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Bill Analysis
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Reps. Calvert, Clancy, Tiberi, Buehrer, Amstutz, Aslanides, Ford, Verich, Hartnett, Jones, O'Brien, Roman, Boyd, Austria, Salerno, Krupinski, Patton, Core, Widener, Olman, Winkler, Jerse, Hoops, Terwilleger, Britton, Barrett

BILL SUMMARY

- Changes the criminal records check requirements for Department of Mental Retardation and Developmental Disabilities (DMRDD) employees and for certain employees of contractors with county boards of mental retardation and developmental disabilities (MRDD).
- Revises the law governing criminal records checks conducted by the Bureau of Criminal Identification and Investigation.
- Permits county MRDD boards to continue to perform certification and registration of their employees on behalf of DMRDD.
- Changes the law governing audits of and payment agreements with providers of services or programs to DMRDD and accreditation by DMRDD of services or programs offered by county MRDD boards.
- Provides that a contractor is not required to repay DMRDD the amount received pursuant to a retroactive rate increase DMRDD granted in April 1997.
- Extends the expiration date of the Joint Council on Mental Retardation and Developmental Disabilities from December 31, 2001, to December 31, 2004.
- Makes other changes in laws governing DMRDD and county MRDD boards.

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CONTENT AND OPERATION

Criminal records checks

Criminal records checks for DMRDD and county MRDD board employees

(secs. 109.57, 109.572, 5123.081, and 5123.28; Section 3)

Background. Existing law requires the superintendent of a county board of mental retardation and developmental disabilities (county MRDD board) to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of each applicant for employment with the board. An exception is that a criminal records check need not be requested for a county MRDD board employee who is being considered for a different position or is returning after a leave of absence or seasonal break in employment, as long as the superintendent has no reason to believe that the employee has committed any of the offenses listed or described below. The superintendent may also request that any other state or federal agency provide a written report regarding the criminal record of the applicant. Further, with regard to an applicant who becomes an MRDD board employee, if the employee holds an occupational or professional license or other credentials, the superintendent may request that the state or federal agency that regulates the employee's occupation or profession supply the superintendent with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or renewing the employee's license or other credentials. Finally, a county MRDD board superintendent must request that the Registrar of Motor Vehicles provide a certified abstract regarding the record of convictions for violations of motor vehicle laws of any applicant who will be required by employment to (1) transport individuals with mental retardation or another developmental disability or (2) operate the county MRDD board's vehicles for any other purpose.

A county MRDD board is not permitted to employ a person who has been convicted of or pleaded guilty to any of the offenses specified in the law, unless rules adopted by the Director of the Department of Mental Retardation and Developmental Disabilities (DMRDD) specify circumstances under which it is permissible to hire an applicant who meets rehabilitation standards set by the

department.¹ But a county MRDD board may employ an applicant pending receipt of the reports requested under the law.

Before hire, the county MRDD board superintendent must require the applicant to submit a statement attesting that the applicant has not been convicted of or pleaded guilty to any of the offenses listed or described in the law. The superintendent must also require that the applicant sign an agreement in which the applicant agrees to notify the superintendent if, while employed with the county MRDD board, the applicant is formally charged with any of those offenses. The agreement must inform the applicant that failure to report formal charges, a conviction, or a guilty plea may result in the applicant being dismissed from employment. The superintendent must terminate the applicant's employment if it is determined that the applicant failed to inform the superintendent that the applicant has been convicted of or pleaded guilty to any of the offenses listed below.

Current law also prohibits any appointing officer from appointing a person to a classified or unclassified position in DMRDD if the person has been convicted of or pleaded guilty to any of the following: (1) any felony, or a crime constituting

