



Ohio Legislative Service Commission

Final Analysis

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ACT 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 Department of Developmental Disabilities (ODODD) to recoup a certain amount, including interest, from an ICF/IID in peer group 1 if the facility 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 in specified circumstances.
- Requires an ICF/IID that downsizes or partially converts on or before October 1 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 them 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 FY 2017 Medicaid rates for ICFs/IID, the results of an exception review conducted during 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.

Developmental centers closure report

- Requires ODODD to prepare a report evaluating the progress of 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 Department of Medicaid refuses to issue 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 developmental disabilities personnel (DD personnel) to perform certain health care services for individuals with developmental disabilities.
- Requires ODODD to develop courses for DD personnel that provide training in performing 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 DD personnel and registered nurses.
- Permits ODODD to take disciplinary action for good cause against 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.
- Designates ODODD as the "lead agency" responsible for the administration of federal funds under the Program.
- Makes conforming changes associated with the 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 stops receiving early intervention services.
- Modifies appropriations for ODH and ODODD to reflect the transfer.

Targeted case management

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



Property tax levies

- Authorizes certain renewal or replacement developmental disabilities property tax levies to be for a different stated purpose than, or for a longer term than, the renewed or replaced levy.
- Authorizes developmental disabilities property tax levies to be combined into a single renewal levy.
- Expands the purposes for which certain developmental disabilities property taxes may be levied.
- Removes references to "mental retardation" in developmental disabilities property tax levy law.
- Requires reimbursement of certain developmental disabilities levy revenue foregone by the creation of a tax increment financing (TIF) incentive district.
- 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.

Disability History and Awareness Month

- Designates October as "Disability History and Awareness Month."

Medicaid waiver nursing services, medically fragile siblings

- Permits a Medicaid provider to provide nursing services to up to four (rather than three) medically fragile siblings in a group visit under a Medicaid waiver.



Removing behavioral health services from nursing facilities' costs

- Removes the costs of behavioral and mental health services from nursing facilities' direct care costs for purposes of Medicaid payments.

Certificate of need for relocation of beds

- Requires the ODH Director to accept a certificate of need application for a new long-term care facility that is to receive its beds from a former county home or county nursing home meeting certain characteristics.

Delayed effective date of continuum of care revisions

- Delays until July 1, 2017, certain laws regarding a continuum of care that boards of alcohol, drug addiction, and mental health services are required to establish.

JFS earmark carry over

- Appropriates for FY 2017 the unexpended, unencumbered portion of an FY 2016 earmark in the Department of Job and Family Services' budget for welfare reforms in Cuyahoga County and services to certain Supplemental Nutrition Assistance Program recipients.

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CONTENT AND OPERATION

Individual or joint self-insurance program

(R.C. 9.833 and 5126.05)

The act 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 had not been authorized to provide insurance through a self-insurance program.¹ The act also allows county DD boards to establish a health savings account program, which

¹ Ohio Attorney General Opinion No. 92-061.



may be part of a self-insurance program. A self-insurance program, whether individual or joint, is subject to certain requirements. For example, a 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.

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 it obtains the Ohio Department of Developmental Disabilities' (ODODD's) approval to become a downsized ICF/IID (one that permanently reduces its Medicaid-certified capacity) and the approval is conditioned on the downsizing being completed by July 1, 2018. Peer group 1 consists of ICFs/IID with a Medicaid-certified capacity exceeding eight. The higher Medicaid payment rate results from the ICF/IID earning higher efficiency incentives for its capital costs and indirect care costs. These higher efficiency incentives have been authorized since FY 2015.

Recoupment

The act requires ODODD, with certain exceptions, to recoup money from an ICF/IID in peer group 1 that obtained approval to downsize, but did not comply with the condition to do so by July 1, 2018. The amount to be recouped is the additional efficiency incentive payments the ICF/IID earned because the provider obtained approval to downsize (see **COMMENT**, below), plus interest. The ODODD Director must adopt rules specifying how the amount of interest is to be determined.

