



# Ohio Legislative Service Commission

## Bill Analysis

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(As Passed by the House)

**Reps.** Amstutz, R. Smith, Anielski, Burkley, Romanchuk, Sears, Sprague, Antonio, Baker, Barnes, Bishoff, Blessing, Brown, Conditt, Craig, Derickson, Dever, Dovilla, Ginter, Grossman, Hambley, Hayes, Howse, Koehler, Kuhns, LaTourette, Manning, McClain, Reineke, Rezabek, Rogers, Ryan, Scherer, Strahorn, Sweeney, Sykes, Thompson, Young, Rosenberger

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## **BILL SUMMARY**

### **Individual or joint self-insurance program**

- Permits a county board of developmental disabilities (county DD board) to provide insurance through an individual or joint self-insurance program.

### **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.
- Permits ODODD to exempt an ICF/IID from a recoupment if it (1) demonstrates, on or before July 1, 2018, that, despite a good faith effort, it failed to downsize for reasons beyond its control and (2) downsizes within a reasonable period of time after that date.
- Requires an ICF/IID that downsizes or partially converts on or before the first day of October of a calendar year to file an additional Medicaid cost report.

- Specifies the period for which the additional cost report is to be used to determine an ICF/IID's Medicaid payment rate.
- Requires ODODD to comply with certain requirements for changes to the following to be valid: (1) ODODD's instructions or guidelines for the ICF/IID resident assessment form and (2) the manner in which the grouper methodology is applied in determining ICF/IIDs' case-mix scores.
- Requires ODODD to make such a change prospectively and, before making it, to notify all ICFs/IID, provide an opportunity for ICFs/IID to share their concerns and suggested revisions, and determine that a change regarding the grouper methodology is consistent with certain documentation.
- Requires ODODD to disregard, for the purpose of the fiscal year 2017 Medicaid rates for ICFs/IID, the results of an exception review conducted during calendar year 2015 if the results are based on such a change and ODODD does not comply with the requirements.
- Provides, for the purpose of Medicaid payments to reserve ICF/IID beds, that a temporary absence from an ICF/IID due to participation in a therapeutic program includes a visit to a potential new residential setting.
- Requires ODODD to prepare a report evaluating the progress of the efforts since July 1, 2015, to relocate the residents of developmental centers for which the Governor has announced closures.

### **Community facility closures**

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

### **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.

### **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.
- Permits ICFs/IID to use medication aides to administer medications to residents.
- 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.
- Modifies appropriations for ODH and ODODD to reflect the transfer of the Part C Early Intervention Services Program to ODODD.

### **Targeted case management**

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

### **Developmental disability renewal and replacement levies**

- Authorizes certain replacement developmental disabilities property tax levies to be for a different purpose than or for a term longer than the replaced levy.



- Authorizes developmental disabilities property tax levies to be combined into a single renewal levy.
- Removes references to "mental retardation" in developmental disabilities property tax levy law.
- Authorizes more than two existing levies to be combined into a single replacement levy.

### **"ABLE" disability savings accounts**

- Authorizes a personal income tax deduction for contributions to an "Achieve a Better Living Experience" (ABLE) savings account, which is used to pay qualified disability expenses of a beneficiary.
- Authorizes residents of other states to open accounts under Ohio's ABLE account program.
- Authorizes the Treasurer of State to issue interests to ABLE account beneficiaries.
- Requires the guardian or trustee of a disabled beneficiary to furnish certain personal information when applying for an ABLE account on behalf of that beneficiary.

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## CONTENT AND OPERATION

### Individual or joint self-insurance program

(R.C. 9.833 and 5126.05)

The bill allows a county board of developmental disabilities (county DD board) to provide insurance through an individual or joint self-insurance program. County DD boards have authority under continuing law to contract for employee benefits, but are not currently authorized to provide insurance through a self-insurance program.<sup>1</sup> The bill also allows county DD boards to establish and maintain a health savings account program, which may be part of a self-insurance program. A self-insurance program, whether individual or joint, is subject to certain requirements. For example, a county DD board that establishes a self-insurance program must reserve funds as necessary to cover potential costs of health care benefits for the officers and employees of the board. These requirements exist under continuing law and apply to self-insurance programs established by political subdivisions.

