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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 144  
135<sup>th</sup> General Assembly

## Final Analysis

[Click here for S.B. 144's Fiscal Note](#)

**Primary Sponsor:** Sen. Romanchuk

**Effective date:** October 24, 2024; appropriations effective July 25, 2024; includes item veto

Audra Tidball, Attorney

## SUMMARY

### Pharmacist administration of immunizations

- Authorizes certified pharmacy technicians and registered pharmacy technicians to administer immunizations in the same manner that pharmacy interns are authorized to do so under continuing law.
- Reduces, from age seven to age five, the youngest age group for whom pharmacists, interns, and technicians may administer immunizations.
- Eliminates a requirement that most immunizations for children under age 13 be prescribed in order to be administered by a pharmacist or pharmacy intern.

### Medication aides

- Limits the Board of Nursing's certification of medication aides to those practicing in nursing homes and residential care facilities, by eliminating the Board's authority to certify aides practicing in intermediate care facilities for individuals with intellectual disabilities (ICFs/IID).
- Revises the law governing the Board's approval of medication aide training programs, including by establishing a \$50 application fee and reducing, from 70 to 30, the hours of instruction that an approved program must provide.
- Specifies that medication aides are to be known as "certified medication aides" or "CMAs," and requires the Board to maintain an online CMA registry.
- Authorizes a medication aide to administer prescription medications to residents of nursing homes and residential care facilities, but only pursuant to the supervision of a registered nurse or licensed practical nurse, rather than the nurse's delegation, as under prior law.

- For as-needed medications, eliminates the requirement that a nursing assessment of the patient be completed before the medication is administered, and also authorizes a medication aide to administer those medications regardless of whether the supervising nurse is present at the facility.
- Eliminates the prohibition on a medication aide administering schedule II controlled substances.
- Authorizes a medication aide to administer insulin by injection if using an insulin pen device with a dosage indicator, but otherwise maintains the prohibition on medication aides administering medications by injection.

### **Certified nurse aides**

- Establishes an alternative condition that an individual may satisfy to be eligible for employment as a nurse aide in a long-term care facility – that the individual has successfully completed a Board of Nursing-approved prelicensure program of nursing education and has passed the Board-accepted examination.
- Establishes an additional ground upon which an individual is to be listed on the Department of Health’s (ODH) nurse aide registry – that the individual has successfully completed a Board-approved prelicensure program of nursing education and has passed the Board-accepted examination.
- Requires individuals listed on the nurse aide registry to be referred to as certified nurse aides, and permits only individuals in good standing on the registry to use the designation “certified nurse aide” or “CNA.”
- Eliminates the Director of Health’s authority to approve competency evaluation programs, but retains the Director’s authority to conduct the programs.
- Authorizes training and competency evaluation programs to conduct competency evaluations.
- Prohibits ODH rules from requiring a training and competency evaluation program instructor to have experience in a nursing home so long as the program coordinator supervising the program is a registered nurse with two years of nursing experience, including at least one year providing services in a nursing home or ICF/IID.

### **Nursing home quality improvement projects**

- Regarding the law that requires nursing homes to participate in at least one quality improvement project every two years, requires priority to be given to projects that assist with workforce, and makes it permissive instead of mandatory for nursing homes to consider projects on a Department of Aging-developed list.

## **Conditional employment – nursing homes and adult day-care programs**

- Extends (from 30 to 60) the number of days that a nursing home or adult day-care program may conditionally employ an applicant while the applicant's criminal records check results are pending.

## **Adult day-care grants**

- Reappropriates all remaining funds from item 042628, Adult Day Care, at the end of FYs 2023 and 2024 to the successive fiscal year, and requires all grants to be administered to adult day-care providers by December 31, 2024.

## **Certificates of need**

- Related to certificates of need to increase the number of long-term care beds in a county in accordance with a county's bed need, exempts a county with at least 60 fewer beds than the county's bed need from a limitation that a county is considered not to need additional beds if its occupancy rate is less than 85%.
- Shortens, to every two years from every four years, the review cycle for (1) determinations of county long-term care bed supply and need and (2) certificate of need review.
- Permits the Director to approve relocation of beds from a county only if the number of beds remaining in the county after the relocation will exceed the county's bed need by at least 50 beds, as opposed to 100 beds under prior law.
- Eliminates a stipulation that permits the Director to approve relocation of beds from a county only if the number of beds in the facility's service area after the relocation is at least equal to the state bed need rate, and eliminates related provisions specifying a facility's service area.
- Regarding comparative review of certificate of need applications, eliminates a requirement that comparative review is required if two applications submitted during the same review period propose to relocate beds from the same service area and the number of beds left in the service area would be less than the state bed need rate.
- Eliminates a requirement that for an approved certificate of need, the long-term care facility from which beds were relocated must reduce the number of beds operated in the facility by at least 10% of the beds relocated.
- Related to the changes above, creates a one-time period of acceptance and review that begins April 24, 2025.

