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ACT SUMMARY

MR/DD RESIDENTIAL FACILITY LICENSING

- Provides for the periodic expiration of a license to operate a residential facility for persons with mental retardation and developmental disabilities (MR/DD residential facility).
- Requires, except under certain circumstances, the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to issue an initial MR/DD residential facility license for a period not exceeding one year and to issue a renewed license for a period not exceeding three years.
- Requires ODMR/DD to establish a program to provide public notice when actions have been initiated to revoke an MR/DD residential facility

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- license, suspend admissions, place a monitor at the facility, or remove residents.
- Specifies criteria to be considered by ODMR/DD when selecting and administering the licensing sanction to be imposed on a residential facility.
 - Specifies procedures for an MR/DD residential facility to appeal an order suspending admissions to the facility when the order was issued without granting an opportunity for a hearing.
 - Provides for ODMR/DD to conduct surveys, rather than inspections, of MR/DD residential facilities.
 - Requires ODMR/DD to initiate disciplinary action against an ODMR/DD employee who causes the notification of an unannounced survey, rather than to suspend the employee for at least three days.
 - Provides that ODMR/DD may issue an interim license to a qualified MR/DD residential facility when necessary to meet a temporary need.
 - Limits the renewal of interim licenses to not more than 150 days.
 - Removes a limitation on the information that ODMR/DD may use to determine a residential facility's compliance with state law.
 - Requires ODMR/DD to adopt rules establishing procedures for receipt, referral, investigation, and disposition of complaints relating to MR/DD residential facilities.
 - Eliminates a prohibition against the substance of a complaint being provided to a licensee before an inspection or investigation is commenced.
 - Requires an MR/DD residential facility to notify the owner of the building when there is a significant change in the identity of the facility's license holder or management contractor.
 - Requires the Director of ODMR/DD to report on the implementation of the act's changes to the law governing licensure of MR/DD residential facilities.

HEALTH CARE SERVICES PERFORMED BY MR/DD PERSONNEL

- Eliminates, nine months after the act's effective date, the requirements for MR/DD boards and ODMR/DD to adopt policies on whether certain MR/DD workers will be authorized to administer oral and topical medications and perform delegated nursing tasks.
- Grants MR/DD personnel the authority to administer prescribed medications, perform specified health-related activities, and perform tube feedings when the personnel are not otherwise authorized by state law to engage in those activities.
- Permits MR/DD personnel to act without nursing delegation when administering oral and topical medications and performing health-related activities in small MR/DD residential facilities with five or fewer resident beds and certain other community living arrangements.
- Specifies the categories of individuals for whom MR/DD personnel, with nursing delegation, may administer insulin by injection and insulin pumps and administer medications through gastrostomy and jejunostomy tubes.
- Requires ODMR/DD to develop courses that train MR/DD personnel and courses that train registered nurses to provide training courses to MR/DD personnel.
- Requires MR/DD personnel and registered nurses who have successfully completed the applicable training to receive certification from ODMR/DD, except when the only individuals who are being served by MR/DD personnel are participants of a field trip sponsored by an MR/DD residential facility with 17 or more resident beds.
- Requires ODMR/DD to establish and maintain a registry of all MR/DD personnel and registered nurses who have been certified by ODMR/DD.
- Specifies the actions that MR/DD personnel may take when providing assistance to individuals in their self-administration of medication.



ADDITIONAL MR/DD PROVISIONS

- Expresses in statute the right of individuals with mental retardation and developmental disabilities to self-administer medication and receive assistance in the self-administration of medication.
- Provides that an in-home care worker who performs certain health services under the authority granted by a family member must have a direct employment relationship with the family member and cannot have an employment relationship with any other person or government entity to provide services to individuals with mental retardation and developmental disabilities.
- Expands the training MR/DD boards must give to their employees and others who implement the adult protective services system for individuals with mental retardation and developmental disabilities.
- Creates a time-limited MR/DD Consumer Information Advisory Council to develop recommendations on methods of providing consumer information about services available under the laws governing ODMR/DD and MR/DD boards.

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CONTENT AND OPERATION

MR/DD RESIDENTIAL FACILITY LICENSING

Background

Each individual, private entity, and government agency desiring to operate a residential facility for individuals with mental retardation and developmental disabilities (MR/DD residential facility) is required to apply for licensure to the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD). With certain exceptions, any home or facility in which an individual with MR/DD resides is considered an MR/DD residential facility and, therefore, is subject to licensure by ODMR/DD. Not included as MR/DD



residential facilities are the homes of relatives or legal guardians, certified respite care homes, county and district homes that are similar to nursing homes, and dwellings in which the residents with MR/DD are in an independent living arrangement or are being provided supported living services. ODMR/DD licensure also does not apply to the following: (1) certain institutions and associations for children certified by the Department of Job and Family Services, (2) hospitals licensed by the Department of Mental Health, and (3) adult care facilities, residential care facilities, and nursing homes licensed by the Department of Health. In most cases, any portion of a nursing home that is certified under the Medicaid program as an intermediate care facility for the mentally retarded must be licensed by ODMR/DD as an MR/DD residential facility.¹

Duration of license

(sec. 5123.19(C) and (G); Section 5)

Previously, an MR/DD residential facility license remained valid until revoked, voluntarily surrendered, or cancelled. Because licenses were valid indefinitely, no procedure for renewal existed.