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<sup>1</sup> Ohio Attorney General Opinion No. 92-061.



## **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.<sup>2</sup> 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 certain exceptions, 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:

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<sup>2</sup> R.C. 5124.17(F)(1)(a), not in the bill.

(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.

#### **Voluntary repayment exemption**

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.

#### **Good faith effort exemption**

ODODD is permitted by the bill to exempt an ICF/IID from the recoupment if both of the following apply:

(1) The ICF/IID, on or before July 1, 2018, demonstrates to ODODD's satisfaction that the ICF/IID made a good faith effort to complete the downsizing by July 1, 2018, but the ICF/IID did not downsize by that date for reasons beyond the ICF/IID's control.

(2) The ICF/IID becomes a downsized ICF/IID within a period of time after July 1, 2018, that ODODD determines is reasonable.

#### **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 and partially converted ICFs/IID**

(R.C. 5124.101 (primary), 5124.10, and 5124.151)

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 or partially converted ICF/IID, may file with ODODD a Medicaid cost report, and therefore begin to receive a higher Medicaid rate, 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.<sup>3</sup>

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.

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<sup>3</sup> 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.)



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

If an ICF/IID downsizes or partially converts on or before the first day of October of a calendar year, its next cost report is due during the immediately following calendar year. This cost report is to cover the full calendar year during which the ICF/IID downsizes or partially converts, including the three-month (or three-month plus) period that the other cost report already covers.

Under the bill, an ICF/IID that downsizes or partially converts on or before the first day of October of a calendar year is required to file an additional cost report. The additional cost report is to cover the portion of the initial calendar year that the ICF/IID operates as a downsized or partially converted ICF/IID. It is due not later than 90 days after the last day of the period that it covers, but ODODD may grant a 14-day extension if there is good cause.

Under current law, the three-month cost report filed by an ICF/IID that downsizes or partially converts on or before the first day of October of a calendar year is to be used to determine the ICF/IID's Medicaid payment rate for the period that (1) begins on the day that the ICF/IID downsizes or partially converts (if that day is the first day of a month) or on the first day of the month immediately following the month the ICF/IID downsizes or partially converts (if it downsizes or partially converts after the first day of a month) and (2) ends on the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID begins to be paid a rate determined using the full-year cost report that is due during the calendar year immediately following the calendar year in which the ICF/IID downsizes or partially converts. Under the bill, this period is to end instead on the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID is paid a rate determined using the additional cost report that the bill requires. The additional cost report is to be used to determine the ICF/IID's Medicaid payment rate for the period that (1) begins on the day immediately following the last day for which the three-month cost report is used to determine the ICF/IID's rate and (2) ends on the last day of the fiscal year for which the ICF/IID begins to be paid a rate determined using the full-year cost report covering the calendar year that immediately follows the initial calendar year that the ICF/IID operates as a downsized or partially converted ICF/IID.

## **Changes to resident assessment forms and grouper methodology**

(R.C. 5124.195; Section 752.10)

Direct care costs are one of the components used in determining an ICF/IID's Medicaid payment rate. Direct care costs are determined in part by using a resident assessment form and a grouper methodology.

The bill requires ODODD to comply with certain requirements in order for changes it makes to either of the following to be valid: (1) ODODD's instructions or guidelines for the resident assessment form and (2) the manner in which the grouper methodology is applied in determining case-mix scores for ICFs/IID. For such a change to be valid, the change must be applied prospectively and, before making the change, ODODD must do all of the following:

(1) Notify all ICFs/IID of the proposed change;

(2) Provide ICF/IID representatives an opportunity to give ODODD their concerns about, and suggestions to revise, the proposed change;

(3) In the case of a change regarding the grouper methodology, determine that the proposed change is consistent with the documentation of ICF/IID staff time that was used to create the grouper methodology.

