



H.B. 215

123rd General Assembly
(As Introduced)

Rep. Terwilleger

BILL SUMMARY

Creation and operation of the Personal Assistance Services Program

- Provides for the creation and operation with Medicaid funds of a home- and community-based Personal Assistance Services Program within the Department of Human Services, subject to federal approval of a waiver authorizing the program.
- Provides that program services are available 24 hours a day, seven days a week, and include hygiene and eating assistance, household maintenance, health-related tasks, personal safety activities, and transportation.
- Establishes income eligibility limits for the program, copayment requirements, application procedures, privacy protections, and alternative methods for selecting, employing, and paying personal assistants.
- Authorizes a personal assistant, after training by a program participant, to perform health-related tasks for the participant without obtaining a license that is otherwise required to perform such tasks.
- Creates a 17-member Personal Assistance Services Policy Council, and requires it to develop a plan to implement the Personal Assistance Services Program.
- Requires the Department of Human Services to assess the program using a quality measuring instrument approved by the policy council.
- Makes an appropriation to the Rehabilitation Services Commission.

Other provisions

- Subject to federal approval if necessary, requires that all the state's Medicaid home- and community-based services waiver programs include a process authorizing an individual receiving services to participate in decisions regarding the services to be provided, to direct the services, and to train an assistant to provide health-related services for which a license under the Nursing Law is otherwise required.
- Allows representatives of centers for independent living to participate in nursing facility pre-admission assessments or determinations made by the Departments of Human Services, Mental Health, and Mental Retardation and Developmental Disabilities.

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CONTENT AND OPERATION

Personal Assistance Services Program

(R.C. Chapter 5116.)



The bill requires the Director of Human Services to apply to the U.S. Secretary of Health and Human Services for a waiver authorizing the creation and operation of the Personal Assistance Services Program with Medicaid funds. Under the program, personal assistants provide services in a participant's home or community (or both) in lieu of the participant (1) residing in a nursing facility, an intermediate care facility for the mentally retarded, or a developmental center operated by the Department of Mental Retardation and Developmental Disabilities, or (2) participating in another home- and community-based services waiver program.¹ The program is to be administered in accordance with a plan developed by a Personal Assistance Services Policy Council that the bill creates.

Services provided under the program

(R.C. 5116.13(B) and 5116.20)

Subject to available funding, the following services are provided under the Personal Assistance Services Program:

--Personal care services, including assistance with eating, bathing and other personal hygiene activities, dressing and grooming, lifting and transferring, and bowel and bladder care;

--Household services, including assistance with meal preparation, shopping, cleaning, laundry, child care, and other activities related to maintaining a household;

--Cognitive services, including assistance with money management, use of medication, remembering to perform activities of daily living, and other activities related to cognitive behavior;

--Personal safety services, including checking that appliances are turned off and that a telephone is within reach when a participant is to be alone at home;

--Mobility services, including driving, acting as an escort, and performing other services that aid with mobility;

--Assistance with health-related tasks;

¹ *Other Medicaid home- and community-based services waiver programs include the PASSPORT program administered by the Department of Aging (R.C. 173.40) and the Individual Options and "OBRA" programs administered by the Department of Mental Retardation and Developmental Disabilities (R.C. 5111.87 and 5111.88, respectively). For additional information on these programs, see below under "**New requirements for Medicaid waiver programs; Nursing Law exemption.**"*

--Training of a personal assistant by another personal assistant to provide services to a participant consistent with the participant's needs;

--Other services identified by the Personal Assistance Services Policy Council that are designed to protect the freedom, liberty, independence, health, safety, and well-being of participants, including supervision, training, assistance in meeting developmental needs, and crisis assistance.

Services are available to participants 24 hours a day, seven days a week.

Eligibility and other terms of participation

(R.C. 5116.03, 5116.17, and 5116.19)

To be eligible for the program, an individual must have an adjusted gross income for state income tax purposes that does not exceed 300% of the Supplemental Security Income (SSI) benefit payable under federal Social Security laws to an individual residing in the individual's own home who has no income or resources. Currently, this SSI benefit is \$500 per month, so 300% of the benefit is \$1,500 per month or \$18,000 per year. In addition, the individual at the time of application must (1) reside in a nursing facility, intermediate care facility for the mentally retarded, or developmental center due to a disability, (2) be at imminent risk of being placed into a nursing facility after an assessment conducted under the state pre-admission screening program determines the individual needs the level of care provided by a nursing facility due to a disability, or (3) participate in another home- and community-based services waiver program.