Voluntary repayment without interest

ODODD must exempt an ICF/IID from a recoupment if the facility voluntarily repays the excess payments to be recouped, described above. But no interest is to be charged on the amount voluntarily repaid.

Good faith effort exemption

ODODD may exempt an ICF/IID from the recoupment if the facility both:



(1) Demonstrates to ODODD's satisfaction, by July 1, 2018, that it made a good faith effort to complete the downsizing by that date, but did not downsize by that date for reasons beyond its control; and

(2) Downsizes 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 must choose one of the following methods by which the recoupment or voluntary repayment will be made:

(1) A lump sum payment;

(2) Subject to ODODD's approval, installment payments;

(3) A single deduction from its next available Medicaid payment, if that payment equals at least the total amount of the recoupment or voluntary repayment;

(4) Subject to ODODD's approval, installment deductions from its Medicaid payments.

Request for reconsideration

An ICF/IID may request that the ODODD Director reconsider either or both of the following:

(1) A decision that the ICF/IID is subject to a recoupment;

(2) A determination of the amount to be recouped.

Deposit of recoupments and voluntary repayments

ODODD must transmit amounts recouped or voluntarily repaid 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 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.²

Under continuing law, an eligible ICF/IID that downsizes or partially converts on or before October 1 must file two cost reports during the following calendar year. The ICF/IID must file one cost report that covers the first three full months after it downsizes or partially converts, which must include the portion of the month in which it downsizes or partially converts if it downsizes or partially converts after the first day of a month. The ICF/IID also must file another cost report that covers the full calendar year during which the ICF/IID downsized or partially converted.

The act requires the ICF/IID to file an additional cost report. The additional report must cover the portion of the first calendar year that the ICF/IID operates as a downsized or partially converted ICF/IID. It is due 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.

The three-month cost report must be used to determine the facility's Medicaid payment rate for the period that (1) begins on the day the facility downsizes or partially converts (or on the first day of the next month 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 precedes the one for which the ICF/IID is paid based on the new cost report (rather than ending on the last day of the fiscal year that precedes the one for which it is paid based on the full year cost report). The new cost report must be used to determine the Medicaid rate for the period that (1) begins on the day after the last day for which the three-month cost report is used to determine its rate and (2) ends on the last day of the fiscal year for which it begins to be paid based on the full-year cost report.

Changes to resident assessment forms and grouper methodology

(R.C. 5124.195; Section 751.30)

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.

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 facilities 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 act.)

The act 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 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 act requires ODODD to disregard, for the purpose of the FY 2017 Medicaid payment rates for ICFs/IID, the results of an exception review conducted during 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 facility for certain reasons, including when a recipient is participating in a therapeutic program. The act also requires full payment when a Medicaid recipient is away visiting potential new places to live.

Developmental centers closure report

(Section 751.20)

The act requires ODODD to prepare a report evaluating the progress of efforts since July 1, 2015, to relocate the residents of the Montgomery Developmental Center and the Youngstown Developmental Center, both of which are planned for closure by July 1, 2017. A developmental center is an ODODD-operated residential facility for



individuals with developmental disabilities. The report must be submitted to the Speaker and Minority Leader of the House, the President and Minority Leader of the Senate, and the chairperson of the Joint Medicaid Oversight Committee. It must be completed by 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.

Community facility closures

(R.C. 5123.377 and 5123.378)

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

The act authorizes the Director to make changes to 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. 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. 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:

³ R.C. 5123.36, not in the act.



(1) The agreement was entered between 1976 and 1999.

(2) It requires the county DD board or county commissioners board to use the facility for at least 40 years (in the case of a community adult facility) or for at least 15 years (in the case of a community early childhood facility).

(3) The county DD board or county commissioners board submits an application to the Director that includes:

(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 require that the sale proceeds be used either to reimburse ODODD up to the outstanding balance owed under the agreement or to acquire housing for individuals with developmental disabilities that complies with the Director's requirements.

The Director may change other agreement terms, including terms regarding how long the facility must be used as a community adult facility or community early childhood facility.