The bill requires ODODD to disregard, for the purpose of the fiscal year 2017 Medicaid payment rates for ICFs/IID, the results of an exception review conducted during calendar year 2015 if the results are based on a change ODODD made to its instructions or guidelines for the resident assessment forms or the manner in which the grouper methodology is applied in determining the case-mix scores of ICFs/IID, unless ODODD applies the change prospectively and, before making the change, takes the actions discussed above concerning notification, ICF/IID representatives, and documentation of ICF/IID staff time.

## **Medicaid payments to reserve an ICF/IID bed**

(R.C. 5124.34)

ODODD is required to pay an ICF/IID 100% of its Medicaid payment rate to reserve a bed for a Medicaid recipient who is temporarily absent from the ICF/IID for certain reasons, including when a recipient is participating in a therapeutic program. The bill provides that participation in therapeutic programs includes visits to potential new residential settings.



## Developmental centers closure evaluation report

(Section 751.50)

The bill requires ODODD to prepare a report evaluating the progress of the efforts since July 1, 2015, to relocate the residents of developmental centers for which the Governor has announced closures. A developmental center is an ODODD-operated residential facility for individuals with developmental disabilities. The report is to be submitted to the Speaker of the House of Representatives not later than June 30, 2016, and must evaluate all of the following regarding the residents who have been relocated since July 1, 2015:

(1) The availability and appropriateness of care, including health care services, provided to each relocated resident in the resident's current residential setting;

(2) The appropriateness of the current living conditions of each relocated resident;

(3) The number of times each relocated resident has since been transferred, discharged, or otherwise relocated to a different residential setting and the type of setting to which the resident has been relocated;

(4) Reports of death, significant bodily injury, hospital or nursing home stays, and arrests or detainments by law enforcement involving each relocated resident that occurred on or after the date of the resident's relocation and before the effective date of this provision of the bill.

### Community facility closures

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.<sup>4</sup>

#### Community adult facilities

(R.C. 5123.377)

The bill authorizes the ODODD Director to make changes to the agreement terms with a county DD board or county commissioners board regarding the closure of a

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<sup>4</sup> R.C. 5123.36, not in the bill.



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.

### **Community early childhood facilities**

(R.C. 5123.378)

The bill authorizes the ODODD Director to make changes to the agreement terms with a county DD board or county commissioners board regarding the closure of a community early childhood facility. A "community early childhood facility" provides a planned program of habilitation designed to meet the needs of individuals with developmental disabilities who have not attained compulsory school age. 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 early childhood facility for at least 15 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) A commitment and demonstration that those individuals will continue to receive services;

(d) 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 early childhood facility.

### **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.



## **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.<sup>5</sup>

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;

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<sup>5</sup> R.C. 5123.42(C).

(5) Application of prescribed compression hosiery.<sup>6</sup>

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.<sup>7</sup>

**Expansion to residential facilities with 17 or more beds**

The bill modifies MR/DD personnel's authority to provide health care services to residents of residential facilities with 17 or more beds. Under current law, MR/DD personnel may provide services to residents of these residential facilities only during certain field trips. The bill permits MR/DD personnel to provide health care services to residents of residential facilities with 17 or more beds regardless of whether the residents are on a field trip.<sup>8</sup>

**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:<sup>9</sup>

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<sup>6</sup> R.C. 5123.41(D).

<sup>7</sup> R.C. 4723.071, 5123.41, 5123.42, 5123.421, 5123.422, 5123.43, 5123.441, 5123.45, and 5126.36.

<sup>8</sup> R.C. 5123.42(A) and (C).

<sup>9</sup> R.C. 5123.42(C) and (D).