Participants in the program are required to pay a copayment or other cost-sharing expense as a condition for receiving personal assistance services if the participant's adjusted gross income exceeds the SSI benefit payable to an individual residing in the individual's own home who has no income or resources (i.e., \$500 per month or \$6,000 per year). The amount of the copayment or other cost-sharing expense is to be specified in the Personal Assistance Services Policy Council's implementation plan for the program.

The bill requires the Director of Human Services, in applying for the initial waiver to establish the program, to request that at least 2,500 individuals be able to participate. If the need for the program expands, the Director is authorized to seek permission from the federal government to allow more participants.

The bill specifies that no individual can be denied eligibility for the program on the basis of the individual's age or type of disability or medical diagnosis.

Individualized service plans

(R.C. 5116.25 and 5116.26)

A participant's services in the program are to be provided in accordance with an individualized service plan that specifies all of the following:

- The participant's goals under the program;
- The personal assistance services that are to be provided;
- The number of hours the participant is to receive the services;
- The manner in which the participant's personal assistant is to be selected and employed (see below under "**Obtaining a personal assistant**");
- That a personal assistant will be available as a temporary substitute when the participant's regular assistant is unavailable;
- The method by which the cost of services provided the participant are to be paid (see below under "**Procedures for paying for personal assistance services**");
- The amount of copayment or other cost-sharing expense for which the participant is responsible;
- The method of performing an evaluation to determine whether a health care professional must periodically reassess the participant's condition and needs and, if reassessments are necessary, the frequency with which a health care professional will conduct them;
- The mechanism by which the participant's personal assistance services are to be coordinated with other health care services the participant receives;
- That the participant's services are to be assessed to determine whether they meet specified quality standards (see below under "**Measuring program quality**").

The Department of Human Services is required to develop each participant's individualized service plan jointly with the participant or the participant's representative. (The bill authorizes an individual to act on behalf of a participant in the program as the participant's representative. The representative can be a member of the participant's family, the participant's attorney or guardian, or any other individual the participant chooses. Henceforth in this analysis, a reference to an action taken by a participant in the program can be read to include an action

taken by the participant's representative.) At the participant's discretion, family members of the participant may assist in developing the plan. At least annually, the department and participant must review the plan pursuant to the reassessment of the participant's condition and needs by a health care professional. At such a reassessment, the health care professional must determine whether the plan should be changed. If the department and participant agree to a proposed change when reviewing the reassessment, the plan can be changed.

After a plan is developed and after each review, the department and participant must sign it, and the department must provide the participant a copy in writing or another appropriate and understandable format.

Application process for participants

(R.C. 5116.01(B), 5116.15, and 5116.16)

The bill requires the Department of Human Services to contract with centers for independent living to be local Personal Assistance Services Program application centers. A "center for independent living" is defined as a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that is designed and operated within a local community by individuals with disabilities and that provides an array of independent living services.

On request, an application center must provide an individual interested in the program informational materials and a copy of the application. An individual can submit a completed application to an application center or to the department. If submitted to an application center, the center must forward the application promptly to the department.

Obtaining a personal assistant

(R.C. 5116.28 through 5116.30)

Participants in the program can select a personal assistant employed by a government or private entity, or can employ the assistant themselves. For an assistant employed by a government or private entity, the bill specifies that the participant has the right to direct the services the assistant provides and to determine when a particular assistant will no longer provide services to the participant. The participant can request that the entity employ a particular individual as the participant's personal assistant.

The bill also allows a participant to request that a family member be the participant's personal assistant. In this case, the personal assistant must be employed by a home health agency that is certified as a provider of home health

services under federal law or accredited by the Joint Commission on Accreditation of Healthcare Organizations. For the bill's purposes, a "family member" is a spouse; parent, child, or sibling; stepparent, stepchild, or stepsibling; parent-in-law, son- or daughter-in-law, or brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

A participant who chooses to directly employ a personal assistant can enter into an agreement with a government or private entity to have the entity manage one or more aspects of the assistant's employment. Such agreements are not required, and the participant can choose to manage all aspects of the employment. In any case, the bill specifies that the participant is the assistant's employer of record regardless of which aspects of the employment are managed by a government or private entity.