The act provides for the issuance of time-limited licenses and establishes procedures for the renewal of licenses. Under the act, an initial license is to be issued for a period that does not exceed one year. A renewed license is to be issued for a period that does not exceed three years. When issuing or renewing a license, the Director of ODMR/DD must specify the period for which the license is being issued or renewed.

The act also specifies that a license remains valid for the length of the licensing period specified by the Director. In the case of a license in effect on the act's effective date, the act provides that the license remains in effect until the Director renews or refuses to renew the license. For these currently licensed MR/DD residential facilities, the Director must adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) establishing a schedule for seeking renewal in accordance with the act's licensing provisions.

¹ *A nursing home bed certified as an intermediate care facility for the mentally retarded (ICF/MR) bed is not subject to ODMR/DD licensure if the Ohio Department of Health (ODH) certified the bed prior to June 30, 1987, or an application to convert the bed from an intermediate care facility bed to an ICF/MR bed was pending with ODH on that date. The bed is subject to ODMR/DD licensure if the nursing home's certification or provider agreement as an ICF/MR is subject to a final order of nonrenewal or termination with respect to which all appeal rights have been exhausted and the home intends to apply for recertification. If the nursing home adds ICF/MR beds, the additional beds are subject to ODMR/DD licensure. (R.C. 5123.192, not in the act.)*

For all MR/DD residential facilities, the Director must adopt rules that establish and specify procedures and criteria for issuing and renewing licenses, including procedures and criteria for determining the length of each license's licensing period. The rules must establish and specify fees for initial and renewed licenses. The Director must adopt the rules in accordance with the Administrative Procedure Act.

Imposition of sanctions

(sec. 5123.19(D) and (G)(2))

Law unchanged by the act permits the Director of ODMR/DD to take "such steps as are necessary" when it is determined that a residential facility is not being operated in accordance with applicable statutes and rules. These steps include suspension of admissions to the facility, placement of a monitor at the facility, and initiation of license revocation proceedings. In other cases, the Director can deny issuance of a license, order the immediate removal of residents from a facility, and cancel a license.

The act continues the sanctioning options already specified in the law and creates the options of terminating a license and refusing to renew a license. Regarding the Director's authority to take any other action considered necessary, the act specifies that the actions must be consistent with the Director's authority under the ODMR/DD statutes regulating residential facilities.

In some cases, existing law includes procedures and criteria to be used by the Director in selecting and administering the sanction to be imposed. The act continues these procedures and criteria, while establishing additional procedures and criteria. Rules are to be adopted under the Administrative Procedure Act establishing and specifying procedures and criteria for imposing each sanction option. With respect to each option, the act provides the following:

--Denial of, refusal to renew, or revocation of a license. The act provides that these sanctions may be imposed if the Director determines that the applicant or licensee has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of the residents.

--Termination of a license. Under this sanctioning option, the act incorporates the existing authority to cancel a license for failure to notify ODMR/DD of a significant change in ownership or the identity of the licensee or management contractor. The act allows a license to be terminated when a facility fails to comply with the act's requirement that the building owner be notified of a significant change in the identity of the licensee or management contractor, if the licensee is not the owner of the building. The act also allows a license to be

terminated if more than 12 consecutive months have elapsed since the residential facility was last occupied by a resident.

--Suspension of admissions. The act provides that the Director may order the suspension of admissions to a facility, without providing an opportunity for an adjudication under the Administrative Procedure Act, if the Director determines that the applicant or licensee has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of the residents. Further, the act provides that the suspension of admissions may be ordered for any other violation specified in rules that are to be adopted under the act. The Director must lift an order for the suspension of admissions when the Director determines that the violation that formed the basis for the order has been corrected.

--Placement of a monitor. The act permits the Director to order the placement of a monitor at a facility for any violation specified in rules that are to be adopted under the act. The Director is required to lift the order when the Director determines that the violation that formed the basis of the order has been corrected.

Surveys of other facilities under the same ownership or operation

(sec. 5123.19(D)(5))

Under the act, if the Director determines that two or more facilities owned or operated by the same person or government entity are not being operated in compliance with applicable statutes or rules, and the Director's findings are based on the same or a substantially similar action, practice, circumstance, or incident that creates a substantial risk to the health and safety of the residents, the Director must conduct a survey as soon as practicable at each facility owned or operated by the licensee. The act specifies that the Director is permitted to impose sanctions against any facility found to be operating in violation of applicable statutes and rules.

Public notification of sanctions

(sec. 5123.19(E))

The act requires the Director to establish a program under which public notification may be made when the Director has initiated license revocation proceedings or issued an order for the suspension of admissions, placement of a monitor, or removal of residents. Rules are to be adopted in accordance with the Administrative Procedure Act to implement the program. The rules must establish the procedures by which the public notification will be made and specify the circumstances for which the notification must be made. The rules must require

that public notification be made if the Director has taken action against the facility in the 18-month period immediately preceding the Director's latest action against the facility, and the latest action is being taken for the same or a substantially similar violation. The rules must specify a method for removing or amending the public notification if the Director's action is found to have been unjustified or the violation at the facility is corrected.