¹ *The disqualifying criminal offenses are the following: aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, failing to provide for a functionally impaired person, aggravated menacing, patient abuse, gross patient neglect, patient neglect, kidnapping, abduction, criminal child enticement, rape, sexual battery, corruption of a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring, prostitution, prostitution after a positive HIV test, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, aggravated robbery, robbery, aggravated burglary, burglary, unlawful abortion, endangering children, contributing to the unruliness or delinquency of a child, domestic violence, carrying concealed weapons, having weapons while under disability, improperly discharging a firearm at or into a habitation or in a school safety zone, corrupting another with drugs, numerous types of "trafficking in drugs" offenses, illegal manufacture of drugs or illegal cultivation of marihuana, various funding of drug or marihuana trafficking offenses, illegal administration or distribution of anabolic steroids, placing harmful or hazardous objects or substances in or furnishing adulterated food or confections, child stealing as it existed prior to July 1, 1996, interference with custody that would have been the offense of child stealing as it existed prior to July 1, 1996, various types of possession of drugs offenses that are not a minor drug possession offense, or the former offense of felonious sexual penetration; a felony contained in the Revised Code that is not specifically listed above, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled; or a violation of any existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses or violations listed or described above.*

a misdemeanor of the first degree on the first offense and a felony on subsequent offenses, contained in the Revised Code, if the felony or misdemeanor bears a direct and substantial relationship to the position being filled or (2) a violation of an existing or former law of Ohio, any other state, or the United States, if the law violated is substantially equivalent to any offense described in (1). The Director of DMRDD or an appointing officer is required to request that BCII or any other state or federal agency supply the Director or officer with a written report regarding the criminal record of any applicant who is under final consideration for a position with the Department.

The bill. The bill repeals the existing provisions concerning prospective DMRDD employees and, modeled on the law for conducting criminal records checks of persons employed by a county MRDD board, requires the DMRDD Director to request that the BCII Superintendent conduct a criminal records check of each applicant for employment in a position with the DMRDD. The new requirements apply only to persons who apply for appointment or employment after the bill's effective date.

The bill also makes several changes to the criminal records check provisions concerning county MRDD board employees and extends those changes to the new provisions governing DMRDD employees. The bill includes as applicants for purposes of both DMRDD and county MRDD boards persons who are being transferred to the Department or board and employees who are being recalled or reemployed after a layoff. It adds to the disqualifying offenses any offense contained in the Revised Code that constitutes a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided and violations of existing or former municipal ordinances that are substantially equivalent to the specified offenses. The bill requires that the employee notify the DMRDD Director or county MRDD board superintendent *within 14 days* of any formal charge, *conviction, or plea of guilty* that concerns one of the disqualifying offenses. Finally, the bill requires a county MRDD board superintendent to provide a copy of each report or abstract obtained under the criminal records check provisions pertaining to board applicants only at the Director's request, rather than always, as required by current law.

Criminal records checks for certain employees of contractors with county MRDD boards

(sec. 5126.281)

Current law generally requires an entity that is under contract with a county MRDD board and that provides "direct services" to individuals with mental retardation or a developmental disability to conduct criminal records checks, in the same manner as county MRDD boards must conduct those checks for their applicants for employment, for all persons under final consideration for employment with the contracting entity in a position that involves providing services directly to such individuals. The bill maintains the current exceptions to this requirement and also *exempts* from the requirement a person who will provide only respite care under a family support services program established under existing law and is selected by a family member of the individual who is to receive the respite care.

The bill adopts a new term to describe individuals who provide direct services and the nature of those services. It refers to employment in a "direct services position," which means an employment position in which the employee has physical contact with, the opportunity to be alone with, or exercises supervision or control over one or more individuals with mental retardation or a developmental disability. The bill also refers to contracting entities providing "specialized services" to individuals pursuant to the contract with a county MRDD board (instead of "direct services" under current law). "Specialized services" means any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by an entity licensed or certified by the DMRDD. If there is a question as to whether a contracting entity is providing specialized services, the contracting entity may request that DMRDD's Director make a determination, and the Director's determination is final.

Changes in the BCII Law regarding criminal records checks

(secs. 109.572 and 109.58)

Tangible and electronic formats for criminal records check forms.

Current law requires the BCII Superintendent to prescribe a form to obtain the information necessary for BCII to conduct a criminal records check. The bill allows the form to be in a tangible format, in an electronic format, or in both formats.

Other methods to obtain fingerprint impressions.

Current law also requires the Superintendent to prescribe standard impression sheets to obtain the fingerprint impressions of any person for whom a criminal records check is required. The bill allows the Superintendent to prescribe other methods to obtain the fingerprint impressions of any person for whom a criminal records check is so required or of any person for whom any other criminal records check is requested

of the Superintendent for employment or licensing purposes. Under the bill, these standard impression sheets or other methods that the Superintendent prescribes may be in a tangible format, in an electronic format, or in both formats. The bill also authorizes the Superintendent to prescribe methods for capturing, entering, and transmitting fingerprint impressions and other descriptive information in an electronic format.