Automatic denial of supported living certificate

(R.C. 5123.1610)

The act 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 a Medicaid provider agreement with the applicant that would authorize the provision of supported living under Medicaid. The automatic denial is effective on the date that the Department of Medicaid refuses to enter the provider agreement. The ODODD Director need not issue an adjudication order under the Administrative Procedure Act (R.C. Chapter 119.) 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 developmental disabilities personnel to provide specified health care services

(R.C. 5123.42 (primary), 4723.071, 5123.41, 5123.421, 5123.422, 5123.43, 5123.44, 5123.441, 5123.45, 5123.451, 5123.452, 5123.47, 5123.651, and 5126.36)

The act replaces references to the phrase "MR/DD personnel" with "developmental disabilities personnel" and modifies their authority to perform certain health care services for individuals with developmental disabilities.

Health care services

Under continuing law, developmental disabilities personnel (DD personnel) who satisfy training and certification requirements are authorized to administer prescribed medications and perform health-related activities.

The act expands the medications that they may administer to include topical over-the-counter musculoskeletal medications, oxygen and metered dose inhaled medications, and metabolic glycemc disorder medications administered through subcutaneous injections. It also permits them to administer insulin to individuals in each, instead of only some, of the categories of individuals they serve and allows the insulin to be administered through inhalation.

The act modifies DD personnel's authority to perform health-related activities. Continuing law lists the specific types of health-related activities that they may perform, which, under prior law, included external urinary catheter care and emptying and replacing colostomy bags. The act clarifies that DD personnel may perform catheter cleaning rather than catheter care and expands their authority to replace ostomy bags, rather than only colostomy bags. The act 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;
- (5) Application of prescribed compression hosiery.

The act eliminates DD personnel's authority to perform tube feedings. Under prior law, DD personnel who satisfied the same training and certificate requirements to be authorized to administer medications and perform health-related activities were authorized to perform tube feedings.



Expansion to residential facilities with 17 or more beds

The act modifies DD personnel's authority to provide health care services to residents of residential facilities with 17 or more beds. Under prior law, DD personnel were permitted to provide services to residents of these residential facilities only during certain field trips. The act permits them to provide health care services to residents of these facilities regardless of whether the residents are on a field trip.

Nursing delegation requirements

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

Authority of DD personnel to perform services				
	Administration of topical OTC musculoskeletal medications	Administration of oxygen and metered dose inhaled medication	Insulin administration	Administration of metabolic glycemic 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
Family support services	Without nursing delegation	Without nursing delegation	With nursing delegation (same as prior law)	With nursing delegation
Certified supported living	Without nursing delegation	Without nursing delegation	With nursing delegation (same as prior law)	With nursing delegation



Authority of DD personnel to perform services				
	Administration of topical OTC musculoskeletal medications	Administration of oxygen and metered dose inhaled medication	Insulin administration	Administration of metabolic glycemic disorder medication
Certified home and community-based services (1 to 4 persons per living arrangement)	Without nursing delegation	Without nursing delegation	With nursing delegation (same as prior 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 prior law)	With nursing delegation
Residential facilities: 6 or more beds	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation

The act also modifies the nursing delegation requirements for DD personnel when serving individuals who are recipients of adult services in a setting where fewer than 17 individuals receive services. It authorizes them to perform health-related activities and administer oral and topical medications without nursing delegation.

Additional health care services

The act authorizes DD personnel to provide three additional health care services, which they may provide to all individuals they serve without nursing delegation: activation of a vagal nerve stimulator, use of an epinephrine autoinjector to treat anaphylaxis, and administration of topical over-the-counter medications for 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 DD personnel must complete a training course developed by ODODD. They must act only in accordance with that training. Their employer must 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 not, they are prohibited from performing the services. If an employer believes that DD personnel



have not or will not safely perform the services, the employer must prohibit them from performing the services. DD personnel are prohibited from performing services the employer prohibits.