A participant needing more than one personal assistant is not required to choose the same employment method for each one.

Criminal records checks for personal assistants

(R.C. 109.57, 2953.32, 3701.881, and 5116.31)

The bill authorizes an employer that is giving final consideration to hiring an applicant for a position as a full-time, part-time, or temporary personal assistant to request that the Superintendent of the Bureau of Criminal Identification and Investigation conduct a criminal records check on the applicant. A government or private entity acting as the employer must request a check if asked to do so by a participant in the program. The request to the superintendent must be made in accordance with procedures established in rules adopted by the Attorney General. The applicant is required to cooperate with the criminal records check as a condition of being employed as a personal assistant. If the employer is a home health agency, it must request the criminal records check in accordance with the Home Health Agency Law.

Not more than 30 days after a criminal records check is requested, the superintendent is required to determine whether information revealing that the applicant has a criminal record exists. The superintendent must provide the employer any information that exists, except information the dissemination of which is prohibited by federal law. If a participant in the program requested the records check, the employer must forward the information to the participant.

An employer requesting a criminal records check must pay the fee established by the Attorney General for such checks. The employer can pass the fee through to the applicant if the Personal Assistance Services Program does not reimburse the employer for it.

The bill specifies that any information provided as part of a personal assistant criminal records check is not a public record for purposes of the Public Records Law.

Procedures for paying for personal assistance services

(R.C. 5116.01(C) and 5116.27)

The bill requires participants to choose one of five methods for paying the costs of personal assistance services. Such costs include the personal assistant's wages and benefits, and any employer taxes. The methods are (1) having the Department of Human Services administer payment, (2) using an individual or agency selected by the participant as a fiscal intermediary to administer payment with funds provided by the department, (3) having the participant administer payment with reimbursements or vouchers provided by the department, (4) using some combination of the participant, department, and a fiscal intermediary to perform various payment duties as agreed upon by those parties, or (5) having the costs paid in another manner agreed to by the participant and department.

The bill specifies that costs of personal assistance services do not include administrative costs incurred by the Department of Human Services or the Personal Assistance Services Policy Council.

Mandatory performance of health-related tasks

(R.C. 5116.01(F) and 5116.36)

The bill provides that no personal assistant, and no government or private entity that employs a personal assistant, can receive funding under the Personal Assistance Services Program unless the assistant or entity implements a mechanism for the assistant to perform health-related tasks needed by participants. The mechanism must include procedures for performing the tasks in the homes and communities of participants. "Health-related tasks" are defined as those performed to preserve or improve an individual's health and that can be performed safely by a qualified individual who is not licensed as a health care professional, including such things as dispensing medication, ventilator care, and tube feeding.

The bill provides that a personal assistant can perform a health-related task only if the assistant is qualified to perform the task through one of the following:

--Delegation of the task by a physician;

--Delegation of the task by a registered nurse in accordance with the Nursing Law and rules adopting under that law;

--Training of the assistant by a participant to perform the task for the participant. With such training, the assistant can perform the task notwithstanding any provision of the Revised Code requiring a license to practice a health care profession.

Protecting participants' rights

(R.C. 5116.35)

Each personal assistant or government or private entity that employs a personal assistant is required to protect participants' right to privacy and confidentiality in maintaining records. Assistants and employers also must ensure that participants are fully informed of and afforded all rights and options with respect to selecting, directing, and changing personal assistance services.

Administrative agency within the Department of Human Services

(R.C. 5116.12 and 5116.13)

The bill requires the Director of Human Services to establish an office, division, bureau, or section within the Department of Human Services to be the Personal Assistance Services Program administrative agency.

In addition to the other duties described in this analysis for the Department of Human Services, the administrative agency is required to do all of the following:

--Provide for the program to be responsive to the desires and preferences of participants and attempt to ensure that program services are of reasonably consistent quality throughout the state;

--Make eligibility determinations for the program;

--Provide for a personal assistant to be available to provide services to a participant as a temporary substitute or during an emergency when the participant's regular assistant is unavailable;

--Offer participants service coordination, case management services, and training on how to select, manage, and dismiss personal assistants;

--Provide application centers with copies of the application for and materials about the program as developed by the Personal Assistance Services Policy Council;

--Adopt rules in accordance with the Administrative Procedure Act as necessary to implement the program.