<b>Authority of MR/DD personnel to perform services</b>				
	<b>Administration of topical OTC musculoskeletal medications</b>	<b>Administration of oxygen and metered dose inhaled medication</b>	<b>Insulin administration</b>	<b>Administration of metabolic glycemc disorder medication</b>
<b>Early intervention, preschool, and school-age services</b>	With nursing delegation	With nursing delegation	With nursing delegation	No authority to perform
<b>Adult services: 17 or more recipients per service site</b>	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
<b>Adult services: 1-16 recipients per service site</b>	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation
<b>Family support services</b>	Without nursing delegation	Without nursing delegation	With nursing delegation (same as current law)	With nursing delegation
<b>Certified supported living</b>	Without nursing delegation	Without nursing delegation	With nursing delegation (same as current law)	With nursing delegation
<b>Certified home and community-based services (1 to 4 persons per living arrangement)</b>	Without nursing delegation	Without nursing delegation	With nursing delegation (same as current law)	With nursing delegation
<b>Other services by county DD boards or ODODD</b>	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
<b>Residential facilities: 1 to 5 beds</b>	Without nursing delegation	Without nursing delegation	With nursing delegation (same as current law)	With nursing delegation
<b>Residential facilities: 6 or more beds</b>	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.<sup>10</sup>

### **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.<sup>11</sup>

### **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 glycemc disorder medications, activation of a vagal nerve stimulator, and the administration of

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<sup>10</sup> R.C. 5123.42(C)(3).

<sup>11</sup> 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.<sup>12</sup>

### **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. A certificate is required to be eligible to provide health care services. Under current law, MR/DD personnel serving residents of residential facilities with 17 or more beds are required only to complete the courses and are not required to obtain the certificate. Consistent with their expanded authority to provide health care services, the bill requires those MR/DD personnel to obtain a certificate as well. 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.<sup>13</sup>

Similarly, continuing law requires the MR/DD personnel training to be provided by a registered nurse who has completed required training and obtained a certificate from ODODD. Current law contains an exception that permits training courses provided to those MR/DD personnel who provide services only to residents of residential facilities with 17 or more beds to be provided by a trained registered nurse (regardless of whether the registered nurse obtained a certificate). The bill repeals this exception, thereby requiring all MR/DD personnel training courses to be provided by a registered nurse who has obtained a certificate from ODODD.<sup>14</sup>

Under current law, the MR/DD personnel training does not need to include information about proper receipt of prescriptions and transcription of prescriptions into an individual's medication administration record if the MR/DD personnel being trained will administer prescribed medication only to residents of a residential facility with 17 or more resident beds who are on a field trip. The bill repeals this provision, thereby requiring all MR/DD personnel training to include this information.<sup>15</sup>

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<sup>12</sup> R.C. 5123.43.

<sup>13</sup> R.C. 5123.45(D).

<sup>14</sup> R.C. 5123.441(B).

<sup>15</sup> R.C. 5123.43(B)(1)(g).

The bill repeals an obsolete grandfathering provision regarding the certificate program.<sup>16</sup>

### **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.<sup>17</sup>

### **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;
- (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).<sup>18</sup>

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<sup>16</sup> R.C. 5123.45(B)(2).

<sup>17</sup> R.C. 5123.421.

<sup>18</sup> R.C. 5123.452.



## Medication aides

(R.C. 4723.67 (primary), 4723.32, 4723.64, 4723.651, and 4723.68)

The bill permits ICFs/IID to use one or more certified medication aides to administer prescription medications to its residents and permits certified medication aides to administer, pursuant to nursing delegation, prescription medication to ICF/IID residents. Under current law, only nursing homes and residential care facilities may use certified medication aides.<sup>19</sup>