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

Training courses

Under continuing law, ODODD must develop courses for training DD personnel in administering medication and performing health-related activities. The act requires ODODD to develop training courses covering the health care services DD personnel are authorized to perform under the act (i.e., administration of over-the-counter medications, administration of metabolic glycemetic disorder medications, activation of a vagal nerve stimulator, and the administration of epinephrine). The courses may be developed as separate courses or included in a general course in administration of medications.

ODODD certificate program

Under continuing law, DD personnel and registered nurses must complete training courses to obtain a certificate from ODODD. A certificate is required to provide health care services. The act requires ODODD to include as a requirement that 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. Under prior law, DD personnel serving residents of residential facilities with 17 or more beds were required only to complete the courses and were not required to obtain the certificate. Consistent with their expanded authority to provide health care services, the act requires those DD personnel to obtain a certificate as well. ODODD must adopt rules establishing requirements that DD personnel and registered nurses must satisfy to be eligible to take those training courses.

Similarly, continuing law requires the DD personnel training to be provided by a registered nurse who has completed required training and obtained a certificate from ODODD. Prior law contained an exception that permitted training courses provided to those DD personnel who provided 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 act repeals this exception, thereby requiring

all DD personnel training courses to be provided by a registered nurse who has obtained a certificate from ODODD.⁴

Under prior law, the DD personnel training did not need to include information about proper receipt and transcription of prescriptions into an individual's medication administration record, if the DD personnel being trained were to administer prescribed medication only to residents of a residential facility with 17 or more resident beds who were on a field trip. The act repeals this exception, thereby requiring all DD personnel training to include this information.

The act repeals an obsolete grandfathering provision regarding the certificate program.

Investigations of complaints

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

Disciplinary action

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

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

- (1) A violation of the laws or rules pertaining to 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 Director determines is or would be injurious to individuals.

⁴ R.C. 5123.441(B).



Disciplinary action must be taken pursuant to an adjudication conducted under Ohio's Administrative Procedure Act (R.C. Chapter 119.).

Consultation on adoption of rules

Under continuing law, when adopting rules to implement the laws governing DD personnel, ODODD must consult with the Board of Nursing and the Ohio Nurses Association. The act requires ODODD to also consult with the Ohio Respiratory Care Board and the Ohio Society for Respiratory Care.

Medication aides

(R.C. 4723.67 (primary), 4723.32, 4723.61, 4723.64, 4723.651, and 4723.68)

The act 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 prior law, only nursing homes and residential care facilities were permitted to use certified medication aides.⁵

Under the act, 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 act 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. An ICF/IID that uses medication aides must ensure that the aides do not have access to any schedule II controlled substances. Also, an employee of an ICF/IID that uses medication aides who reports in good faith a medication error at the facility 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.

Under continuing law, an individual may satisfy a medication aide certificate eligibility requirement by being a certified nurse aide. Under the act, an individual who is to practice as a medication aide in an ICF/IID may satisfy this eligibility requirement alternatively by having at least one year of direct care experience in an ICF/IID. 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.

⁵ R.C. 4723.32, 4723.64, and 4723.67.

In-home care workers

(R.C. 5123.47)

Under continuing law, a family member of an individual with a developmental disability may authorize an unlicensed in-home care worker to perform certain health care tasks. The act establishes the following additional health care tasks that a family member may authorize an in-home care worker to perform: 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 act establishes the following additional conditions that must be satisfied:

(1) The task must be completed in accordance with standard, written instructions.

(2) Performing 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) Performing the task must require no complex observation of the individual receiving the care.

(5) Improperly performing the task could result in only minimal complications that are not life threatening.

The act 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.

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

The act 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)⁶ and administered by the states. It serves infants and toddlers through age two with developmental delays or who have diagnosed physical or mental conditions with high probabilities of resulting in developmental delays.⁷ The Program previously was administered by ODH through the Help Me Grow Program.

The act designates ODODD (rather than ODH) to serve as the "lead agency" to implement the Program. Under federal law, each state governor must designate or establish a lead agency responsible for carrying out Part C Early Intervention Program duties.⁸ As the lead agency, ODODD may do any of the following:

--Enter into an interagency agreement with 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 service providers.