Determining who is disqualified (sec. 109.572). The bill makes clear that the BCII Superintendent merely provides the person, board, or entity that requested a criminal records check with the results of the check, and it is the person, board, or entity that receives the results that determines whether the person who is the subject of the check is disqualified from holding the position or license sought.

Conforming changes

(secs. 109.57, 109.59, 109.60, 173.41, 2151.86, 3301.32, 3301.541, 3301.88, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5126.28, and 5153.111.)

The bill amends a number of Revised Code sections to recognize that methods other than standard impression sheets may be used for obtaining fingerprint impressions in the course of the conduct of criminal records checks through the BCII. The bill also clarifies that the FBI only provides fingerprint-based information when the BCII Superintendent contacts the FBI to obtain information as part of a criminal records check. The bill relatedly requires the BCII Superintendent to request from the FBI any fingerprint-based information it has with respect to the person who is the subject of a criminal records check only (1) on request and (2) if the criminal records check is required by a section of the Revised Code.

Alternate certification and registration programs for county MRDD board employees

(sec. 5126.252; Section 7)

Current law generally provides that no person can be employed or compensated by a county MRDD board who does not hold the certificate, evidence of registration, or license required for the position under the rules of DMRDD or the State Department of Education (sec. 5126.26, not in the bill). The bill provides that, notwithstanding this and related provisions, DMRDD may authorize county MRDD boards to establish and administer in their counties programs for the certification and registration of persons for employment by the boards and entities contracting with the boards. A certificate or evidence of

registration issued by a board participating in programs under this type of DMRDD authorization has the same effect as a certificate or evidence of registration issued by the DMRDD.

Uncodified law that expired June 30, 1999, authorized DMRDD to exercise the power described in the immediately preceding paragraph by means of pilot projects. The bill specifies that the provisions that it enacts revive the uncodified law, except that, under the bill, the provisions are in the Revised Code and programs authorized by the DMRDD are not limited to pilot projects.

Accreditation of county MRDD boards

(sec. 5126.081)

Current law requires DMRDD to establish a system of accreditation for county MRDD boards. DMRDD must establish uniform standards for the system by rules adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.). The bill instead requires the DMRDD to adopt rules governing the system of accreditation and to establish requirements for accreditation.

Current law specifies that if, after being given an opportunity to implement a correction plan to comply with the DMRDD's accreditation standards, a county MRDD board continues to fail to meet them, the DMRDD must issue an order denying the board accreditation. The bill eliminates a provision of current law providing that a board denied accreditation is ineligible to receive, for the programs and services that are the subject of the denied accreditation, any state or federal funds in an amount that exceeds the amount the board received for the programs and services immediately prior to the date DMRDD determined that the board did not meet the accreditation standards.

Audits of providers of services or programs

(secs. 5123.05 and 5123.051)

Current law provides that if DMRDD determines pursuant to an audit or a reconciliation that money is owed to the state by a contractor, the Office of Support within the DMRDD may enter into a payment agreement with the contractor. A "contractor" is a person or government agency that has entered into a contract with DMRDD to provide residential or respite care services. The bill applies these provisions to all providers of a program or service to DMRDD. It also provides that the agreement is to be with DMRDD rather than the Office of Support.

The bill eliminates the provision of current law that requires that all money collected under the payment agreement provisions be deposited in the state treasury to the credit of the Purchase of Service Fund. Current law creates that fund and requires it to be used solely for residential and respite care services. The bill instead requires that the fund be used for audits of the programs and services that receive funds through or are subject to regulation by DMRDD.

Repayments by contractors to the DMRDD

(Section 5)

The bill provides that a contractor is not required to repay DMRDD the amount the contractor received from DMRDD pursuant to a retroactive rate increase the DMRDD issued in April 1997. If, prior to the bill's effective date a contractor repaid DMRDD the amount it received pursuant to that retroactive rate increase, DMRDD must return the payment. The returned payment must be paid from the Purchase of Service Fund. Neither the retroactive increase nor a payment DMRDD returns is an amount payable to the state for purposes of current law that governs the collection of amounts owed the state or is subject to a reconciliation under the MRDD Law.

