



Ohio Legislative Service Commission

Bill Analysis

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BILL SUMMARY

Intermediate care facilities for individuals with intellectual disabilities (ICFs/IID)

- Requires, with an exception, the Ohio Department of Developmental Disabilities (ODODD) to recoup a certain amount, including interest, from an intermediate care facility for individuals with intellectual disabilities (ICF/IID) in peer group 1 if the ICF/IID obtained approval to downsize not later than July 1, 2018, and fails to do so.
- Permits an ICF/IID to voluntarily repay the amount, excluding interest, that would otherwise be recouped.
- Requires an ICF/IID to file an annual Medicaid cost report even though (1) the ICF/IID downsized, partially converted, or initially opened after the first day of October of a year and (2) ODODD accepted another Medicaid cost report for the ICF/IID covering a certain period following the downsizing, partial conversion, or opening.

Supported living certificates

- Automatically denies an application to ODODD for a certificate to provide Medicaid-funded supported living if the Ohio Department of Medicaid refuses to issue to the applicant a provider agreement authorizing the provision of Medicaid-funded supported living.

Community adult facility closure

- Permits the ODODD Director to change the agreement terms with a county board of developmental disabilities or county commissioners board regarding the closure of a community adult facility if certain conditions are met.

- Eliminates a requirement that the ODODD Director adopt rules concerning an order the Director may issue to immediately remove a residential facility's residents whenever conditions present an immediate danger to the residents.

Authority to provide health-related services to individuals with developmental disabilities

- Modifies the authority of MR/DD personnel to perform certain health care services for individuals with mental retardation and developmental disabilities.
- Requires ODODD to develop courses for MR/DD personnel that provide training in the performance of those health care services.
- Requires an individual to be able to read and write in English to be eligible to take the training courses established by ODODD for MR/DD personnel and registered nurses.
- Permits ODODD to take disciplinary action for good cause against MR/DD personnel and registered nurses who hold an ODODD-issued certificate.
- Modifies the authority of a family member of an individual with developmental disabilities to authorize an unlicensed in-home care worker to perform health care tasks.

Part C Early Intervention Services Program

- Transfers from the Department of Health (ODH) to ODODD the responsibility for implementing the state's Part C Early Intervention Services Program, through which eligible infants and toddlers receive early intervention services in accordance with federal law.
- Designates ODODD as the "lead agency" responsible for the administration of funds provided for the Program.
- Makes conforming and technical changes associated with the Program's transfer, including replacing the Help Me Grow Advisory Council with the Early Intervention Services Advisory Council and requiring ODODD (rather than ODH) to fulfill certain duties when a child ceases receiving early intervention services and enrolls in a public school.

Appropriations changes

- Modifies appropriations for ODH and ODODD to reflect the transfer of the Part C Early Intervention Services Program to ODODD.



- Modifies ODODD appropriations to reflect a change in reimbursement methodology for targeted case management.

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CONTENT AND OPERATION

Intermediate care facilities for individuals with intellectual disabilities (ICFs/IID)

Recoupments and voluntary repayments from ICFs/IID failing to downsize

(R.C. 5124.39 and 5124.45)

An intermediate care facility for individuals with intellectual disabilities (ICF/IID) in peer group 1 is eligible for a higher Medicaid payment rate if the ICF/IID obtains the Ohio Department of Developmental Disabilities' (ODODD's) approval to



become a downsized ICF/IID (an ICF/IID that permanently reduces its Medicaid-certified capacity) and the approval is conditioned on the downsizing being completed not later than July 1, 2018. Peer group 1 consists of ICFs/IID with a Medicaid-certified capacity exceeding eight.

The higher Medicaid payment rate results from such an ICF/IID earning higher efficiency incentives for its capital costs and indirect care costs. In the case of capital costs, the ICF/IID is eligible for an efficiency incentive that equals 50% (instead of 25%) of the difference between the ICF/IID's allowable per diem costs of ownership and the statutory limits on the costs of ownership payment rates.¹ In the case of indirect care costs, the cap on the ICF/IID's efficiency incentive varies for different fiscal years as follows:

(1) For fiscal year 2015, the ICF/IID's efficiency incentive could not exceed 100% (instead of 50%) of the cap in effect for fiscal year 2014.