Rules

The act requires the ODODD Director 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 service provider;

--Operating standards and procedures for service providers, including standards and procedures governing data collection, program monitoring, and Program evaluation;

--Procedures to appeal the denial of an application to receive services or the termination of services;

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

⁷ U.S. Department of Education, *IDEA 2004: Building the Legacy*, available at <http://idea.ed.gov/part-c/search/new>.

⁸ 20 U.S.C. § 1435(a)(10).



- Procedures to appeal a decision by ODODD to deny an application to be a service provider or to terminate a provider's status;
- Procedures for addressing complaints by persons who receive services;
- Criteria for the payment of service providers; and
- The metrics or indicators used to measure provider performance.

Early Intervention Services Advisory Council

The act 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, it abolishes the Help Me Grow Advisory Council, which had served that purpose. Federal law requires a state to have an interagency coordinating council to receive Part C funds.⁹

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 act prohibits any member who represents ODH or ODODD from serving as the chairperson.

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. The Council is not subject to review by the Sunset Review Commission.

Data verification codes

The act transfers to the ODODD Director (from the ODH Director) authority to request a student data verification code for each child who receives services from Ohio's Part C Early Intervention Program. Under continuing law, 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 ask the child's parent or guardian for the name and address of the child's school district of residence. When a child stops receiving services from the Program, the Director must submit the child's data verification code to the child's school district of residence.

⁹ 20 U.S.C. § 1441(a)(1).

Consistent with continuing law, the Director and each school that receives a data verification code are 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, the act 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;

--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; 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, as appropriate in context.

Employees

The act specifies that an ODH employee who is assigned to the Program on June 30, 2016, is transferred to ODODD and retains all rights the employee has under law if a layoff occurs. The employee also retains all benefits 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 in its possession regarding the employee.

Equipment and assets

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

Appropriations changes

The act transfers a total of \$25.1 million in FY 2017 from ODH to ODODD.

Targeted case management

(Sections 610.10 and 610.11 (amending Section 259.110 of H.B. 64 of the 131st General Assembly))

Due to a change in reimbursement methodology, the act 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 act.

Property tax levies

Renewal and replacement levies

(R.C. 5705.192(B), 5705.222, and 5705.25)

The act 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 (generally higher) voted millage, meaning that a replacement levy generally will raise more revenue, than the levy it replaces did. 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, so that a renewal levy generally will continue to raise about the same amount as the levy being renewed did.



Purposes and terms of renewal and replacement levies

The act authorizes certain renewal and replacement developmental disabilities property tax levies to be for a different stated 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 disabilities 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 act, a renewal or 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 act authorizes either type of levy to be renewed or replaced by a levy for the "operational and capital costs" for which a 5705.222 levy may be imposed. Prior law generally permitted the renewal or replacement of a levy only if the new levy was for the same purpose as the levy being replaced.

Combined renewal levies

The act 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.

Purposes of developmental disabilities levies

(R.C. 5705.19 and 5705.222)

The act expands the stated purposes for which a 5705.222 levy may be imposed. Under prior law, 5705.222 levies could be used for the operation of developmental disabilities "programs and services by" a county DD board. The act instead authorizes 5705.222 levy funds to be expended on any "community program or service" authorized by the county DD board, even if the board itself does not operate the program or service. In addition, the act explicitly authorizes a levy to be for operational or capital costs, or both.

The act also removes references to "mental retardation" in relation to the purposes for which a developmental disabilities 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 disabilities purposes.



Developmental disabilities levy TIF reimbursement

(R.C. 5709.40(F), 5709.73(F), and 5709.78(E))

The act requires reimbursement of 5705.222 levy revenue foregone because of the creation of a tax increment financing (TIF) incentive district, with the reimbursement to be made from proceeds of the service payments remitted by owners of property located in the incentive district TIF. Previously, such reimbursement was required only for 5705.19(L) levies.