## **Nursing home change of operator**

- Replaces references to an "applicant" for a license to operate a nursing home following a change of operator with references to the "entering operator."

- Removes a requirement that an application for a license to operate a nursing home following a change of operator disclose the owners with at least 5% ownership of a management firm or business employed to manage the nursing home.
- Specifies that the bond required as part of a nursing home change of operator license application may be supplied by either the entering operator or the owner of the nursing home.
- Establishes additional circumstances under which the Director of Health is required to deny a nursing home change of operator license application.
- Removes several actions undertaken by the owner of a nursing home as actions that constitute a change of operator of the nursing home.
- Requires the owner of a nursing home to provide written notice of specified information to the Department of Medicaid before a change of owner of a nursing facility may occur.
- Specifies that a nursing facility that undergoes a change of owner on July 1, 2023, or later is ineligible to receive a quality incentive payment for a specified period of time if, within one year of the change, there is an increase in the lease payments or other financial obligations of the operator to the owner.
- Requires, not later than October 24, 2025, that the identity of the operator holding a license to operate a nursing facility and the person holding the Medicaid provider agreement on record for the facility be the same person.

### **Medicaid payment rate for ICFs/IID in peer group 5**

- Eliminates the prohibition on the per Medicaid day payment rate for intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) in peer group 5 exceeding the payment rate for developmental centers that was in effect on July 1, 2013.
- Eliminates law that established fixed amounts for the (1) capital component costs, (2) direct care costs, (3) indirect care costs, and (4) other protected costs components for the per Medicaid day payment rate for new ICFs/IID in peer group 5.
- Specifies that for FY 2025, the per Medicaid day payment rate for ICFs/IID in peer group 5 is to be calculated in accordance with the act and the remaining provisions of continuing law regarding payments made to ICFs/IID.
- Specifies that if an ICF/IID in peer group 5 receives a per Medicaid day payment from the Department of Developmental Disabilities between July 1, 2024, and October 24, 2024 (the act's effective date), the Department must make a supplemental payment to the ICF/IID that covers the difference between the amount paid and the amount required to be paid under the act.

### **Ohio Medical Quality Foundation (VETOED)**

- Would have repealed the statute that refers to the Ohio Medical Quality Foundation, which is organized as a nonprofit corporation, and directed the Foundation to transfer all

of its unencumbered funds to the monitoring organization under contract with the State Medical Board.

- Would have required the monitoring organization to use transferred funds for purposes of administering the confidential monitoring program for impaired practitioners licensed by, or seeking licensure with, the Medical Board.

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## TABLE OF CONTENTS

Pharmacist administration of immunizations.....	6
Medication aides – certification .....	6
Eligibility .....	7
Application and renewal .....	7
Training program approval.....	7
Medication administration.....	7
Immunity .....	8
Rulemaking.....	8
Note on related enactment.....	8
Certified nurse aides .....	8
Nursing education .....	9
Nurse aide references .....	9
Competency evaluation programs and training and competency evaluation programs .....	9
Nursing home quality improvement projects.....	10
Conditional employment – nursing homes and adult day-care programs.....	10
Adult day-care grants.....	11
Certificates of need.....	11
Bed supply and bed need determinations; review period.....	11
Occupancy rate consideration .....	11
Other considerations related to certificate of need approval .....	12
One-time period of acceptance and review.....	12
Nursing home change of operator.....	12
Department of Health change of operator application .....	13
Required disclosures.....	13
Bond or other financial security .....	14
Prior experience .....	14
Issuing or denying a license .....	14
Department of Medicaid nursing facility change of operator or owner .....	15
Change of operator .....	15
Change of owner .....	16

Medicaid payment rate for ICFs/IID in peer group 5.....	17
Ohio Medical Quality Foundation (VETOED) .....	18

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## **DETAILED ANALYSIS**

### **Pharmacist administration of immunizations**

The act makes several modifications to the authority of pharmacists and other persons under their supervision to administer immunizations. First, it extends the authority to certified pharmacy technicians and registered pharmacy technicians in the same manner as pharmacy interns under preexisting law. This involves having to meet a number of conditions, including that the technician (1) work under the direct supervision of a pharmacist, (2) complete a course in administering immunizations that meets requirements established in rules, (3) receive and maintain certification to perform basic life-support procedures, and (4) practice in accordance with a protocol that meets various requirements established under continuing law.<sup>1</sup>