Appeals

(sec. 5123.19(F))

The act provides that appeals from proceedings initiated to impose a sanction against an applicant or licensee are to be conducted in accordance with the Administrative Procedure Act. This requirement applies in the case of an order for the suspension of admissions to a facility, unless the order was issued before providing an opportunity for an adjudication, in which case the act provides the following:

(1) The licensee may request a hearing not later than ten days after receiving the notice required under the Administrative Procedure Act.

(2) If a timely request for a hearing is made, the hearing must commence not later than 30 days after ODMR/DD receives the request.

(3) After commencing, the hearing must continue uninterrupted, except for weekends and holidays, unless other interruptions are agreed to.

(4) If the hearing is conducted by a hearing examiner, the hearing examiner must file a report and recommendations not later than ten days after the close of the hearing.

(5) Not later than five days after the hearing examiner files the report and recommendations, the licensee may file objections.

(6) Not later than 15 days after the hearing examiner's filing, the Director must issue an order approving, modifying, or disapproving the report and recommendations.

(7) Irrespective of whether the hearing is pending, the Director must lift the order for suspension of admissions when the Director determines that the violation that formed the basis for the order is corrected.

Surveys

(sec. 5123.19(G)(4) and (H))

ODMR/DD is required to conduct an inspection of an MR/DD residential facility before issuing a license. While the facility is licensed, it must be inspected at least once a year. ODMR/DD may conduct additional inspections as needed.

The act requires ODMR/DD to conduct *surveys* rather than *inspections* of MR/DD residential facilities. The act alters the current inspection requirement by requiring, rather than "at least one *inspection* during the period a license is valid," "at least one *survey* during the period a license is valid;" however, neither current law nor the act indicates the difference between these terms. Procedures for conducting surveys are to be established and specified in rules adopted under the Administrative Procedure Act; however, the act retains ODMR/DD's current authority to conduct additional *inspections* as needed.²

Prior law required the Director of ODMR/DD to suspend without pay for a period of at least three days any ODMR/DD employee who caused an unauthorized person to be notified of an unannounced inspection. The act requires that the Director initiate disciplinary action against an ODMR/DD employee for causing the notification of an unannounced survey. The nature of the disciplinary action is not specified.

Interim licenses

(sec. 5123.19(R))

Law unchanged by the act authorizes ODMR/DD to issue an interim license to operate an MR/DD residential facility if an emergency exists requiring immediate placement of persons in an MR/DD residential facility and insufficient licensed beds are available. The facility must meet the interim license standards established in rules and it must be likely that the facility will receive a permanent license within 30 days after the interim license is issued. An interim license is valid for 30 days and can be renewed not more than twice.

² *The Random House College Dictionary* defines "inspection" as (1) the act of inspecting or viewing (especially carefully or critically) and (2) formal or official viewing or examination. "Inspect" is defined as (1) to look carefully at or over, (2) view closely and critically, and (3) to view or examine formally or officially. The definitions of "survey" include (1) to take a general or comprehensive view of or appraise, as a situation and (2) to view in detail, as in order to ascertain condition, value, etc.

The act provides that ODMR/DD may also issue an interim license when necessary to meet a temporary need for an MR/DD residential facility. To be eligible to receive an interim license in either circumstance for which it may be issued, an applicant must meet the same criteria that must be met to receive a permanent license, except for any conflicting procedures and time frames. The act permits an interim license to be renewed for a period not to exceed 150 days.

The act requires the Director to adopt rules as the Director considers necessary to administer the issuance of interim licenses. The rules must be adopted in accordance with the Administrative Procedure Act.

Sources of information

(sec. 5123.19(D)(8) and (H))

In determining whether an MR/DD residential facility is being operated in compliance with applicable statutes and rules, or whether conditions at a facility present an immediate danger of physical or psychological harm to the residents, ODMR/DD is permitted to rely on information obtained by a county MR/DD board or other governmental agencies in the course of investigating major unusual incidents. The act removes the limitation specifying that the information must be obtained in the course of investigating major unusual incidents.

Complaints

(sec. 5123.19(K))

A county MR/DD board, the Legal Rights Service, or an interested person is permitted to file a complaint with ODMR/DD alleging violations of statutes or rules relating to MR/DD residential facilities. Prior law required ODMR/DD to acknowledge receipt of such a complaint and, within five working days of receiving the complaint, notify the complainant of the action that will be taken. The act requires instead that ODMR/DD adopt rules establishing procedures for the receipt, referral, investigation, and disposition of complaints. The rules must be adopted in accordance with the Administrative Procedure Act.

The act also eliminates a prohibition against the substance of a complaint being provided to a licensee before an inspection or investigation is commenced. The act retains a prohibition against ODMR/DD revealing the source of a complaint unless the complainant agrees in writing to waive confidentiality or until a court orders that the source be revealed.