TIF is a mechanism available to municipalities, townships, and counties to finance public infrastructure improvements and, in certain circumstances, residential rehabilitation. TIFs operate by authorizing a county, municipal corporation, or township to grant a real property tax exemption with respect to the incremental increase in assessed valuation of designated parcels. Owners of the property make payments in lieu of taxes to the political subdivision that created the TIF equal to the taxes that would otherwise have been paid ("service payments"). Some portion of the payments are used to reimburse other taxing units for various specified purposes, as the act requires for 5705.222 DD levies.

Combined replacement levies

(R.C. 5705.192(D))

The act authorizes taxing authorities to combine more than two existing levies into a single replacement levy. Prior law authorized only two such levies to be combined into a single replacement levy. The provision applies to replacement levies for any purpose, not just those for developmental disabilities purposes.

"ABLE" disability savings accounts

The act makes several changes to the 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.

Background

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 the account must be used to pay qualified disability expenses of the beneficiary. Once money is contributed to an account, earnings on that money are



exempt 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 program, see LSC's Final Analysis of H.B. 155 of the 131st General Assembly.¹⁰

ABLE account contributions tax deduction

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

The act authorizes an income tax deduction for contributions to an ABLE account. The deduction is available for contributions to accounts opened under Ohio's program and is limited to \$2,000 per year for each beneficiary. If a taxpayer contributes more than \$2,000 in a year, the taxpayer may carry forward and deduct that excess in future 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 deduction for contributions to an account created under the state's "529" college savings program.

Other states' accounts

(R.C. 113.50, 113.51, 113.52, 113.53, and 113.54)

The act authorizes residents of other states to open ABLE accounts under Ohio's program. Under prior law, generally only Ohio residents could open an Ohio ABLE account. 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 make their ABLE account programs available to nonresidents.¹¹

Additionally, the act authorizes the Treasurer of State to enter into agreements with other states, or their local governments or residents, 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 act 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

¹⁰ <https://www.legislature.ohio.gov/download?key=3127&format=pdf>.

¹¹ Consolidated Appropriations Act of 2016, P.L. 114-113, Sec. 303 (2015).



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 act 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.

Disability History and Awareness Month

(R.C. 5.234)

The act designates October as "Disability History and Awareness Month." It encourages schools to provide instruction and events during that month that are focused on disability history, people with disabilities, and the disability rights movement.

Medicaid waiver nursing services, medically fragile siblings

(R.C. 5166.041 (primary) and 5166.01)

A Department of Medicaid rule limits nursing services provided in a group visit to a ratio of one provider to three Medicaid recipients.¹² The act increases the ratio to one to four if the services are provided to medically fragile children who are siblings, reside together in their caretaker relative's home, and are enrolled in a Medicaid home and community-based waiver component that covers nursing services.

A "medically fragile child" is an individual who is under 18, has intensive health care needs, and is considered blind or disabled under the federal law governing the Supplemental Security Income program.

Removing behavioral health services from nursing facilities' costs

(R.C. 5165.01)

To conform the law to existing practice, the act removes behavioral and mental health services from nursing facilities' direct care costs for purposes of Medicaid payments. Instead, Medicaid providers that provide behavioral and mental health

¹² Ohio Administrative Code 5160-12-04.



services to Medicaid recipients residing in nursing facilities are authorized to bill Medicaid rather than nursing facilities for the services.

Certificate of need to relocate beds

(Section 737.10)

The act requires the ODH Director to accept for review a certificate of need (CON) application to which all of the following apply:

(1) The application is for the establishment, development, or construction of a new long-term care facility.

(2) The new long-term care facility's beds are to come from a former county home or former county nursing home (a) that was an existing long-term care facility on or before October 1, 2015, and (b) for which the operator certified to the Director the number of long-term care beds that were in operation in the home on July 1, 1993.

(3) The application is submitted to the Director during the period beginning October 1, 2015, and ending January 10, 2017.