Under the bill, the laws that apply to the use of medication aides in nursing homes and residential care facilities also apply to the use of medication aides in ICFs/IID. The bill prohibits a nurse who delegates to a medication aide the responsibility of medication administration to ICF/IID residents from withdrawing the delegation for any purpose other than patient safety.<sup>20</sup> An ICF/IID that uses medication aides must ensure that the aides do not have access to any schedule II controlled substances within the ICF/IID for use by its residents.<sup>21</sup> Also, an employee of an ICF/IID that uses medication aides who reports in good faith a medication error at the ICF/IID is not subject to professional disciplinary action and is not liable in civil damages for injury, death, or loss that allegedly results from the report.<sup>22</sup>

Under continuing law, an individual may satisfy a medication aide certificate eligibility requirement by being a certified nurse aide. Under the bill, an individual who is to practice as a medication aide in an ICF/IID may satisfy this eligibility requirement by instead having at least one year of direct care experience in an ICF/IID.<sup>23</sup> If an individual satisfies the requirement in this way, the individual's medication aide certificate is to be valid for use only in an ICF/IID.<sup>24</sup>

## 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

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<sup>19</sup> R.C. 4723.32, 4723.64, and 4723.67.

<sup>20</sup> R.C. 4723.67(A).

<sup>21</sup> R.C. 4723.67(E).

<sup>22</sup> R.C. 4723.68.

<sup>23</sup> R.C. 4723.651(A)(5).

<sup>24</sup> R.C. 4723.651(B).



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 glyceemic 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 judgment 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.

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.<sup>25</sup>

### **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 ODOODD 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)<sup>26</sup> and administered by the states, that serves infants and toddlers through two years of age with developmental delays or

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<sup>25</sup> R.C. 5123.47.

<sup>26</sup> 20 United States Code (U.S.C.) §§ 1431 through 1443.



who have diagnosed physical or mental conditions with high probabilities of resulting in developmental delays.<sup>27</sup> 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.<sup>28</sup> 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.

## **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;

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<sup>27</sup> U.S. Department of Education, *IDEA 2004: Building the Legacy*, available at <http://idea.ed.gov/part-c/search/new>.

<sup>28</sup> 20 U.S.C. § 1435(a)(10).



--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.<sup>29</sup>

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

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<sup>29</sup> 20 U.S.C. § 1441(a)(1).

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 ODODD 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.

## **Targeted case management**

(Sections 610.10 and 610.11)

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 DD 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.

## **Developmental disability renewal and replacement levies**

(R.C. 5705.192(B) and 5705.25)

The bill makes changes to the manner in which developmental disabilities property tax levies may be renewed or replaced. A replacement levy and a renewal levy



both serve to reauthorize an existing levy. The significance of a replacement levy is that, unlike a renewal levy, its effective millage is nearly equal to the millage appearing on the ballot. In effect, it re-sets the effective millage nearly equal to the voted millage. By contrast, the voted millage of a renewal levy is generally greater than the effective millage that will be imposed when the renewal levy takes effect.

### **Replacement levies**

The bill authorizes certain replacement developmental disabilities property tax levies to be for a different purpose than the existing levy or, in some cases, for a longer term than the existing levy. Continuing law authorizes two distinct types of developmental disability property levies. One type authorizes a county to levy a tax for up to five years for developmental disabilities "programs and services" (hereafter "5705.19(L) levy"). The second type authorizes a county to levy a tax for up to ten years or a continuing period of time for "operational and capital costs" of a county DD board (hereafter "5705.222 levy").

Under the bill, the replacement levy for an existing 5705.19(L) levy may be for up to ten years or for a continuing period of time, similar to a 5705.222 levy. Additionally, the bill authorizes either type of levy to be replaced by a levy for the "operational and capital costs" for which a 5705.222 levy may be imposed. Current law, however, permits the replacement of a levy only if the new levy is for the same purpose as the levy being replaced (certain school district levies are exempted from this limitation).

### **Renewal levies**

The bill also allows a county to combine two or more existing developmental disabilities levies into a single renewal levy. The ballot question whether to renew such a combined levy may be submitted on the date of the primary or general election held during the year before at least one of the renewal levies is scheduled to expire.