Change of ownership

(sec. 5123.19(J))

If the Director of ODMR/DD determines that a significant change in the ownership of a residential facility is being proposed, the Director must consider the proposed change to be an application for development by a new operator. Previously, the Director was required to notify the applicant of whether the current license would continue in effect or a new license was required. Under the act, if a facility must seek a new license, the Director must permit the facility to continue to operate under the current license until the new license is issued.

In addition, the act requires the licensee to notify the owner of the building in which the licensee's residential facility is located of any significant change in the identity of the licensee or management contractor, if the licensee is not the owner of the building. The notice must be given before the effective date of the change.

Reports on implementation of new licensing requirements

(sec. 5123.195)

The act requires the Director of ODMR/DD to submit a report to the President and Minority Leader of the Senate and Speaker and Minority Leader of the House of Representatives regarding the implementation of the law governing the licensure of MR/DD residential facilities since the act's effective date. The report is due not later than 60 days after the end of calendar years 2003, 2004, and 2005. The Director is required to include all of the following information in the report:

- (1) A summary of any rules adopted under the licensing law to implement the changes the act makes;
- (2) The number of MR/DD residential facility licenses issued, renewed, and denied since the act's effective date or, in the case of reports due in 2005 and 2006, since the previous report was submitted;
- (3) The length of time for which MR/DD residential facility licenses are issued and renewed;
- (4) The sanctions imposed against MR/DD residential facilities and the kinds of violations that cause the sanctions;
- (5) Any other information the Director determines is important to the implementation of the changes the act makes to the licensing law.

The Director must inform each member of the General Assembly when the report becomes available.

HEALTH CARE SERVICES PERFORMED BY MR/DD PERSONNEL

Background

Ohio law previously required each county MR/DD board to adopt a policy on whether certain workers who are not health care professionals will be allowed to administer oral and topical medications, perform delegated nursing tasks, or do both, within the programs and services offered by the county board. Similarly, the law required ODMR/DD to adopt a policy on whether workers in intermediate care facilities for the mentally retarded will be allowed to engage in those activities.

The act eliminates ODMR/DD's duty to adopt a policy on whether workers may engage in the specified health care activities and repeals the corresponding statutes specifying the procedures and limitations that apply to the workers and nurses who delegate activities to the workers. In place of those laws, the act (1) specifies the health care services that may be performed by MR/DD personnel, which is an expanded group of workers that includes persons employed by private entities, (2) specifies whether nursing delegation is required according to the type of service being performed and where it is performed, and (3) requires ODMR/DD to establish a certification program under which MR/DD personnel are trained by registered nurses.

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

(secs. 5123.41 and 5123.42(A))

The act authorizes MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings when no other provisions of the Revised Code specifically authorize the personnel to perform those services. For purposes of this provision, the act specifies that MR/DD personnel are the employees and workers under contract who provide specialized services to individuals with mental retardation or developmental disabilities. Included as MR/DD personnel are those who provide the services as follows:

- (1) Through direct employment with ODMR/DD or an MR/DD board;
- (2) Through an entity under contract with ODMR/DD or an MR/DD board;
- (3) Through direct employment or by being under contract with private entities, including entities that operate residential facilities.



Transition period

(sec. 5123.41(A); Sections 3 and 4)

The authority granted by the act to MR/DD personnel begins nine months after its effective date. Until then, the act retains the existing laws under which county MR/DD board workers and workers in certain intermediate care facilities for the mentally retarded are authorized to give oral and apply topical medications, perform delegated nursing tasks, or both. When the authority granted by the act takes effect, the existing laws cease to be effective. During the transition period, ODMR/DD is authorized to implement provisions of the act pertaining to the adoption of rules, development of training courses, and issuance of certificates.

Prescribed medication, health-related activities, and tube feedings

(sec. 5123.41)

In establishing the authority of MR/DD personnel to administer prescribed medications, the act specifies that a prescribed medication is any drug that is to be administered according to the instructions of a licensed health professional authorized to prescribe drugs. The act specifies the method by which the medications may be administered for each category of individuals being served by MR/DD personnel.

In establishing the authority to perform health-related activities, the act lists specific types of activities that may be performed. These health-related activities are limited to the following:

- (1) Taking vital signs;
- (2) Application of clean dressings that do not require health assessment;
- (3) Basic measurement of bodily intake and output;
- (4) Oral suctioning;
- (5) Use of glucometers;
- (6) External urinary catheter care;
- (7) Emptying and replacing colostomy bags;
- (8) Collection of specimens by noninvasive means.

In establishing the authority to perform tube feedings, the act specifies that tube feeding is the provision of nutrition to an individual through a gastrostomy

tube or a jejunostomy tube. A gastrostomy tube is one that is placed surgically through the skin into a patient's stomach; a jejunostomy tube is surgically placed into the patient's upper intestinal tract.³

Categories of individuals served

(secs. 5123.41 and 5123.42(A))

The authority the act grants to MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings applies when providing specialized services to individuals with mental retardation and developmental disabilities in specified categories. When referring to recipients of services, the act specifies that the services must be offered or provided pursuant to the statutes governing ODMR/DD and MR/DD boards. When referring to residents of residential facilities, the act includes both ODMR/DD residential facilities and ICF/MR facilities that continue to operate under a nursing home license (*see* Footnote 1). Residential facilities are categorized according to the number of resident beds to accommodate differences in the services that MR/DD personnel may provide.