The ODH Director is prohibited from denying the application on the grounds that the former county home or former county nursing home from which the long-term care beds are being relocated closed and ended its participation in Medicare and Medicaid.

Delayed effective date of ADAMHS board continuum of care revisions

(R.C. 340.034 and 5119.25; Sections 610.10 and 610.11 (amending Sections 110.12 and 812.40 of H.B. 64 of the 131st General Assembly), Sections 610.25 and 610.26 (amending Section 812.40 of H.B. 483 of the 130th General Assembly), and Section 812.40)

The act delays until July 1, 2017, the effective date of recent revisions to laws governing the continuum of care to be provided by local alcohol, drug addiction, and mental health services (ADAMHS) boards. These revisions – enacted in 2014 and 2015 – originally were scheduled to take effect September 15, 2016.

The same delay implemented by this act also is implemented by S.B. 129 of the 131st General Assembly, which passed the General Assembly on the same day as this act.



Description of delayed revisions

In general, the revisions to the law governing the continuum of care delayed by the act:

(1) Required that the addiction and mental health services that are part of the continuum of care include intensive and other supports, recovery support, prevention and wellness management, sub-acute detoxification, and an array of treatment and support services for all levels of opioid and co-occurring drug addiction;

(2) Required that the array of treatment and support services for all levels of opioid and co-occurring drug addiction include at least ambulatory and sub-acute detoxification, nonintensive and intensive outpatient services, medication-assisted treatment, peer mentoring, residential treatment services, recovery housing, and 12-step approaches;

(3) Established requirements and options for the recovery housing that is part of the array of treatment and support services, including requirements regarding who may and may not own and operate the recovery housing and an expansion of the definition "recovery housing" to include housing for individuals recovering from alcoholism as well as drug addiction;

(4) Required an ADAMHS board's proposed budget to identify funds the board has available for the array of treatment and support services required to be included in the continuum of care;

(5) Required the Department of Mental Health and Addiction Services to disapprove an ADAMHS board's proposed budget if the proposed budget would not make available in the board's service district the essential elements required to be included in the continuum of care;

(6) Required the Department to withhold funds otherwise to be allocated to an ADAMHS board if the board's use of federal or state funds fails to comply with the board's approved budget and if the Department disapproves all or part of the board's annual community addiction and mental health services plan, budget, or statement of services;

(7) Established duties for community addiction services providers regarding the treatment and support services required to be included in an ADAMHS board's continuum of care, including requirements regarding waiting lists and reports of information to ADAMHS boards;



(8) Required ADAMHS boards to compile the information they receive from community addiction services providers and to make certain determinations regarding denied applications for services included in the array of treatment and support services for all levels of opioid and co-occurring drug addiction;

(9) Required ADAMHS boards to report to the Department the information they compile and determine and all other information the Department requires;

(10) Required the Department to make the reports it receives from ADAMHS boards available on its website.

JFS earmark carry over

(Sections 610.10 and 610.11 (amending Section 305.198 of H.B. 64 of the 131st General Assembly))

The current operating budget act includes in the Department of Job and Family Services' budget a \$500,000 earmark for FY 2016 and another \$500,000 earmark for FY 2017 to (1) establish a pilot program to implement, in Cuyahoga County, reforms to the work requirements of the Ohio Works First program and the Supplemental Nutrition Assistance Program (SNAP) and (2) provide services to SNAP recipients who face significant barriers to employment. The earmarks use state funds appropriated for the Temporary Assistance for Needy Families program.

The Director of Job and Family Services must certify to the Director of Budget and Management the unexpended, unencumbered portion of the earmark at the end of FY 2016. The amount certified is appropriated to the Department for the same purpose for FY 2017.

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.¹³

¹³ *State v. White*, 132 Ohio St.3d 344 (2012).

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

HISTORY

ACTION	DATE
Introduced	03-03-16
Reported, H. Finance	05-11-16
Passed House (96-0)	05-11-16
Reported, S. Finance	05-25-16
Passed Senate (33-0)	05-25-16
House concurred in Senate amendments (93-3)	05-25-16

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