(2) For fiscal year 2016 and each fiscal year thereafter ending in an even-numbered calendar year, the ICF/IID's efficiency incentive cannot exceed 7.1% (instead of 3.55%) of the maximum rate for indirect care costs for ICFs/IID in peer group 1.

(3) For fiscal year 2017 and each fiscal year thereafter ending in an odd-numbered calendar year, the ICF/IID's efficiency incentive cannot exceed the cap in effect for the immediately preceding fiscal year.

Recoupment

The bill requires, with a certain exception, ODODD to recoup a certain amount from an ICF/IID in peer group 1 that obtained ODODD's approval to become a downsized ICF/IID not later than July 1, 2018, but the ICF/IID does not become a downsized ICF/IID by that date. The amount to be recouped is to equal the sum of the following:

(1) The difference between the amount of the efficiency incentive payments the ICF/IID earned because the provider obtained ODODD's approval to downsize and the amount of the efficiency incentive payments the ICF/IID would have earned had the ICF/IID not obtained the approval (see **COMMENT**, below);

(2) An amount of interest on the difference determined under (1) above.

The ODODD Director is required to adopt rules specifying how the amount of interest is to be determined.

¹ R.C. 5124.17(F)(1)(a), not in the bill.



Voluntary repayment

ODODD is required by the bill to exempt an ICF/IID from a recoupment if the ICF/IID voluntarily repays ODODD the difference between the amount of the efficiency incentive payments the ICF/IID earned because the provider obtained ODODD's approval to downsize and the amount of the efficiency incentive payments the ICF/IID would have earned had the ICF/IID not obtained the approval. No interest is to be charged on the amount voluntarily repaid.

Method of recoupment or voluntary repayment

An ICF/IID subject to a recoupment or voluntarily making a repayment under the bill must choose one of the following methods by which the recoupment or voluntary repayment is to be made:

- (1) In a lump sum payment;
- (2) Subject to ODODD's approval, in installment payments;

(3) In a single deduction from the next available Medicaid payment made to the ICF/IID if that payment at least equals the total amount of the recoupment or voluntary repayment;

(4) Subject to ODODD's approval, in installment deductions from Medicaid payments made to the ICF/IID.

Request for reconsideration

The bill permits an ICF/IID to request that the ODODD Director reconsider either or both of the following:

- (1) A decision that the ICF/IID is subject to a recoupment under the bill;
- (2) A determination of the amount to be recouped from the ICF/IID.

Deposit of recoupments and voluntary repayments

ODODD is required to transmit amounts recouped or voluntarily repaid under the bill to the Treasurer of State for deposit in the General Revenue Fund.

Medicaid cost reports for downsized, partially converted, and new ICFs/IID

(R.C. 5124.101 (primary) and 5124.10)

Continuing law establishes conditions under which an ICF/IID in peer group 1 or peer group 2 that, on or after July 1, 2013, becomes a downsized ICF/IID, partially



converted ICF/IID, or new ICF/IID may file with ODODD a Medicaid cost report sooner than it otherwise would. A downsized ICF/IID is an ICF/IID that permanently reduced its Medicaid-certified capacity pursuant to a plan approved by ODODD. A partially converted ICF/IID is an ICF/IID that converted some, but not all, of its beds to home and community-based services under the Individual Options Medicaid waiver program.²

For a downsized or partially converted ICF/IID to be allowed to file a Medicaid cost report sooner than it otherwise would, the ICF/IID must have, as of the day it downsizes or partially converts, (1) a Medicaid certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately before the day it downsizes or partially converts or (2) at least five fewer ICF/IID beds than it had on the day immediately before the day it downsizes or partially converts. For a new ICF/IID to be allowed to file a Medicaid cost report sooner than it otherwise would, the ICF/IID's beds must be from a downsized ICF/IID that has, as of the day it downsizes or partially converts, (1) a Medicaid-certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately before the day it downsizes or (2) at least five fewer ICF/IID beds than it had on the day immediately before the day it downsizes.

A cost report authorized by this provision of law is to cover the first three full months following the date the ICF/IID downsizes, partially converts, or opens. The cost report also is to cover the portion of the month in which the ICF/IID downsizes, partially converts, or opens if the ICF/IID downsizes, partially converts, or opens after the first day of a month.