### **References to "mental retardation"**

(R.C. 5705.19 and 5705.222)

The bill removes references to "mental retardation" in relation to the purposes for which a subdivision or county DD levy may be imposed, presumably no longer requiring counties to reference the term when proposing new levies to voters or renewing or replacing existing levies that might have been characterized as such when originally imposed. Such levies may continue to be levied for developmental disability purposes.



## **Combined replacement levies**

(R.C. 5705.192(D))

The bill authorizes taxing authorities to combine more than two existing levies to be combined into a single replacement levy. Current law only authorizes two such levies to be combined into a single replacement levy.

## **"ABLE" disability savings accounts**

The bill makes several changes to an existing state program that authorizes disabled individuals to open a federally tax-advantaged savings account. These accounts are referred to as "Achieve a Better Living Experience" (ABLE) savings accounts.

Continuing law authorizes the Treasurer of State to create and administer the ABLE savings account program. Under the program, a disabled individual or the individual's guardian or trustee may apply to open an ABLE account, which is endowed with certain federal income tax and means-tested public assistance advantages. Any person may contribute money to an ABLE account, within certain limitations. Money in an ABLE account is required to be used to pay qualified disability expenses of the account beneficiary. Once money is contributed to an account, earnings on that money are exempted from federal and Ohio income tax, and distributions from the account to the beneficiary are exempted to the extent the money is used to pay qualified disability expenses as defined by federal law. For additional information about the ABLE savings account program, see LSC's Final Analysis of H.B. 155 of the 131st General Assembly.

## **ABLE account contributions tax deduction**

(R.C. 5747.01 and 5747.78; Section 757.01)

The bill authorizes an income tax deduction for contributions to an ABLE account. The deduction is limited to \$2,000 per taxable year for each ABLE account beneficiary. If a taxpayer contributes more than \$2,000 in a taxable year, the taxpayer may carry forward and deduct that excess in future taxable years. If a contribution is made by a married taxpayer, the \$2,000-per-beneficiary limit applies regardless of whether the taxpayer and spouse file separately or jointly. The \$2,000 limit mirrors the limit on the existing deduction for contributions to an account created under the state's "529" college savings program.



## **Other states' accounts**

(R.C. 113.51, 113.52, 113.53, and 113.54)

The bill authorizes residents of other states to open ABLE accounts under Ohio's ABLE account program. Under current law, generally only Ohio residents may open an ABLE account under Ohio's ABLE account program. Indeed, under the federal law that authorized states to create ABLE account programs, states were generally prohibited from offering ABLE accounts to nonresidents. However, a recent change to that law authorized states to open their ABLE account programs to nonresidents.<sup>30</sup>

Additionally, the bill authorizes the Treasurer of State to enter into agreements with other states, or the local governments or residents thereof, related to that state's or Ohio's ABLE program.

## **Issuance of interests**

(R.C. 113.51(A)(8))

If the Treasurer of State elects to administer ABLE account deposits, the bill authorizes the Treasurer of State to administer the issuance of "interests" by the Ohio ABLE savings program trust fund to an account beneficiary. Under continuing law, the Treasurer may instead contract to allow one or more financial organizations to administer and manage Ohio's ABLE account program.

## **Account application**

(R.C. 113.53(A))

The bill requires a guardian or trustee who completes an ABLE account application on behalf of a disabled individual to include the guardian's or trustee's name, address, and Social Security number.

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## **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

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<sup>30</sup> Consolidated Appropriations Act of 2016, P.L. 114-113, Sec. 303 (2015).

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.<sup>31</sup>

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).

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## HISTORY

ACTION	DATE
Introduced	03-03-16
Reported, H. Finance	05-11-16
Passed House (96-0)	05-11-16

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<sup>31</sup> *State v. White*, 132 Ohio St.3d 344 (2012).

