



Ohio Revised Code

Section 3721.162 Determining whether transfer or discharge complies.

Effective: September 5, 2001

Legislation: House Bill 94 - 124th General Assembly

(A) On receiving a request pursuant to section 3721.161 of the Revised Code, the department of health shall conduct hearings under this section in accordance with 42 C.F.R. 431, subpart E, to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code.

(B) The department shall employ or contract with an attorney to serve as hearing officer. The hearing officer shall conduct a hearing in the home not later than ten days after the date the department receives a request pursuant to section 3721.161 of the Revised Code, unless the resident and the home or, if the resident is not competent to make a decision, the resident's sponsor and the home, agree otherwise. The hearing shall be recorded on audiotape, but neither the recording nor a transcript of the recording shall be part of the official record of the hearing. A hearing conducted under this section is not subject to section 121.22 of the Revised Code.

(C) Unless the parties otherwise agree, the hearing officer shall issue a decision within five days of the date the hearing concludes. In all cases, a decision shall be issued not later than thirty days after the department receives a request pursuant to section 3721.161 of the Revised Code. The hearing officer's decision shall be served on the resident or resident's sponsor and the home by certified mail. The hearing officer's decision shall be considered the final decision of the department.

(D) 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 be governed by section 119.12 of the Revised Code, except for all of the following:

(1) The resident, resident's sponsor, or home shall file 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 to the court for designation as an indigent and, if the court grants the application, the resident or resident's sponsor shall not be required to furnish the



costs of the appeal.

(3) The appeal shall be filed with the department and the court within thirty days after the hearing officer's decision is served. The appealing party shall serve the opposing party a copy of the notice of appeal by hand-delivery or certified mail, return receipt requested. If the home is the appealing party, it shall provide a copy of the notice of appeal to both the resident and the resident's sponsor or attorney, if known.

(4) The department shall not file a transcript of the hearing with the court unless the court orders it to do so. The court shall 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 do so not later than thirty days after the day the court issues the order.

(E) The court shall not require an appellant to pay a bond as a condition of issuing a stay pending its decision.

(F) 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 enjoin the violation and order other appropriate relief, including attorney's fees.