Second, the act makes several changes regarding immunizations for children. The act authorizes pharmacists, interns, and technicians to administer immunizations beginning when a child is five, as opposed to the prior law age limit of seven. For children under 13, the act eliminates a requirement that their immunizations generally be prescribed (other than immunizations for COVID-19 and the flu, which already did not require a prescription before the act).<sup>2</sup> The act also requires, for each immunization administered to a child under 18, that the pharmacist, intern, or technician inform the child’s parent or legal guardian of the importance of well child visits with a pediatrician or other primary care provider, and refer patients when appropriate. Note that the act maintains law that requires parental permission for immunizations administered to children under 18.<sup>3</sup>

### **Medication aides – certification**

The act makes several changes regarding the Board of Nursing’s certification and regulation of medication aides, individuals authorized under law to administer medications to residents in certain facilities. The act limits the Board’s certification to aides practicing in nursing homes and residential care facilities, by eliminating law authorizing medication aides certified by the Board to also practice in intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs).<sup>4</sup>

Similar to nurse aides, the act specifies that medication aides are to be known as “certified medication aides” or “CMAs,” and requires the Board to maintain an online CMA registry.<sup>5</sup>

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<sup>1</sup> R.C. 4729.41(A) and (B).

<sup>2</sup> R.C. 4729.41(A)(1).

<sup>3</sup> R.C. 4729.41(C)(4)(c) and (d).

<sup>4</sup> R.C. 4723.61 to 4723.69.

<sup>5</sup> R.C. 4723.653.

## **Eligibility**

The act revises the eligibility requirements for certification as a medication aide, by eliminating the conditions that an applicant (1) be a nurse aide or have at least one year of direct care experience and (2) meet any other requirements established in Board of Nursing rules.<sup>6</sup> It also eliminates a corresponding provision requiring the Board to specify in rule additional requirements to obtain a medication aide certificate. The act instead requires an applicant to satisfy Board requirements for providing direct care, which the act allows the Board to establish in rule.

## **Application and renewal**

The act eliminates the requirement that application and renewal fee amounts be established by Board of Nursing rule and instead sets the amounts as follows: \$50 for an initial application, \$50 for a renewal, and \$100 for a late renewal. It also requires the completion of eight contact hours of continuing education as a condition of renewal. Of the eight hours, one must be directly related to the laws governing medication aides, one must be directly related to establishing and maintaining professional boundaries, and the remaining six must relate to medications or the administration of prescription medications.<sup>7</sup>

## **Training program approval**

The act revises the law governing the approval of medication aide training programs, including by eliminating the requirement that a program meet the standards established in Board of Nursing rules.<sup>8</sup> Other revisions include (1) establishing a \$50 application fee, (2) reducing, from 70 to 30, the total number of hours of program instruction and, from 20 to 16, the number of supervised clinical practice hours that an approved program must provide, and (3) authorizing an approved program to administer the examination that tests the ability of students to administer prescription medications safely.

The act eliminates provisions authorizing the denial of applications for approval submitted by a person who controls or has controlled a program that had its approval withdrawn, revoked, suspended, or restricted by the Board of Nursing or a board of another jurisdiction. It also eliminates provisions specifying certain procedures to be followed when denying, suspending, or revoking training program approval, instead stating that the Board must take those actions only in accordance with Ohio's Administrative Procedure Act.<sup>9</sup>

## **Medication administration**

The act revises the kind of nursing oversight that medication aides must have when administering prescription medications to residents of nursing homes and residential care

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<sup>6</sup> R.C. 4723.651 and 4723.69.

<sup>7</sup> R.C. 4723.65 and 4723.651.

<sup>8</sup> R.C. 4723.66.

<sup>9</sup> R.C. Chapter 119, not in the act.

facilities to the supervision – rather than the delegation – of a registered nurse or licensed practical nurse.<sup>10</sup> Accordingly, the act eliminates law establishing conditions on delegation.

For as-needed medications, the act eliminates the requirement that a nursing assessment of the patient be completed before the medication is administered. It also authorizes a medication aide to administer those medications regardless of whether the supervising nurse is present at the facility.

The act eliminates the prohibition on medication aides administering schedule II controlled substances. It also authorizes a medication aide who satisfies training and competency requirements established by the aide’s employer to administer insulin by injection, but only if an insulin pen device with a dosage indicator is used. The act otherwise maintains law generally prohibiting medication aides from administering medications by injection.