With a certain exception, an ICF/IID's next cost report is due during the calendar year immediately following the calendar year during which it downsizes, partially converts, or opens. This cost report is to cover the calendar year during which the ICF/IID downsizes, partially converts, or opens, including the three-month (or three-month plus) period that the other cost report already covers. The exception is that the ICF/IID is not required to file its next cost report until the second calendar year immediately following the calendar year during which it downsizes, partially converts, or opens if it downsizes, partially converts, or opens after the first day of October of a calendar year. Such an ICF/IID's next cost report would cover the calendar year

² Peer group 1 consists of ICFs/IID with a Medicaid-certified capacity exceeding eight. Peer group 2 consists of ICFs/IID with a Medicaid-certified capacity not exceeding eight, other than ICFs/IID in peer group 3. Peer group 3 consists of ICFs/IID (1) that are first certified after July 1, 2014, (2) that have a Medicaid-certified capacity not exceeding six, (3) that have contracts with ODODD that are for 15 years and include a provision for ODODD to approve all admissions and discharges, and (4) whose residents are admitted directly from a developmental center or have been determined by ODODD to be at risk of admission to a developmental center. (R.C. 5124.01(MM), (NN), and (OO), not in the bill.)

immediately following the calendar year that it downsizes, partially converts, or opens rather than the calendar year during which it downsizes, partially converts, or opens. The bill eliminates this exception. This means that an ICF/IID must file its next cost report during the calendar year immediately following the calendar year during which it downsizes, partially converts, or opens regardless of whether it downsizes, partially converts, or opens after the first day of October of a calendar year.

Automatic denial of supported living certificate

(R.C. 5123.1610)

The bill provides that an application to ODODD for a supported living certificate authorizing the provision of Medicaid-funded supported living is automatically denied if the Department of Medicaid refuses to enter into a Medicaid provider agreement with the applicant that would authorize the provision of supported living under the Medicaid program. The automatic denial is effective on the date that the Department of Medicaid refuses to enter into the Medicaid provider agreement. The Director of Developmental Disabilities is not required to issue an adjudication order under the Administrative Procedure Act (R.C. Chapter 119.) in order for a supported living certificate application to be automatically denied. The automatic denial has no effect on a person's or government entity's opportunity to apply to provide non-Medicaid-funded supported living under a supported living certificate.

Community adult facility closure

(R.C. 5123.377)

The bill authorizes the ODODD Director to make changes to the agreement terms with a county board of developmental disabilities (county DD board) or county commissioners board regarding the closure of a community adult facility. A "community adult facility" provides services to adults with developmental disabilities regarding self-care, sensory and motor development, socialization, daily living skills, communication, community living, social skills, or vocational skills. The Director may change the agreement terms if all of the following apply:

- (1) The agreement was entered into between 1976 and 1999.
- (2) The agreement requires the county DD board or county commissioners board to use the community adult facility for at least 40 years.
- (3) The county DD board or county commissioners board submits an application to the Director that includes the following information:



- (a) A statement of intent to close the facility and the anticipated date of closure;
- (b) The number of individuals with developmental disabilities served in the facility at the time of application;
- (c) Identification of alternative providers of services to be offered to those individuals;
- (d) A commitment and demonstration that those individuals will receive services from the alternative providers;
- (e) A resolution from the county DD board or the county commissioners board authorizing the application. The resolution must also require that the proceeds of the sale be used to either reimburse ODODD up to the outstanding balance owed under the agreement or to acquire housing for individuals with developmental disabilities that complies with the requirements established by the Director.

The Director may change other agreement terms, including terms regarding the length of time the facility must be used as a community adult facility.

Current law authorizes ODODD to assist with construction projects regarding services to individuals with developmental disabilities. The assistance is provided in accordance with an agreement between the ODODD Director and a county DD board or a county commissioners board. Generally, the agreement may provide for ODODD to pay 90% of the total project cost where circumstances warrant.³

Rules concerning removal of residential facility residents

(R.C. 5123.19)

The ODODD Director licenses residential facilities for individuals with developmental disabilities. Residential facilities are also known as group homes.

As part of the ODODD Director's authority regarding residential facilities, the ODODD Director may take various disciplinary actions when a residential facility is out of compliance with licensing requirements. One of the disciplinary actions is to order, pursuant to rules which must be adopted, the immediate removal of a residential facility's residents whenever conditions at the facility present an immediate danger of physical or psychological harm to the residents. The bill eliminates the requirement that those rules be adopted but maintains the ODODD Director's authority to order the immediate removal of residents in such a situation.