Under the act, the categories of individuals for whom MR/DD personnel may administer prescribed medication, perform health-related activities, and perform tube feedings are:

- (1) Recipients of early intervention, preschool, and school-age services;
- (2) Recipients of adult services, which include any service provided outside the home that supports learning and assistance in the area of sensory and motor development, socialization, daily living skills, or vocational skills;
- (3) Recipients of family support services, which are provided under a program that pays all or part of the costs incurred for services that promote self-sufficiency and normalization, prevent or reduce inappropriate institutional care, and further the unity of the families by enabling them to meet the special needs of individuals with mental retardation and developmental disabilities;
- (4) Recipients of services from certified supported living providers, which are the housing and other support services provided to individuals with mental retardation and developmental disabilities that enable them to live independently

³ Mead Johnson Nutritionals, "Enteral Product Reimbursement Guide," Section I, p. 5, (<http://www.meadjohnson.com/professional/dietetics3.html>, last visited, December 1, 2002).

or with not more than three other individuals with mental retardation and developmental disabilities;

(5) Recipients of residential support services from certified home and community-based services providers, if the services are being received in a community living arrangement that includes not more than four individuals;

(6) Recipients of other ODMR/DD or MR/DD board services that are not included in the services specified in (1) to (5), above;

(7) Residents of a residential facility with five or fewer resident beds;

(8) Residents of a residential facility with six to 16 resident beds;

(9) Residents of a residential facility with 17 or more resident beds who are on a field trip from the facility being sponsored for purposes of complying with federal or state Medicaid laws, regulations, or rules or other federal or state laws, regulations, or rules that require the facility to provide habilitation, community integration, or normalization services to its residents.

Field trip participants

(sec. 5123.42(A)(9))

The number of individuals who may participate in a particular field trip, and the number of MR/DD personnel who must accompany the individuals, is dependent on the health needs of the participants, particularly with respect to the need for medication administration. For MR/DD personnel to be authorized under the act to provide services on the field trip, all of the following must be the case:

(1) Not more than five participants may be residents who have health needs requiring the administration of prescribed medications. Participants who self-administer medications or receive assistance with self-administration of medications are not counted.

(2) The facility must staff the field trip with MR/DD personnel in such a manner that one person will administer prescribed medications, perform health-related activities, or perform tube feedings for not more than two participants if one or both of those participants have health needs requiring the person to administer prescribed medications through a gastrostomy or jejunostomy tube.

(3) According to the instructions of a health care professional, the health needs of the participants are such that the participants must receive the medication during the field trip to avoid jeopardizing their health and safety.

Nursing delegation requirements

(secs. 4723.071, 5123.41, and 5123.42(B))

For each category of individuals being served by MR/DD personnel, and for each type of service being performed, the act specifies whether MR/DD personnel are authorized to act with or without nursing delegation. "Nursing delegation" is defined by the act as the process established in rules adopted by the Board of Nursing under which a registered nurse or a licensed practical nurse acting at the direction of a registered nurse transfers the performance of a particular nursing activity or task to another individual who is not otherwise authorized to perform the activity or task. The act requires the Board to adopt rules as necessary to govern nursing delegation as it applies to MR/DD personnel. The act prohibits the Board from establishing by rule any requirement that is inconsistent with the authority the act grants to MR/DD personnel.

Performance of services

(sec. 5123.42(B))

The chart below summarizes the authority of MR/DD personnel to perform particular services under the act for each category of individuals being served and specifies whether nursing delegation is required:

Authority of MR/DD personnel to perform services					
	Health-related activities	Oral and topical medication administration	G- and J-tube medication administration	Tube feedings	Insulin administration
Early intervention, preschool, and school-age services	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation	None
Adult services	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation	None
Family support services	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation



Authority of MR/DD personnel to perform services					
	Health-related activities	Oral and topical medication administration	G- and J-tube medication administration	Tube feedings	Insulin administration
Certified supported living	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Certified home and community-based services (1 to 4 persons per living arrangement)	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Other services by MR/DD boards or ODMR/DD	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation	None
Residential facilities: 1 to 5 beds	Without nursing delegation	Without nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation
Residential facilities: 6 to 16 beds	With nursing delegation	With nursing delegation	With nursing delegation	With nursing delegation	None
Field trip participants from residential facilities with 17 or more beds	With nursing delegation	With nursing delegation	With nursing delegation (not more than 5 participants may be on the field trip)	With nursing delegation (1 person may not serve more than 2 participants)	None

In establishing the authority of MR/DD personnel to perform particular services, the act specifies all of the following:

- (1) The gastrostomy and jejunostomy tubes being used for medication administration and tube feedings must be "stable and labeled."



(2) Administration of insulin may be performed through subcutaneous injections and insulin pumps. The doses of insulin being administered must be routine.

(3) When the individuals being served are field trip participants from facilities with 17 or more resident beds, the authority of MR/DD personnel applies only during the field trip.