### **Immunity**

The act eliminates law specifying that a person employed by a nursing home, residential care facility, or ICF/IID who reports in good faith a medication error at the home, facility, or ICF/IID is not subject to professional discipline and civil liability.<sup>11</sup>

### **Rulemaking**

The act eliminates provisions requiring the Board of Nursing to adopt certain rules governing the certification and regulation of medication aides and instead permits the Board to adopt rules as necessary.<sup>12</sup>

### **Note on related enactment**

On the same date that S.B. 144 was enacted, S.B. 28 was enacted. S.B. 28 also contains provisions to revise the law governing the certification and practice of medication aides. To the extent S.B. 28 and S.B. 144 are determined to be irreconcilable, the statute latest in date of enactment prevails.<sup>13</sup> Based on the Senate Journal from June 26, 2024, it appears S.B. 144 is the later enactment.

### **Certified nurse aides**

The act makes the following changes to the law governing the training and certification of nurse aides, individuals who must satisfy certain training requirements in order to be listed on ODH’s nurse aide registry, and thus certified and eligible for employment in long-term care facilities.<sup>14</sup>

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<sup>10</sup> R.C. 4723.67.

<sup>11</sup> R.C. 4723.61 and 4723.68.

<sup>12</sup> R.C. 4723.69.

<sup>13</sup> R.C. 1.52.

<sup>14</sup> R.C. 3721.28, 3721.30, 3721.31, and 3721.32; conforming changes in other sections.

## **Nursing education**

The act establishes an alternative condition that an individual may satisfy to be eligible for employment as a nurse aide in a long-term care facility – that the individual has successfully completed a Board of Nursing-approved preclicensure program of nursing education and has passed the Board-accepted examination.<sup>15</sup> Similarly, it specifies that successfully completing the program and successfully completing and passing the Board-approved examination is an additional ground upon which an individual must be listed on ODH’s nurse aide registry.<sup>16</sup> The act deems that to be the equivalent of successfully completing an ODH-conducted competency evaluation program.

## **Nurse aide references**

The act requires individuals listed on ODH’s nurse aide registry to be referred to as certified nurse aides, and permits only individuals listed on the registry in good standing to use the designation “certified nurse aide” or “CNA.”<sup>17</sup>

## **Competency evaluation programs and training and competency evaluation programs**

The act revises the law governing ODH’s regulation of nurse aide competency evaluation programs and nurse aide training and competency evaluation programs, by doing all of the following:

- Eliminating the Director of Health’s authority to approve competency evaluation programs, while retaining the Director’s authority to conduct such programs;<sup>18</sup>
- Authorizing training and competency evaluation programs to also conduct competency evaluations;<sup>19</sup>
- Requiring the Director of Health to permit a training and competency evaluation program that is operated by a career center, community college, or similar educational institution to perform competency evaluations if (1) the Director determines that the program complies with federal laws and regulations and (2) the competency evaluation is substantially similar to the competency evaluation conducted by the Director;<sup>20</sup>
- Authorizing a nursing home to proctor a competency evaluation under the circumstances specified in federal law;<sup>21</sup>

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<sup>15</sup> R.C. 3721.28(B)(8).

<sup>16</sup> R.C. 3721.32(A)(9).

<sup>17</sup> R.C. 3721.32(E).

<sup>18</sup> R.C. 3721.31(A) and (C).

<sup>19</sup> R.C. 3721.30(A).

<sup>20</sup> R.C. 3721.31(C).

<sup>21</sup> R.C. 3721.31(C).

- Specifying that a training and competency evaluation program conducted by a long-term care facility, which has been granted a waiver from the prohibition on training and competency programs by the federal Centers for Medicare and Medicaid Services, is not subject to the law prohibiting the Director of Health from approving or reapproving a training and competency evaluation program conducted by a long-term care facility, if the U.S. Department of Health and Human Services has determined that the facility was out-of-compliance with federal law within the two-year period before seeking approval or reapproval;<sup>22</sup>
- Prohibiting the Director of Health from restricting participation in a training program for instructors to individuals with experience working in a nursing home;<sup>23</sup>
- Prohibiting the Director of Health, when adopting rules, from requiring a training and competency evaluation program instructor to have experience in a nursing home, so long as the program coordinator supervising the program is a registered nurse with two years of nursing experience, including at least one year providing services in a nursing home or ICF/IID;<sup>24</sup>
- Requiring participants in training and competency evaluation programs to provide evidence of their identity by showing identification issued by any state or the U.S. Citizenship and Immigration Service.<sup>25</sup>