³ R.C. 5123.36, not in the bill.

Authority of MR/DD personnel to provide specified health care services

(R.C. 5123.42 (primary), 4723.071, 5123.41, 5123.421, 5123.422, 5123.43, 5123.45, 5123.452, 5123.47, and 5126.36)

The bill modifies the authority of MR/DD personnel to perform certain health care services for individuals with mental retardation and developmental disabilities. Current law authorizes MR/DD personnel who meet certain training and certification requirements to administer medications, perform health-related activities, and perform tube feedings for individuals with developmental disabilities in specified categories. Depending on the health care service being performed and the category of the individual being served, MR/DD personnel may need nursing delegation to perform the service.

Health care services

Under current law, MR/DD personnel who satisfy training and certification requirements are authorized to perform the following health care services: administer prescribed medications, perform health-related activities, and perform tube feedings.

The bill expands the medications that may be administered by MR/DD personnel to include topical over-the-counter musculoskeletal medications, oxygen and metered dose inhaled medications, and metabolic glycemc disorder medications administered through subcutaneous injections. The bill also permits MR/DD personnel to administer insulin to individuals in each, instead of only some, of the categories of individuals served by MR/DD personnel and allows the insulin to be administered through inhalation.⁴

The bill modifies MR/DD personnel's authority to perform health-related activities. Current law establishes a list of the specific types of health-related activities that may be performed, which includes external urinary catheter care and emptying and replacing colostomy bags. The bill substitutes catheter cleaning for catheter care and ostomy bags for colostomy bags. The bill also adds the following activities:

- (1) Pulse oximetry reading;
- (2) Use of continuous positive airway pressure machines;
- (3) Application of percussion vests;
- (4) Use of cough assist devices and insufflators;

⁴ R.C. 5123.42(C).



(5) Application of prescribed compression hosiery.⁵

The bill modifies MR/DD personnel's authority to perform tube feedings. Under current law, MR/DD personnel who satisfy the same training and certificate requirements necessary to be authorized to administer medications and perform health-related activities are authorized to perform tube feedings. The bill eliminates this authority with respect to tube feedings and makes conforming changes regarding the development of training courses and other related provisions.⁶

Nursing delegation requirements

For each category of individuals being served by MR/DD personnel, and for each type of health care service being performed, current law specifies whether MR/DD personnel are authorized to act with or without nursing delegation. The bill establishes whether nursing delegation is required for each of the health care services added by the bill. The following table summarizes the authority of MR/DD personnel to perform those health care services for each category of individuals being served and specifies whether nursing delegation is required:⁷

Authority of MR/DD personnel to perform services				
	Administration of topical OTC musculoskeletal medications	Administration of oxygen and metered dose inhaled medication	Insulin administration	Administration of metabolic glycemetic disorder medication
Early intervention, preschool, and school-age services	With nursing delegation	With nursing delegation	With nursing delegation	No authority to perform
Adult services: 17 or more recipients per service site	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Adult services: 1-16 recipients per service site	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation

⁵ R.C. 5123.41(D).

⁶ R.C. 4723.071, 5123.41, 5123.42, 5123.421, 5123.422, 5123.43, 5123.441, 5123.45, and 5126.36.

⁷ R.C. 5123.42(C) and (D).



Authority of MR/DD personnel to perform services				
	Administration of topical OTC musculoskeletal medications	Administration of oxygen and metered dose inhaled medication	Insulin administration	Administration of metabolic glycemc disorder medication
Family support services	Without nursing delegation	Without nursing delegation	With nursing delegation (same as current law)	With nursing delegation
Certified supported living	Without nursing delegation	Without nursing delegation	With nursing delegation (same as current law)	With nursing delegation
Certified home and community-based services (1 to 4 persons per living arrangement)	Without nursing delegation	Without nursing delegation	With nursing delegation (same as current law)	With nursing delegation
Other services by county DD boards or ODODD	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Residential facilities: 1 to 5 beds	Without nursing delegation	Without nursing delegation	With nursing delegation (same as current law)	With nursing delegation
Residential facilities: 6 to 16 beds	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Field trip participants from residential facilities with 17 or more beds	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation

The bill also modifies the existing nursing delegation requirements for MR/DD personnel when serving individuals who are recipients of adult services in a setting where fewer than 17 individuals receive the services. For MR/DD personnel serving



those individuals, the bill authorizes the MR/DD personnel to perform health-related activities and administer oral and topical medications without nursing delegation.⁸

Additional health care services

The bill authorizes MR/DD personnel to provide three additional health care services. MR/DD personnel may provide the services to all individuals being served by MR/DD personnel without nursing delegation. The additional services are activation of a vagal nerve stimulator, use of an epinephrine autoinjector to treat anaphylaxis, and administration of topical over-the-counter medications for the purpose of cleaning, protecting, or comforting the skin, hair, nails, teeth, or oral surfaces.

To be authorized to activate a vagal nerve stimulator or use an epinephrine autoinjector, the MR/DD personnel must complete a training course developed by ODODD. The bill provides that MR/DD personnel must act only in accordance with that training. The bill requires the employer of MR/DD personnel to ensure that they have been trained specifically with respect to each individual for whom they activate a vagal nerve stimulator or use an epinephrine autoinjector. If the personnel have not received the training, they are prohibited from performing the services. If an employer believes that MR/DD personnel have not or will not safely perform the services, the employer is required by the bill to prohibit the MR/DD personnel from performing the services; MR/DD personnel are prohibited from performing services the employer prohibits.

The bill requires MR/DD personnel to activate vagal nerve stimulators, use epinephrine autoinjectors, or administer topical over-the-counter medications in accordance with the manufacturer's instructions.⁹

Training courses

Under continuing law, ODODD must develop courses for the training of MR/DD personnel in the administration of medication and the performance of health-related activities. The bill requires ODODD to develop training courses covering the health care services MR/DD personnel are authorized to perform under the bill (i.e., administration of over-the-counter medications, administration of metabolic glyceic disorder medications, activation of a vagal nerve stimulator, and the administration of

⁸ R.C. 5123.42(C)(3).

⁹ R.C. 5123.42(B).

epinephrine). The bill permits the courses to be developed as separate courses or included in a general course in the administration of medications.¹⁰

ODODD certificate program

Under continuing law, MR/DD personnel and registered nurses must complete training courses to be eligible to obtain a certificate from ODODD. ODODD must adopt rules establishing requirements that MR/DD personnel and registered nurses must satisfy to be eligible to take those training courses. The bill requires ODODD to include as a requirement that MR/DD personnel and registered nurses have sufficient written and oral English skills to communicate effectively and reliably with patients, their families, and other medical professionals.¹¹

The bill repeals an obsolete grandfathering provision regarding the certificate program.¹²

Investigations of complaints

Under continuing law, ODODD must accept and investigate complaints regarding the administration of medication and performance of health-related activities by MR/DD personnel. The bill repeals a requirement that ODODD adopt rules establishing procedures for accepting complaints and conducting the investigations.¹³

Disciplinary action

The bill modifies the disciplinary action that may be taken by the ODODD Director against MR/DD personnel and registered nurses who have obtained a certificate from ODODD. Under the bill, if good cause exists, the ODODD Director may refuse to issue or renew, revoke, or suspend a certificate.

The bill specifies that each of the following constitutes good cause:

(1) A violation of the laws or rules pertaining to MR/DD personnel and registered nurses who hold a certificate issued by ODODD;

(2) Confirmed abuse or neglect;

¹⁰ R.C. 5123.43.

¹¹ R.C. 5123.45(D).

¹² R.C. 5123.45(B)(2).

¹³ R.C. 5123.421.

- (3) Conviction of or a guilty plea to a disqualifying offense;
- (4) Misfeasance, malfeasance, or nonfeasance;
- (5) In the case of a registered nurse, disciplinary action taken by the Board of Nursing;
- (6) Other conduct the ODODD Director determines is or would be injurious to individuals.

Disciplinary action must be taken pursuant to an adjudication conducted under Ohio's Administrative Procedure Act (Chapter 119. of the Revised Code).¹⁴

In-home care workers

Under continuing law, a family member of an individual with mental retardation or a developmental disability may authorize an unlicensed in-home care worker to perform certain health care tasks. The bill establishes the following as additional health care tasks that a family member may authorize an in-home care worker to perform: the administration of nutrition and medications through gastrostomy and jejunostomy tubes, administration of oxygen and metered dose inhaled medications, administration of insulin, and administration of metabolic glycemetic disorder medications.