Appealing a Department of Human Services decision

(R.C. 5101.35 and 5116.18)

Current law requires the Department of Human Services to grant a hearing to a person who appeals under federal or state law a decision or order of an agency administering a human services program. The bill specifies that the hearing requirement applies to the Personal Assistance Services Program. A program participant must be afforded a fair hearing if aggrieved by a decision made by the department regarding the program.

Measuring program quality

(R.C. 5116.40)

The Department of Human Services is required to assess the quality of the Personal Assistance Services Program using a measuring instrument developed by the Personal Assistance Services Policy Council. The measuring instrument must determine how well the program does the following:

- Improves participants' integration into the community;
- Increases participants' mobility;
- Increases participants' productivity or self-direction;
- Protects participants' health and safety without infringing on their right to take risks;
- To the maximum extent possible, protects participants against abuse, neglect, and exploitation;
- Enables participants to address their concerns and preferences in individualized services plans;
- Assists participants in meeting the goals specified in their individualized services plans;
- Assists participants in meeting other goals that participants and the department consider appropriate;
- Meets the expectations of the participants.

Creation of Personal Assistance Services Policy Council

(R.C. 5116.05 through 5116.08; Section 3)

The bill creates a 17-member Personal Assistance Services Policy Council, and charges it with developing a plan for the implementation of the Personal Assistance Services Program. The council is to consist of the following members:

--The Directors of Human Services, Aging, and Mental Retardation and Developmental Disabilities, or their respective designees;

--The Director of the Rehabilitation Services Commission or the director's designee;

--A member of the Ohio Independent Living Council (a board established by the governor pursuant to the federal "Rehabilitation Act Amendments of 1992");

--One representative each from the organizations known as American Disabled for Attendant Program Today, ARC of Ohio, Ohio Advocates of Mental Health, and Families for Acceptable Care and Treatment;

--One representative each from the Personal Assistance Services Coalition, Ohio Association of Centers for Independent Living, Ohio Brain Injury Association, and Ohio Developmental Disabilities Alliance for Service Eligibility;

--Two Personal Assistance Services Program participants who are not affiliated with any of the organizations represented on the Council;

--Two representatives of the general public who are not affiliated with any of the organizations represented on the Council, not more than one of whom can be a Personal Assistance Services Program participant.

The governor is required to appoint the members of the policy council, and to ensure that more than half of the council members are program participants. All of the members who represent named organizations must be program participants or representatives of program participants. Each organization is required to nominate up to three individuals to serve as its representative, and the organizations as a group must jointly nominate up to six individuals to serve in the two slots for personal assistance services program participants who are not affiliated with any of the organizations. The governor must choose the members from the nominated individuals. But the governor can refuse to appoint any of an organization's nominees, in which case the organization must make additional nominations until one is satisfactory to the governor. For the initial appointments

of members who are required to be program participants, the governor is to appoint individuals who would be eligible for the program if it already were established.

The governor is required to make initial appointments to the council not later than 60 days after the bill's effective date. Of the initial appointments, four must be for terms of one year, four for terms of two years, and five for terms of three years. Thereafter, terms are for three years, with each term ending on the same day of the same month as the term it succeeds. A member holds office from the date of appointment until the end of the term for which appointed. Members can be reappointed, but cannot serve more than two consecutive three-year terms. Vacancies are to be filled in the manner provided for original appointments, and a member appointed to fill a vacancy occurring prior to the expiration of a term holds office for the remainder of that term. A member continues in office after the expiration of the member's term until the member's successor takes office or 60 days have elapsed, whichever occurs first.

The Sunset Law does not apply to the policy council. Generally under that law, state boards, commissions, and similar bodies expire four years after their creation unless reauthorized by the General Assembly.

Plan for implementing the program

(R.C. 5116.09 and 5116.10)

The bill requires the governor to convene a meeting of the Personal Assistance Services Policy Council within 15 days after completing the initial appointments. At the meeting, the council must elect a chairperson from among its members.