## **Nursing home quality improvement projects**

Continuing law requires a nursing home to participate in at least one quality improvement project every two years. The act makes it permissive, rather than mandatory as under prior law, for nursing homes to select a project from the list developed by the Department of Aging as part of the Nursing Home Quality Initiative. The act also requires each home to prioritize projects that assist with workforce, such as employee satisfaction surveys, enhanced recruitment methods, or workplace culture improvements.<sup>26</sup>

## **Conditional employment – nursing homes and adult day-care programs**

The act extends (from 30 to 60) the number of days that a nursing home or adult day-care program may conditionally employ an applicant while the applicant's criminal records check results are pending.<sup>27</sup>

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<sup>22</sup> R.C. 3721.31(A).

<sup>23</sup> R.C. 3721.31(D).

<sup>24</sup> R.C. 3721.30(C).

<sup>25</sup> R.C. 3721.31(G).

<sup>26</sup> R.C. 3721.072 and 173.60, not in the act.

<sup>27</sup> R.C. 3721.121.

## Adult day-care grants

The act reappropriates all remaining funds from Dedicated Purpose Fund group item 042628, Adult Day Care, at the end of FYs 2023 and 2024 to the successive fiscal year, and requires the Director of Budget and Management to administer all grants to adult day-care providers not later than December 31, 2024.<sup>28</sup> The source of the funding is the Coronavirus State Fiscal Recovery Fund, which was authorized by the American Rescue Plan Act. These federal funds must be obligated by December 31, 2024, and spent by December 31, 2026.

## Certificates of need

The act makes several changes regarding certificates of need where the increase in beds is attributable solely to relocation of existing beds from an existing long-term care facility in a county with excess beds to a long-term care facility in a county in which there are fewer long-term care beds than the county's bed need.

### Bed supply and bed need determinations; review period

Regarding a preexisting requirement that the Director of Health determine the long-term care bed supply for each county, the act increases the frequency of that determination to every two years, from every four years. That information, along with a determination related to occupancy rates, is used to determine a county's bed need. The act likewise requires the certificate of need review period to begin every two years, instead of four years.<sup>29</sup>

### Occupancy rate consideration

The act modifies a limitation in preexisting law that, in considering a certificate of need that would increase the number of beds in a county, and considering a county's bed need as described above, if a county's occupancy rate is less than 85%, the county is to be considered not to need additional beds. Under the act, the limitation does not apply, i.e., a county will be considered to have a need for additional beds regardless of its occupancy rate, if all of the following conditions are satisfied:<sup>30</sup>

- The county has at least 60 fewer long-term care beds than the county's bed need;
- The application for a certificate of need is for the approval of beds in a new long-term care facility or an increase of beds in an existing long-term care facility, and the beds are proposed to be licensed as nursing home beds;
- The additional beds will be located in category one private rooms, which means they are private rooms that have unshared access to a toilet and sink.<sup>31</sup>

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<sup>28</sup> Section 280.12 of H.B. 45 of the 134<sup>th</sup> General Assembly.

<sup>29</sup> R.C. 3702.593(B)(1) and (3) and (D)(1).

<sup>30</sup> R.C. 3702.593(C)(1)(b).

<sup>31</sup> See R.C. 5165.158, not in the act.

## Other considerations related to certificate of need approval

Also regarding considering certificate of need applications, the act makes the following changes:

- Permits the Director of Health to approve relocation of beds from a county only if the number of beds remaining in the county after the relocation will exceed the county's bed need by at least 50 beds, as opposed to 100 beds under prior law;<sup>32</sup>
- Eliminates a requirement that the Director may approve relocation of beds from a county only if the number of beds in the facility's service area after the relocation is at least equal to the state bed need rate, and eliminates related provisions specifying a facility's service area;<sup>33</sup>
- Regarding comparative review, which is a process that applies under continuing law if two or more certificate of need applications are submitted during the same review period, eliminates a requirement for comparative review if the applications propose to relocate beds from the same service area and the number of beds left in the service area would be less than the state bed need rate.<sup>34</sup>
- Regarding approved certificates of need, eliminates a requirement that the long-term care facility from which beds were relocated must reduce the number of beds operated in the facility by at least 10% of the beds relocated.<sup>35</sup>

## One-time period of acceptance and review

To facilitate the above changes during the present period of review, the act creates a one-time period of acceptance and review that begins April 24, 2025 (six months after the act's effective date).<sup>36</sup>

## Nursing home change of operator

The act modifies the list of actions that constitute a nursing home or nursing facility change of operator. Continuing law specifies actions that do and do not constitute a change of operator for purposes of a nursing home licensed by ODH and a nursing facility that has entered into a provider agreement with the Department of Medicaid (ODM), and requires an application process before a change of operator. The act removes actions by the owner of a nursing home or nursing facility that constitute a change of operator. It removes references to a "change of control" of an existing operator or existing owner of the real property associated with a nursing home or nursing facility. Instead, the act refers to a change in the "operational control" of a nursing home or nursing facility, which means having the ability to direct the overall operations

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<sup>32</sup> R.C. 3702.593(E)(3).