For the purpose of this provision, the bill defines "contractor" as a person or government agency that has entered into a contract with DMRDD to provide residential services to individuals with mental retardation or developmental disabilities.

Extension of the Joint Council on Mental Retardation and Developmental Disabilities

(Section 4)

The bill exempts the Joint Council on Mental Retardation and Developmental Disabilities from the operation of the sunset review law, under which the Council will cease to exist on December 31, 2001. The bill extends the expiration date to December 31, 2004.

Self audits by county MRDD boards

(sec. 5126.082)

Current law requires (1) that the DMRDD Director adopt rules in accordance with the Administrative Procedure Act that establish standards for promoting and advancing the quality of life of individuals with mental retardation and developmental disabilities who receive certain early childhood, adult, or

family support services and (2) that these rules specify actions that county MRDD boards and the agencies with which they contract should take to implement the standards. Current law also requires each county MRDD board annually to submit a report to the DMRDD regarding the board's progress in complying fully with the standards so established. The bill requires instead that each county MRDD board conduct a self audit to evaluate the board's progress in fully complying with the standards.

Other changes relating to the DMRDD and county MRDD boards

Citizen's advisory council

(sec. 5123.092; Section 6)

The bill reduces from thirteen to seven the number of members of the citizen's advisory council that each DMRDD institution and branch institution is required to establish and specifies that the reduction does not affect existing advisory council member terms. It reduces from seven to four the number of the members who cannot be providers of mental retardation services, and eliminates the authority of the Joint Council on Mental Retardation and Developmental Disabilities to appoint advisory council members when the DMRDD Director rejects nominees for appointment to an advisory council.

Agreements with medical colleges

(sec. 5123.11)

The bill authorizes, rather than requires as under existing law, DMRDD to enter into agreements with medical or osteopathic medical colleges to establish, manage, and conduct residency medical training programs.

Residence of superintendent of DMRDD institution

(sec. 5123.09)

The bill removes the authority of the DMRDD Director to require the superintendent of a DMRDD institution to reside on the institution's grounds.

Trustee of estate of an individual with mental retardation or a developmental disability

(sec. 5123.55)

The bill permits an individual to be appointed a trustee of an estate of an individual with mental retardation or another developmental disability, in lieu of

guardianship and without a judicial determination of incompetency, if the value of the estate is \$10,000 or less, rather than \$7,000 or less as under existing law.

Instruction on bill of rights

(sec. 5123.63)

The bill removes the requirement that instruction about the rights of individuals with mental retardation or another developmental disability be part of all individual habitation plans and instead requires that the instruction be documented.

Limitation on guardianship

(sec. 5123.93)

The bill prohibits the assignment of a person or agency that provides services to an individual with mental retardation as the individual's guardian, unless the person is related by blood or marriage or unless the service the person or agency provides is a protective service.

Access to records of DMRDD institutions

(sec. 5123.89)

The bill authorizes a DMRDD institution's managing officer to provide access to the records and certain other confidential documents relating to a resident, former resident, or person whose institutionalization was sought, on the latter's death, to the guardian or, if there was no guardian, to a family member (defined as a parent, brother, sister, spouse, son, daughter, grandparent, aunt, uncle, or cousin) of the decedent "upon a written request" for the access.

Travel expenses

(sec. 5123.801)

The bill removes the \$20 limit on the amount of travel and escort expenses a DMRDD institution may provide under certain circumstances for a resident on the resident's discharge or during a trial visit to an alternative community residential placement.

Comprehensive evaluation

(secs. 5123.01 and 5123.85)

The bill increases from 20 to 30 days the time within which, after a resident's admission to a DMRDD institution, a comprehensive evaluation must be completed and changes the definition of "comprehensive evaluation" so that the group that conducts the evaluation need not include an individual professionally qualified in the field of education.

Purposes of Chapter 5123.

(sec. 5123.67)

The bill replaces in existing law's list of the purposes for which the law governing DMRDD must be "liberally construed" to accomplish a requirement that the need of persons with mental retardation or another developmental disability to live in surroundings and circumstances *as close to normal as possible* be recognized when care in a residential facility is absolutely necessary, with a requirement that opportunities be promoted for those persons to live in surroundings and circumstances that are *typical for other community members*, and adds as a purpose the promotion of the right of those persons to speak and be heard about the desired direction of their lives and to use available resources in ways that further that direction.