Conditions on performance of services

(sec. 5123.42(C))

To be authorized under the act to administer prescribed medications, perform health-related activities, or perform tube feedings, MR/DD personnel must complete the training course or courses required by ODMR/DD. Except for personnel who serve only field trip participants, the personnel must obtain the appropriate certificate or certificates issued through the certification program the act requires ODMR/DD to establish.

The act provides that MR/DD personnel must act only as authorized by the training completed or certification held. If nursing delegation is required, the act provides that MR/DD personnel must not act without nursing delegation or in a manner that is inconsistent with the delegation.

The act requires the employer of MR/DD personnel to ensure that they have been trained specifically with respect to each individual for whom they administer prescribed medications, perform health-related activities, or perform tube feedings. If the personnel have not received the training, they are prohibited from performing the services.

If an employer believes that MR/DD personnel have not or will not safely administer prescribed medications, perform health-related activities, or perform tube feedings, the employer is required by the act to prohibit the action from continuing or commencing. MR/DD personnel are prohibited from engaging in the action or actions subject to the employer's prohibition.

Implementation rules

(secs. 5123.42(D) and 5123.46)

Under the act, ODMR/DD is required to adopt rules governing its implementation of the authority granted to MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings. The rules must be adopted in accordance with the Administrative

Procedure Act and in consultation with the Board of Nursing and Ohio Nurses Association. The act requires that ODMR/DD's rules include the following:

(1) Requirements for documentation of the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel;

(2) Procedures for reporting errors that occur in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel.

(3) Other standards and procedures ODMR/DD considers necessary for implementation of the authority granted by the act to MR/DD personnel.

Complaints

(secs. 4723.071(C), 5123.421, and 5123.46)

The act requires ODMR/DD to accept complaints from any person or government entity regarding the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted by the act. ODMR/DD is required by the act to conduct investigations of complaints as it considers appropriate. ODMR/DD must adopt rules establishing procedures for accepting complaints and conducting investigations of complaints. The rules must be adopted in accordance with the Administrative Procedure Act and in consultation with the Board of Nursing and Ohio Nurses Association.

The act permits the Board of Nursing to accept complaints from any person or government entity regarding the performance or qualifications of MR/DD personnel who administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to the authority granted by the act. The act requires the Board to refer all complaints received to ODMR/DD and permits the Board to participate in ODMR/DD's investigation of a complaint.

Immunity from liability

(sec. 5123.422)

Law unchanged by the act provides limited immunity from civil liability to certain persons authorized to give oral or apply topical medications, perform delegated nursing tasks, or do both. The act extends the limited immunity to MR/DD personnel acting pursuant to the authority granted by the act. Specifically, the act provides that MR/DD personnel are not liable for any injury

caused by administering prescribed medications, performing health-related activities, or performing tube feedings, if both of the following apply:

(1) The MR/DD personnel acted in accordance with the methods taught in training completed in compliance with the act's requirement;

(2) The MR/DD personnel did not act in a manner that constitutes wanton or reckless misconduct.

Training courses for MR/DD personnel

(secs. 5123.43(A) and 5123.46)

The act requires ODMR/DD to develop courses for the training of MR/DD personnel. The Department is permitted to develop separate or combined training courses for the administration of prescribed medications, performance of health-related activities, and performance of tube feedings. Training in the administration of prescribed medications through gastrostomy and jejunostomy tubes may be included in a course providing training in tube feedings. Training in the administration of insulin may be developed as a separate course or included in a course providing training in the administration of other medications.

ODMR/DD is required by the act to adopt rules that specify the content and length of the training courses. The rules may include any other standards the Department considers necessary. The rules must be adopted in accordance with the Administrative Procedure Act and in consultation with the Board of Nursing and the Ohio Nurses Association.

Medication administration training courses

(sec. 5123.43(B))

In adopting rules under the act that specify the content of a training course or part of a training course that trains MR/DD personnel in the administration of prescribed medications, ODMR/DD must ensure that the content includes all of the following:

(1) Infection control and universal precautions;

(2) Correct and safe practices, procedures, and techniques for administering prescribed medication;

(3) Assessment of drug reaction, including known side effects, interactions, and the proper course of action if a side effect occurs;

- (4) The requirements for documentation of medications administered to each individual;
- (5) The requirements for documentation and notification of medication errors;
- (6) Information regarding the proper storage and care of medications;
- (7) Information about proper receipt of prescriptions and transcription of prescriptions into an individual's medication administration record, except for personnel being trained to serve only field trip participants from residential facilities with 17 or more resident beds;
- (8) Course completion standards that require successful demonstration of proficiency in administering prescribed medications;
- (9) Any other material or standards for course completion standards that ODMR/DD considers relevant to the administration of prescribed medications by MR/DD personnel.

Training provided by registered nurses

(secs. 5123.44 and 5123.441)

Under the act, each MR/DD personnel training course developed by ODMR/DD must be provided by a registered nurse. To provide a training course or courses, a registered nurse must complete the training required by ODMR/DD to provide the course or courses.