<sup>33</sup> R.C. 3702.593(E)(4).

<sup>34</sup> R.C. 3702.593(F)(3).

<sup>35</sup> R.C. 3702.593(I).

<sup>36</sup> Section 5.

and cash flow of a nursing home. Operational control of a nursing home or nursing facility may be exercised by a person, persons, or government entity through the following actions or criteria:

1. Directly operating the nursing home or nursing facility;
2. Directly or indirectly owning 50% or more of the operator of the nursing home or nursing facility; or
3. Through an agreement or other arrangement granting operational control of the nursing home or nursing facility.<sup>37</sup>

### **Department of Health change of operator application**

The act makes several changes to the change of operator application process under continuing law. H.B. 33 of the 135<sup>th</sup> General Assembly (the main operating budget for FY 2024-FY 2025) established an application process that must be completed before the Director of Health may issue a license to operate a nursing home following a change of operator. For a background and overview of the application process, please consult the [H.B. 33 Final Analysis \(PDF\)](#), which can be accessed by searching for H.B. 33 on the Ohio Legislature website: [legislature.ohio.gov](http://legislature.ohio.gov).

The act replaces references to an “applicant” for a nursing home change of operator license with references to the “entering operator” of the nursing home. It establishes a timeframe under which an application must be submitted to the Director. A completed application for a nursing home change of operator license must be submitted at least 45 days before the proposed effective date of the change of operator, if the change does not require the relocation of residents. If the change of operator does require the relocation of residents, the completed application must be submitted at least 90 days before the proposed effective date of the change. The Director may waive these time requirements in an emergency, such as upon the death of the nursing home operator.<sup>38</sup>

### **Required disclosures**

The act extends the disclosures an entering operator must make on a change of operator application. As part of the application, continuing law requires an entering operator to disclose various direct and indirect owners of the nursing home, the building in which the nursing home is housed, and the legal rights associated with ownership of the nursing home. The act extends these disclosures to also require them when the owner is a government entity that is different from the entering operator. Additionally, the act removes a requirement that the disclosures include information concerning the management firm or business employed to manage a nursing home.<sup>39</sup>

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<sup>37</sup> R.C. 3721.01(A)(10) and (19) and 5165.01(I) and (II).

<sup>38</sup> R.C. 3721.026.

<sup>39</sup> R.C. 3721.026(A)(1)(a).

### **Bond or other financial security**

The act specifies that if a bond or other financial security is required under continuing law as part of the change of operator application, the bond may be supplied by either the entering operator or the property owner of the nursing home.<sup>40</sup> Continuing law generally requires an entering operator to submit a bond or other financial security to the Director if the owner owns 50% or less of the nursing home and assets. The act limits the aggregate liability of a surety to the sum of the bond, which is cumulative from period to period, during the five years after the change of operator.

The act requires the Director to provide at least 30 days' notice to the operator before revoking the operator's nursing home license for failure to maintain the required bond or surety. Under continuing law, the Director may revoke a nursing home operator's license if the required bond or other financial security is not maintained for five years. Continuing law establishes circumstances under which the Director may utilize the bond or other financial security. The act specifies that if one of these circumstances occurs, the Director may utilize the bond to pay expenses incurred by the Director or by another state official or agency.<sup>41</sup>

### **Prior experience**

The act modifies the requirement that the entering operator, or person or government entity having operational control after a change of operator, have at least five years of requisite experience as either of the following in a nursing home in Ohio or another state: (1) a nursing home administrator, or (2) a direct or indirect owner of at least 50% of the operator of a nursing home or a manager of a nursing home. The act modifies this requirement to instead require that the entering operator or person or government entity who will have operational control of the nursing home have at least five years of experience as either an administrator or having operational control of a nursing home in Ohio or another state.<sup>42</sup>

### **Issuing or denying a license**

If the Director determines that all application requirements have been satisfied, except for submission of a final document evidencing completion of the transaction between an entering and exiting operator, the act requires the Director to issue a notice of intent to grant a change of operator license to the entering operator. The act makes it permissive, rather than mandatory, for the Director to conduct a survey of a nursing home following a change of operator. Furthermore, if the Director elects to conduct a survey, the act specifies that the survey must occur not less than 60 days after the effective date of the change of operator, instead of not more than 60 days as required under prior law.<sup>43</sup>

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<sup>40</sup> R.C. 3721.026(A)(2).