Under continuing law, a family member may authorize an in-home care worker to perform health care tasks only if certain conditions apply. The bill establishes the following as additional conditions that must be satisfied:

- (1) The task must be completed in accordance with standard, written instructions.
- (2) Performance of the task must require no judgement based on specialized health care knowledge or expertise.
- (3) The outcome of the task must be reasonably predictable.
- (4) Performance of the task must require no complex observation of the individual receiving the care.
- (5) Improper performance of the task must be able to result in only minimal complications that are not life threatening.

¹⁴ R.C. 5123.452.

The bill requires the family member or a health care professional to be available to communicate with the in-home care worker either in person or by telecommunication while the worker performs the task.¹⁵

Part C Early Intervention Services Program

(R.C. 3301.0714, 3701.07, 3701.61, 3701.611 (repealed), 3701.62 (repealed), 5123.02, 5123.0421, 5123.0422, and 5123.0423; Sections 610.10, 610.11, 610.20, 610.30, 610.31, and 751.10)

Lead agency transfer

Effective July 1, 2016, the bill transfers from the Department of Health (ODH) to ODODD the responsibility for implementing Ohio's Part C Early Intervention Services Program. Part C is a \$436 million federal program, created by Part C of the federal Individuals with Disabilities Education Act (IDEA)¹⁶ and administered by the states, that serves infants and toddlers through two years of age with developmental delays or who have diagnosed physical or mental conditions with high probabilities of resulting in developmental delays.¹⁷ Under existing law, Ohio's Part C Early Intervention Program is administered by ODH through the Help Me Grow Program, which also provides home visiting services to eligible families with a pregnant woman or an infant or toddler under three years of age.

Associated with the transfer of the Program from ODH to ODODD, the bill specifies that ODODD (rather than ODH) is to serve as the "lead agency" to implement the Program. Under IDEA, each state governor must designate or establish a lead agency responsible for carrying out Part C Early Intervention Program duties in his or her state.¹⁸ As the lead agency under the bill, ODODD may do any of the following:

--Enter into an interagency agreement with one or more other state agencies to implement the Program;

--Distribute Program funds through contracts, grants, or subsidies to entities that are Program service providers; or

--Establish a system of payment to Program services providers.

¹⁵ R.C. 5123.47.

¹⁶ 20 United States Code (U.S.C.) §§ 1431 through 1443.

¹⁷ U.S. Department of Education, *IDEA 2004: Building the Legacy*, available at <<http://idea.ed.gov/part-c/search/new>>.

¹⁸ 20 U.S.C. § 1435(a)(10).



Rules

The bill requires the Director of Developmental Disabilities to adopt rules that are necessary to implement Ohio's Part C Early Intervention Program. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) and specify all of the following:

- Eligibility requirements to receive Program services;
- Eligibility requirements to be a Program service provider;
- Operating standards and procedures for Program service providers, including standards and procedures governing data collection, program monitoring, and Program evaluation;
- Procedures to appeal the denial of an application to receive Program services or the termination of Program services;
- Procedures to appeal a decision by ODODD to deny an application to be a Program service provider or to terminate a provider's status;
- Procedures for addressing complaints by persons who receive Program services;
- Criteria for the payment of Program service providers; and
- The metrics or indicators used to measure Program service provider performance.

Conforming and technical changes

The bill makes a number of conforming and technical changes associated with the transfer of the Part C Early Intervention Program from ODH to ODODD. These changes pertain to the following topics.

Early Intervention Services Advisory Council

The bill requires the Governor to create the Early Intervention Services Advisory Council to serve as the state interagency coordinating council for Ohio's Part C Early Intervention Program. Accordingly, the bill repeals the Help Me Grow Advisory Council, which serves that purpose under current law. Under IDEA, a state must have an interagency coordinating council to receive Part C funds.¹⁹

¹⁹ 20 U.S.C. § 1441(a)(1).



Members of the Early Intervention Services Advisory Council must reasonably represent the population of Ohio. The Governor must appoint one Council member to serve as the chairperson, or the Governor may delegate that appointment to the Council. The bill prohibits any member of the Council who represents ODH or ODODD from serving as the chairperson.