The act requires ODMR/DD to develop the courses that train registered nurses to provide MR/DD personnel training courses. ODMR/DD is permitted to develop courses that train registered nurses to provide all of the MR/DD personnel training courses or any one or more of the personnel training courses.

Rules are to be adopted by ODMR/DD specifying the content and length of the training courses for registered nurses. The rules may include any other standards ODMR/DD considers necessary. The rules must be adopted in accordance with the Administrative Procedure Act and in consultation with the Board of Nursing and the Ohio Nurses Association.

In most cases, the act requires a registered nurse who trains MR/DD personnel to obtain the certificate or certificates ODMR/DD requires under its certification program. A certificate is not required, however, if the only MR/DD personnel who a registered nurse trains are personnel who perform services for field trip participants from residential facilities with 17 or more resident beds. A

registered nurse may provide only the training courses for which the nurse holds a certificate or has been trained to provide.

Certification program

(secs. 5123.45 and 5123.46)

The act requires ODMR/DD to establish a program under which it issues certificates to (1) MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings and (2) registered nurses to provide the training courses for MR/DD personnel. As noted above, MR/DD personnel and registered nurses must obtain the certificate or certificates required under the program, unless the only individuals being served are field trip participants from residential facilities with 17 or more resident beds.

To receive a certificate under the act, MR/DD personnel and registered nurses must successfully complete the applicable training course developed by ODMR/DD and meet all other applicable requirements established in rules to be adopted by ODMR/DD. ODMR/DD must issue the appropriate certificate or certificates to MR/DD personnel and registered nurses who meet the requirements for the certificate or certificates.

ODMR/DD is required by the act to include provisions in the program for issuing certificates to MR/DD personnel who are qualified under current law to administer oral and topical medications and perform delegated nursing tasks. ODMR/DD must also include provisions in the program for issuing certificates to registered nurses who currently conduct training courses for MR/DD personnel. The act prohibits a registered nurse from training MR/DD personnel to administer insulin until the registered nurse has completed a course developed by ODMR/DD that enables the registered nurse to obtain a certificate to provide training in administering insulin. MR/DD personnel are likewise prohibited from administering insulin until appropriately trained and certified.

Certificates issued to MR/DD personnel are to be valid for one year and may be renewed. Certificates issued to registered nurses are to be valid for two years and may be renewed. To be eligible for renewal, MR/DD personnel and registered nurses must meet the applicable continued competency requirements and continuing education requirements established in rules to be adopted by ODMR/DD. In the case of registered nurses, the act provides that continuing nursing education completed for purposes of renewing a license to practice nursing as a registered nurse may be counted toward meeting the continuing education requirements established by ODMR/DD for renewal of a certificate to provide MR/DD personnel training courses.

The rules adopted by ODMR/DD for the certification program must be adopted in accordance with the Administrative Procedure Act and in consultation with the Board of Nursing and the Ohio Nurses Association. The act requires that the rules establish all of the following:

(1) Requirements that MR/DD personnel and registered nurses must meet to be eligible to take a training course;

(2) Standards that must be met to receive a certificate, including requirements pertaining to an applicant's criminal background;

(3) Procedures to be followed in applying for a certificate and issuing a certificate;

(4) Standards and procedures for renewing a certificate, including requirements for continuing education and, in the case of MR/DD personnel who administer prescribed medications, standards that require successful demonstration of proficiency;

(5) Standards and procedures for suspending or revoking a certificate;

(6) Standards and procedures for suspending a certificate without a hearing pending the outcome of an investigation;

(7) Any other standards and procedures ODMR/DD considers necessary.

Registry

(sec. 5123.451)

The act requires ODMR/DD to establish and maintain a registry that lists the MR/DD personnel and registered nurses who hold valid certificates issued by ODMR/DD. The registry must specify the type of certificate held by each individual and any limitations that apply to the individual. ODMR/DD must make the information in the registry available to the public in computerized form or any other manner that provides continued access to the information in the registry.

Assistance with self-administration of medication

(sec. 5123.651; Section 3)

Previously, an MR/DD board could permit its workers and the employees of entities under contract with the board to assist the board's clients in the self-administration of prescribed medication. Only those actions authorized by Board

of Nursing rules could be taken when providing assistance with self-administration of medication.

The act allows MR/DD personnel to provide assistance to individuals with mental retardation or developmental disabilities in their self-administration of prescribed medication. To provide that assistance, MR/DD personnel are not required to undergo the act's training or certification requirements. The authority of MR/DD personnel to provide the assistance is not subject to the nine-month transition, and, therefore, begins on the effective date of the act.

In place of the Board of Nursing rules that specify the actions that may be taken in providing assistance with self-administration of medication, the act specifies that MR/DD personnel are permitted to do only the following:

(1) Remind an individual when to take medication and observe the individual to ensure that the individual follows the directions on the container;

(2) Assist an individual by taking the medication in its container from the area where it is stored, handing the container with the medication in it to the individual, and opening the container, if the individual is physically unable to open the container;

(3) Assist, on request by or with the consent of, a physically impaired but mentally alert individual with removal of oral or topical medication from the container and with the individual's taking or applying of the medication. If an individual is physically unable to place a dose of medication to the individual's mouth without spilling or dropping it, MR/DD personnel are permitted to place the dose in another container and place that container to the individual's mouth.