<sup>41</sup> R.C. 3721.026(A)(2)(a) and (b).

<sup>42</sup> R.C. 3721.026(A)(3).

<sup>43</sup> R.C. 3721.026(B) and (C).

The act modifies the circumstances under which the Director is required to deny a change of operator license application. Under prior law, the Director was required to deny a license application if the applicant has or had 50% or more direct or indirect ownership in the operator or manager of a current or previously licensed nursing home in any state for which an involuntary closure, bankruptcy proceeding, receivership proceeding, or license suspension, denial, or revocation occurred within five years immediately preceding the date of application. The act modifies this requirement to apply if the entering operator or person or government entity having operational control, who is identified in the application as having 25% or more ownership of the entering operator, meets the above criteria.<sup>44</sup>

Additionally, the act requires the Director to deny a change of operator license application if there is a change of 25% or more of the property ownership interest in a nursing home that occurs in connection with the change of operator, and the person or government entity who acquired the property interest meets the above criteria.<sup>45</sup>

In addition to notifying the Director of any change in information or documentation required as part of the application under continuing law, the act also requires an entering operator to do the following:<sup>46</sup>

- Notify the Director immediately upon discovery of any error, omission, or change of information in an application;
- Truthfully supply any additional information or documentation requested by the Director; and
- Not complete a change of operator until the Director issues the entering operator notice of intent to grant a change of operator license.

## **Department of Medicaid nursing facility change of operator or owner**

### **Change of operator**

The act makes several changes concerning the authority of an operator of a nursing facility to enter into a Medicaid provider agreement with ODM following a change of operator. It specifies generally that to be eligible to enter into or retain a Medicaid provider agreement, not only must a nursing facility be licensed by ODH if required to be so under Ohio law, but the operator of the nursing facility must also be the licensed operator of the facility.<sup>47</sup> Following a change of operator, continuing law specifies that an entering operator may enter into a Medicaid provider agreement with ODM if the entering operator submits specified documents to the

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<sup>44</sup> R.C. 3721.026(E)(2).

<sup>45</sup> R.C. 3721.026(E)(3).

<sup>46</sup> R.C. 3721.026(G).

<sup>47</sup> R.C. 5165.06.

Department. The act requires an entering operator to ensure that ODM receives from ODH notice of ODH's intent to grant a change of operator license to the entering operator.<sup>48</sup>

The act requires each nursing facility to take steps to ensure that the identity of the operator that holds the license to operate the facility issued by ODH and the operator that holds the Medicaid provider agreement issued by ODM is the same individual or entity and is consistently identified for both purposes. If the identity of the operator that holds the license issued by ODH is different from the identity of the operator that holds the Medicaid provider agreement, the act requires the nursing facility, not later than October 24, 2025, to take action to ensure that the same person is the operator for both purposes and is identified consistently. The act further specifies that any action taken to ensure that the same person is identified as the operator for both purposes specified above does not constitute a change of operator.<sup>49</sup>

### **Change of owner**

The act establishes requirements that must be satisfied if there is a change of owner of a nursing facility. Under the act, an owner of a nursing facility must provide written notice to ODM of a change of owner. The written notice must be provided to ODM not later than 45 days before the effective date of the change of owner, unless ODM waives this time requirement. The act specifies that the written notice must include all of the following:<sup>50</sup>

- The name of the owner and the owner's authorized agent, if any;
- The name of the nursing facility that is the subject of the change of owner;
- The seven-digit Medicaid legacy number and the ten-digit national provider identification number for the nursing facility;
- The extent of the owner's interest in the nursing facility;
- The effective date of the change of owner;
- The manner in which the change of owner is accomplished, including a description of each step involved in the change of owner if the change involves more than one step;
- The names and addresses of the persons to whom ODM should send correspondence regarding the change of owner;
- A statement describing any material increase in lease payments or other financial obligations of the operator to the owner resulting from the change of owner, or affirmation that there is no material increase; and
- The signature of the owner's representative.

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<sup>48</sup> R.C. 5165.511.

<sup>49</sup> R.C. 5165.518.

<sup>50</sup> R.C. 5165.51(B).