Not more than four months after the first meeting, the council must develop the plan for implementing the Personal Assistance Services Program. At a minimum, the plan is to provide for or specify all of the following:

- Informational materials about the program, and the application for it;
- Copayments and other cost-sharing expenses (the design of which must not discourage participants from being employed);
- Personal assistance services to be available under the program, in addition to those listed above under "**Services provided under the program**";
- Approval of the quality measuring instrument to be utilized by the Department of Human Services in assessing the program;

--The minimum amount of wages to be paid to personal assistants.

Report to the General Assembly

(Section 4)

The bill requires the Personal Assistance Services Policy Council, by December 31, 2001, to report to the General Assembly on the implementation and administration of the Personal Assistance Services Program.

New requirements for Medicaid waiver programs; Nursing Law exemption

(R.C. 5111.89)

The bill, subject to the approval of the U.S. Secretary of Health and Human Services when such approval is necessary, requires that the state's Medicaid home- and community-based services waiver programs include a process authorizing each individual receiving services to participate in decisions regarding the services to be provided the individual, and to direct the services. In addition, the process must authorize the individual to train the assistant who provides his or her services how to provide health-related services for which a license under the Nursing Law (R.C. Chapter 4723.) is otherwise required. The bill authorizes the assistant to provide the individual health-related services in accordance with that training without obtaining such a license.

The new requirements apply to the following Medicaid home- and community-based services programs:

--The PASSPORT Program, for individuals aged 60 or older who because of age or disability would otherwise need to reside in an intermediate care facility, nursing facility, or skilled nursing facility (R.C. 173.40);

--The Individual Options Program, for individuals with mental retardation or a developmental disability who would otherwise need to reside in an intermediate care facility for the mentally retarded (R.C. 5111.87);

--The "OBRA" Program, also called the Waiver VII Program, for individuals with mental retardation or a developmental disability who would otherwise need to reside in a nursing facility (R.C. 5111.88);

--Any other current or future waiver program operated by the Department of Human Services or another agency pursuant to an interagency agreement with the department.

The bill requires the Director of Human Services to seek federal permission to change the current waiver programs as necessary to comply with the new requirements.

Center for independent living participation in nursing facility assessments

(R.C. 5101.75, 5111.202, 5111.204, 5119.061, and 5123.021)

Current law authorizes the Department of Human Services to require a Medicaid recipient applying for or intending to apply for admission to a nursing facility to undergo an assessment to determine whether the person needs the level of care provided by a nursing facility.² A person who is not a Medicaid recipient also can be assessed to determine whether the person is in need of nursing facility services or whether an alternative source of long-term care is more appropriate. If a person seeking admission to a nursing facility is mentally ill or mentally retarded, the Department of Mental Health or Department of Mental Retardation and Developmental Disabilities is required to determine whether the person requires the level of service provided by a nursing facility and, if so, whether the person also requires specialized services for mental illness or mental retardation. Additionally, if a nursing facility notifies the Department of Mental Health or Department of Mental Retardation and Developmental Disabilities that a mentally ill or mentally retarded resident's mental or physical condition has changed significantly, the department must redetermine whether the resident requires the nursing facility's level of services.

The bill allows a representative of a center for independent living to participate in any of these assessments or determinations. If the representative requests to participate, the Department of Human Services, Department of Mental Health, or Department of Mental Retardation and Developmental Disabilities cannot deny the request.

Criminal records check correction

(R.C. 109.57)

Current law requires the Superintendent of the Bureau of Criminal Identification and Investigation to respond to requests for criminal records checks

² A "nursing facility" is defined as a facility, or a distinct part of a facility, that is certified as a nursing facility by the Director of Health in accordance with Title XIX of the Social Security Act and is not an intermediate care facility for the mentally retarded. It includes a facility that is so certified and that also is certified as a skilled nursing facility by the director in accordance with Title XVIII of the Social Security Act.

for applicants for employment in certain positions (1) with county boards of mental retardation and developmental disabilities or agencies that contract with such boards, (2) that involve providing direct care to older adults, or (3) that involve responsibility for the care, custody, and control of a child. (R.C. 109.572, not in the bill.) But the law does not expressly require the superintendent to procure and file the information on crimes that is utilized when checking the backgrounds of such applicants, or require clerks of court and persons in charge of jails and correctional institutions to assist the superintendent in procuring the information. The bill corrects this omission.

HISTORY

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