Right to self-administer medication

(sec. 5123.65)

The act provides that individuals with mental retardation and developmental disabilities who can safely self-administer medication or receive assistance with self-administration of medication have the right to do so. ODMR/DD is to adopt rules as it considers necessary to implement and enforce this right. The rules must be adopted in accordance with the Administrative Procedure Act.

Cross-reference within MR/DD board statutes

(sec. 5126.36)

In the statutes that apply directly to MR/DD boards, the act specifies that MR/DD board employees and employees of entities under contract with MR/DD boards may administer prescribed medications, perform health-related activities, perform tube feedings, and provide assistance with self-administration of medication according to the act's provisions dealing with MR/DD personnel.

Conforming and corrective changes

(secs. 4731.053, 5123.50, and 5123.611)

The act includes certain sections of the Revised Code for purposes of eliminating statutory cross-references made obsolete by the act. In some cases, the act modifies or clarifies references in those sections to individuals with mental retardation and developmental disabilities and makes other corrective changes.

IN-HOME CARE WORKERS

Delegation by family members

(sec. 5123.47)

A family member of an individual who receives funding for services from an MR/DD board is authorized to permit an unlicensed in-home care worker to give oral or apply topical prescribed medication or perform other health care tasks. An in-home care worker was previously defined as any individual who provides in-home care but is not a health care professional, including an MR/DD board worker or person employed by an entity under contract with an MR/DD board. Law unchanged by the act requires the family member to prepare a written document granting the authority to the in-home care worker, obtain a written prescription or other instructions for the care to be provided by the worker, and provide the worker with appropriate training and written instructions.

The act specifies the following regarding in-home care workers who may be authorized by family members to perform oral and topical medication administration and other health care tasks:

(1) The worker must be providing the care through an employment or other arrangement entered into directly with the family member.

(2) The worker cannot be otherwise employed by or under contract with a person or government entity to provide services to individuals with mental retardation and developmental disabilities.

The act further specifies that the process of granting formal authority to an in-home care worker applies to the performance of "other health care tasks" only when the task has been prescribed, ordered, delegated, or otherwise directed by a health care professional. The act also specifies that the in-home care worker may be selected by the individual with mental retardation or developmental disability who is receiving the care.

PROTECTIVE SERVICES

Training by MR/DD boards

(secs. 5126.30 to 5126.34)

MR/DD boards are required to provide comprehensive formal training for employees and other persons authorized to implement the laws that govern the review or reports of abuse and neglect of adults with mental retardation and developmental disabilities and the manner in which MR/DD boards arrange for the provision of services for the prevention, correction, or discontinuance of abuse or neglect of such adults. ODMR/DD is required to adopt rules establishing minimum standards for the training.

The act specifies that the training must cover other relevant provisions of the laws dealing with the abuse and neglect of adults with mental retardation and developmental disabilities. Included within these laws are procedures for allowing other entities to review a report of abuse or neglect, filing for a court order to prevent interference with an investigation, and filing for a court order to arrange services for an adult when consent cannot be secured.

CONSUMER INFORMATION

MR/DD Consumer Information Advisory Council

(Section 6)

The act creates the MR/DD Consumer Information Advisory Council. The Council is to consist of the following members:

- (1) One representative of ODMR/DD, appointed by the Director;
- (2) One representative of People First of Ohio, appointed by the organization's president;



(3) One representative of the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities, appointed by the association's president;

(4) Two representatives of the Ohio Health Care Association, appointed by the association's chairperson;

(5) Two representatives of the Ohio Provider Resource Association, appointed by the association's president;

(6) One representative of the ARC of Ohio, appointed by the association's president;

(7) One representative of the Ohio Legal Rights Service, appointed by its administrator;

(8) One representative of the Ohio Superintendents of County Boards of Mental Retardation and Developmental Disabilities, appointed by the organization's president;

(9) One representative of Advocacy and Protective Services, Inc., appointed by the organization's executive director;

(10) One representative of the Ohio Developmental Disabilities Council, appointed by the organization's executive director.

Council members are to serve at the discretion of the appointing authority. Except to the extent the serving is part of their regular employment duties, members are to serve without compensation or reimbursement.

The ODMR/DD representative is to serve as the Council's chairperson and is required to convene the Council's meetings. ODMR/DD is required to supply meeting space and staff support for the Council.

Report

The act requires the Council to develop recommendations on methods of providing consumer information about services available under the laws governing ODMR/DD and MR/DD boards in a manner that promotes awareness of the range of available services and is easy to use and understand. The act requires the Council to issue a report on its recommendations to the Director of ODMR/DD not later than September 1, 2003. On issuance of the report, the act abolishes the Council.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-06-01	p. 1038
Reported, S. Health, Human Services & Aging	03-20-02	p. 1604
Passed Senate (32-0)	03-20-02	pp. 1630-1631
Reported, H. Health & Family Services	12-04-02	p. 2205
Passed House (95-1)	12-05-02	pp. 2263-2267
Senate Concurrence in House Amendments (31-0)	12-10-02	pp. 2336-2337

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