Persons with mental retardation or another developmental disability

(secs. 5123.01, 5123.02, 5123.042, 5123.082, 5123.17, 5123.181, 5123.27, 5123.34, 5123.351, 5123.353, 5123.55, 5123.62, 5123.63, 5123.67, 5123.93, and 5126.042)

The bill changes certain existing references in MRDD-related statutes from "mentally retarded or developmentally disabled persons" to "persons with mental retardation or another developmental disability."²

Terminology changes

(secs. 5123.041, 5123.06, 5123.18, 5123.19, and 5123.21)

The bill changes the title from "chief" to "deputy director" of a division of the DMRDD. It replaces "standards and *procedures*" for the certification of habitation centers (adopted by DMRDD Director rules) with "standards" for that certification; changes a reference from "head of a hospital" to "managing officer" of an "institution"; and removes references to a "semi-independent living home,"

² *The latter types of homes are all "residential facilities," a term the bill retains without modification.*

"family home," "group home," and "foster family home" in various MRDD-related statutes.

Waiting lists

(sec. 5126.042)

The bill provides that the following take precedence over provisions in current law governing waiting lists for MRDD programs or services: (a) Medicaid rules and regulations and (b) any specific requirements that may be contained within a Medicaid state plan amendment or waiver program that a county MRDD board has authority to administer or respect to which it has authority to provide services, programs, or supports.

In-home care exemption

(sec. 5126.357)

The bill extends the exemption from county MRDD board delegated nursing task requirements for in-home care to specified "family members" who act as primary supervisor of the care and select and directly supervise unlicensed in-home care worker.

Due date for expenditure reports

(sec. 5126.12)

The bill changes from February 15 to March 30 the annual date for certifying to the DMRDD county MRDD board income and operating expenditure reports covering the immediately preceding calendar year and requires that this annual report cover all income and operating expenditures in the format the DMRDD specifies.

Expenditure report required for regional council of government

(sec. 5126.13)

The bill requires the fiscal officer of a regional council of government that consists of county MRDD boards to provide an income and operating expenditure report to the DMRDD, in the format the DMRDD specifies, by each March 30 covering the immediately preceding calendar year.

Participation in community employment services

(sec. 5126.02)

The bill reduces from twenty to ten the average number of hours required per week for a person with mental retardation or a developmental disability to be considered as participating in community employment services for purposes of a report a county MRDD board must annually submit to the DMRDD.

MRDD board members

(sec. 5126.02)

The bill requires (a) that county MRDD board members be United States citizens and (b) that both the board of county commissioners and the probate judge, to the maximum extent possible, appoint members to the county MRDD board who have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service.

Appointment of interim superintendent

(sec. 5126.023)

The bill authorizes a county MRDD board to appoint, when a vacancy occurs, a superintendent for an interim period not to exceed 120 days until a permanent superintendent can be employed or arranged for under current law, but allows the DMRDD Director to approve additional time periods for these types of interim appointments if a county MRDD board so requests and if the Director determines that additional periods are warranted and the services of a permanent superintendent are unavailable.

Access to records of county MRDD boards

(sec. 5126.044)

The bill authorizes a county MRDD board or an entity under contract with it to provide access to the records and other confidential reports pertaining to an eligible person or a person who requests programs or services, on the person's death, to the guardian or, if there was no guardian, to a family member (defined as a parent, brother, sister, spouse, son, daughter, grandparent, aunt, uncle, or cousin) of the person on a written request for the access.

DMRDD Director to adopt rules regarding plans for residential services

(sec. 5123.042)

The bill repeals a requirement that the DMRDD Director adopt rules under the Administrative Procedure Act establishing procedures as well as uniform standards governing the submission of certain plans to county MRDD boards for

the development of residential services for individuals with mental retardation or another developmental disability.

Repeal of provisions

(secs. 5123.16 and 5123.231; Section 2)

The bill repeals two statutes whose provisions, according to DMRDD, are no longer operative. The provisions relate to the sale or lease of land or facilities under DMRDD's jurisdiction and substantial compliance by DMRDD and DMRDD institutions with standards for mental retardation facilities of the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons or medical assistance standards under Title XIX of the Social Security Act by July 1, 1982 or January 1, 1983.

HISTORY

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