adult Individuals Away from Abuse/Neglect

Immediate health and safety issues surround cases where an individual with MRDD is being allegedly abused or neglected. One of the standard responses is to separate the alleged individual victim and the primary person involved (suspect). This is necessary in every situation with immediate jeopardy to ensure the health and safety of the individual, even those allegations that will most likely later on turn out to be unfounded. There are several ways in which to separate the alleged victim and the suspect. One way is to remove the suspect from the area during the time of the investigation. This is commonly referred to as administrative leave. A second way is to assign duties to the suspect that do not involve contact with individuals.

There are certain times in which removing the primary person involved (suspect) will not be an option. For example, the suspect provides a home for the individual or the alleged abuse or neglect is a systemic problem with the provider as a whole. In situations like these the individual with MRDD should be removed from the environment where the abuse or neglect has been alleged or proven. The individual could be served by an immediate temporary respite.

Ohio Revised Code (ORC) Sections 5126.31 and 5126.33 provide for the situations in which it is necessary for an adult individual with MRDD to leave their home. The steps needed to help someone move will be different based on whether the individual or the individual's guardian consents to the move. The individual still has the capacity to consent to the move even if they have been found incompetent ORC under Chapter 2111 of the ORC. If the individual or their guardian refuses to move or withdraws their consent, a complaint must be filed with the Probate Court. A complaint must also be filed if the individual has no guardian and lacks the capacity to consent to the move. A description of the two methods follows.

Method #1 – Consent of the Individual or the Individual's Guardian - ORC 5126.31

- Step #1: Obtain the consent of the individual or the individual's guardian.
- Step #2: Provide temporary respite as needed to ensure health and safety.
- Step #3: If a more permanent move would require expenditures by ODMRDD or the county board, receive approval from the Department or the county board.
- Step #4: Individual's Service Plan is revised in keeping with emergency placement options.
- Step #5: Individual moves to the new residence.

Please note an additional option is available to remove an individual from a licensed facility when there is an immediate danger of physical or psychological harm and the individual/guardian consents. ORC section 5123.19(D) and Ohio Administrative Code section 5123:2-3-16 provide a process for the county board to file an MUI and seek an order from the Director to remove an individual(s) from

a dangerous situation. This option is most appropriate where there is a systemic problem with the provider and all of the individuals residing at the facility share the same risk.

Method #2 – No Consent from either Individual or Individual's guardian; Individual has no guardian and lacks capacity to consent; Consent is withdrawn by either individual or individual's guardian - Court Order is Obtained – ORC 5126.33

Step #1: Individual or individual's guardian withdraws consent or refuses to move from the home or individual has no guardian and lacks capacity to consent.

Step #2: A complaint is filed with the Probate Court in the county in which the individual resides seeking the court to intervene and order an alternative placement. The document must include:

- Name, age and address of individual.
- Facts describing nature of abuse and neglect.
- Facts supporting the county board's belief that services are needed.
- Proposed services set forth in the ISP.
- Facts showing the county board's attempts to obtain consent of individual or the individual's guardian.

Step #3: Give notice to the individual, individual's caretaker, individual's legal counsel and the Ohio Legal Rights Services.

Step #4: A court hearing is held at least 24 hours, but no later than 72 hours after the notice. The court must determine by clear and convincing evidence that the individual:

- Has been abused or neglected.
- Is incapacitated.
- Has a substantial risk of immediate physical harm or death.
- Has a need for the services.
- Has no one authorized by law or court order available or willing to consent.

Step #5: Standard for move from home ORC 5126.33(E):

If the court finds that all other options for meeting the adult's needs have been exhausted, it may order that the adult be removed from the adult's place of residence and placed in another residential setting. Before issuing that order, the court shall consider the adult's choice of residence and shall determine that the new residential setting is the least restrictive alternative available for meeting the adult's needs and is a place where the adult can obtain the necessary requirements for daily living in safety. The court shall not order an adult to a hospital or public hospital as defined in section 5122.01 or a state institution as defined in section 5123.01 or the Revised Code.

Step #6: The Court issues an order and the individual moves to a new residence.

Method #3 – Involuntary Civil Commitment – ORC 5123.71

While the Court cannot order an individual to a state institution (developmental center) pursuant to ORC 5126.33, a county board could utilize the process set forth in ORC 5123.71 for individuals that meet the criteria for involuntary civil commitment when such placement is the least restrictive alternative.

Method #4 – Immediate Removal by Law Enforcement to Protect from Further Injury or Abuse – ORC 5123.61(I)

An adult about whom a report of abuse or neglect is made may be removed from his/her residence by a law enforcement officer if the officer determines immediate removal is essential to protect the adult from further injury or abuse.

For questions or comments regarding the above Alert, please contact the MUI/Registry Unit at (614) 995-3810.

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