Related to the replacement of the Help Me Grow Advisory Council with the Early Intervention Services Advisory Council, the bill specifies both of the following:

--Individuals who are members of the Help Me Grow Advisory Council on June 30, 2016, become members of the Early Intervention Advisory Council and remain members until the completion of their terms; and

--Whenever the Help Me Grow Advisory Council, or ODH in relation to the Part C Early Intervention Program, is referred to in statute, contract, or other instrument, the reference is deemed to refer to the Early Intervention Services Advisory Council or ODODD, whichever is appropriate in context.

In addition, the bill specifies that the Early Intervention Services Advisory Council is not subject to review by the Sunset Review Commission.

Data verification codes

The bill requires the ODODD Director (instead of the ODH Director) to request a student data verification code for each child who receives services from Ohio's Part C Early Intervention Program. Under existing law unchanged by the bill, such codes are requested from the independent contractor engaged by the Department of Education to create and maintain the codes for school districts and community schools. The ODODD Director must submit a child's data verification code to the public school in which the child enrolls at the time the child ceases to receive Part C Early Intervention services and begins to receive special education and related services from the school.

Consistent with existing law, the ODODD Director and each school that receives a data verification code is prohibited from releasing that code to any person except as provided by law. Any document that the Director holds in the Director's files that contains both a child's name or other personally identifiable information and the child's code is not a public record.

Legal authority

Associated with ODODD's designation as the new lead agency for Ohio's Part C Early Intervention Program, the bill specifies all of the following:



--ODODD is the successor to, assumes the obligations and authority of, and otherwise continues the Program's implementation;

--No validation, cure, right, privilege, remedy, obligation, or liability related to the Program is impaired or lost by reason of the transfer and must be recognized, administered, performed, or enforced by ODODD;

--Business associated with the Program's implementation that was commenced but not completed by ODH must be completed by ODODD in the same manner, and with the same effect, as if completed by ODH; and

--All of ODH's rules, orders, and determinations associated with the Program continue in effect as rules, orders, and determinations of ODH until modified or rescinded by ODODD.

Employees

The bill specifies that an ODH employee who is assigned to the Program on June 30, 2015, is transferred to ODODD and retains all rights the employee has under existing law, unchanged by the bill, if a layoff occurs. The employee also retains all benefits the employee had accrued on the transfer effective date, including discipline status. The employee's employment records and actions, including personnel actions, disciplinary actions, performance improvement plans, and performance evaluations, transfer with the employee. Absent authorization from the employee, ODH is prohibited from transferring to ODODD any medical documentation regarding the employee in its possession.

Equipment and assets

The bill specifies that all equipment and assets relating the Program, except for those related to Early Track, are transferred from ODH to ODODD.

Appropriations changes

As part of the transfer of responsibility for the Part C Early Intervention Program from ODH to ODODD, the bill transfers a total of \$25.1 million in fiscal year 2017 from ODH to ODODD.

Additionally, due to a change in reimbursement methodology, the bill makes adjustments to certain appropriation items relating to targeted case management. In past practice, the nonfederal share of the cost of targeted case management services provided by county DD boards was sent to ODODD in order to draw down the federal Medicaid reimbursement. Then, the state disbursed to county boards both the county-paid nonfederal share plus the federal Medicaid reimbursement received. Due to the



recent changes, county DD boards are no longer required to send the nonfederal portion of funds to ODODD in order to draw down federal reimbursement. Instead, boards certify the expenditure has been made when billing. As a result, the Targeted Case Management Fund is no longer needed and is abolished by the bill.

COMMENT

Section 28, Article II of the Ohio Constitution provides that "The General Assembly shall have no power to pass retroactive laws . . ." This provision prohibits the General Assembly from enacting laws imposing new substantive duties and obligations upon a person's past conduct and transactions. A law may run afoul of this prohibition if it impairs or takes away vested rights; affects an accrued substantive right; imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction; creates a new right out of an act that gave no right and imposed no obligation when the act occurred; creates a new right; or gives rise to or takes away the right to sue or defend actions at law.²⁰

To the extent that the bill authorizes ODODD to recoup Medicaid payments made before the recoupment authority is enacted, it has the potential of violating this prohibition (see "**Recoupment**," above).

HISTORY

ACTION	DATE
Introduced	03-03-16

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²⁰ *State v. White*, 132 Ohio St.3d 344 (2012).