The act specifies that if a nursing facility undergoes a change of owner with an effective date of July 1, 2023, or later, the facility is ineligible to receive a Medicaid quality incentive payment under continuing law for a period of time. The facility will not receive a quality incentive payment until the earlier of the first day of January or the first day of July that is at least six months after the effective date of the change of owner, if within one year after the change of owner, there is an increase in the lease payments or other financial obligations of the operator to the owner above the payments or obligations specified by the agreement between the previous owner and the operator.<sup>51</sup>

## **Medicaid payment rate for ICFs/IID in peer group 5**

The act eliminates law that prohibits the per Medicaid day payment rate for an ICF/IID in peer group 5 from exceeding the average rate for developmental centers that was in effect on July 1, 2013.<sup>52</sup> Accordingly, the act specifies that to assist with increased wages within the direct care workforce and other workforce supports, the per Medicaid day payment rate for ICFs/IID in peer group 5 during FY 2025 is to be determined without the cap on payments described above and in accordance the remaining provisions of continuing law regarding payment to ICFs/IID.<sup>53</sup> Under continuing law unchanged by the act, an ICF/IID is considered to be part of peer group 5 if it meets all of the following criteria:<sup>54</sup>

- The ICF/IID is first certified as an ICF/IID after July 1, 2014;
- The ICF/IID has a Medicaid-certified capacity not exceeding six;
- The ICF/IID has a contract with the Department of Developmental Disabilities that is for 15 years and includes a provision for the Department to approve all admissions to, and discharges from, the ICF/IID;
- The ICF/IID's residents are admitted to the facility directly from a developmental center or have been determined by the Department to be at risk of admission to a developmental center.

To facilitate the changes to the per Medicaid day payment rate for ICFs/IID in peer group 5, the act specifies that if an ICF/IID in this group receives a per Medicaid day payment from the Department of Developmental Disabilities between July 1, 2024, and October 24, 2024 (the act's effective date), the Department must make a supplemental payment to the ICF/IID that covers the difference between the amount paid to the ICF/IID during that period and the amount required to be paid under the act.<sup>55</sup>

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<sup>51</sup> R.C. 5165.26(F)(3).

<sup>52</sup> R.C. 5124.15(B).

<sup>53</sup> Section 6(A).

<sup>54</sup> R.C. 5124.01(NN)(5), not in the act.

<sup>55</sup> Section 6(B).

Additionally, the act eliminates law that establishes specified amounts for various components of the initial per Medicaid day payment rate for a new ICF/IID in peer group 5. Under prior law, the initial per Medicaid day capital component rate for a new ICF/IID in peer group 5 was set at \$29.61. The direct care costs component was set at \$264.89, the indirect care costs component is set at \$59.85, and the other protected costs component rate was set at \$25.99.<sup>56</sup> In eliminating these specified costs of components of the initial per Medicaid day payment rate, the act requires the initial per Medicaid day payment rate for new ICFs/IID in peer group 5 to be calculated in a similar manner as that for new ICFs/IID in other peer groups under continuing law.

## Ohio Medical Quality Foundation (VETOED)

The Governor vetoed provisions that would have repealed the statute that refers to the Ohio Medical Quality Foundation, a nonprofit corporation organized under Ohio law and charged with funding activities to improve the quality of medical care rendered to the public.<sup>57</sup> In his [S.B. 144 Veto Message \(PDF\)](#), also available at [governor.ohio.gov](http://governor.ohio.gov), the Governor noted that the Sunset Review Committee is scheduled to conduct hearings on the Foundation.

The vetoed provisions specified that by repealing the statute, it was the intent of the General Assembly that the Foundation dissolve itself and take actions required by the law governing nonprofit corporations to wind up its affairs.<sup>58</sup> The provisions also would have directed the Foundation to transfer all of its remaining unencumbered funds, to the extent possible under law and contract, to the monitoring organization under contract with the State Medical Board to conduct its confidential monitoring program for impaired practitioners licensed by, or seeking licensure with, the Board.<sup>59</sup> Following the transfer, the act would have required the monitoring organization to use the funds for purposes of the monitoring program.

## HISTORY

Action	Date
Introduced	08-28-23
Reported, S. Health	12-06-23
Passed Senate (30-1)	12-06-23
Reported, H. Health Provider Services	06-20-24
Passed House (76-21)	06-26-24
Senate concurred in House amendments (31-0)	06-26-24

24-ANSB0144EN-135/ar

<sup>56</sup> R.C. 5124.151(C).

<sup>57</sup> R.C. 3701.89; Section 9.

<sup>58</sup> Section 9. See also R.C. Chapter 1702, not in the act.

<sup>59</sup> R.C. 4731.25 to 4731.255, not in the act.