



Sub. H.B. 405

124th General Assembly
(As Reported by H. Finance & Appropriations)
(excluding appropriations and similar provisions)

Reps. Peterson, Schmidt, Clancy

BILL SUMMARY

MRDD PROVISIONS

- Revises the eligibility requirements and disqualifications for serving on a county board of mental retardation and developmental disabilities (county MR/DD board).
- Requires that the appointing authority of a county MR/DD board member remove the member on receipt of written notice from any source that reasonably demonstrates that the member is ineligible to serve on the board and permits a resident of the county that the board serves or the Director of the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to bring mandamus proceedings against the appointing authority for failure to remove the member.
- Increases the number of consecutive terms a county MR/DD member may serve to three and the amount of time a member must wait to be re-appointed after serving three, full, consecutive terms to two years.
- Requires the Joint Council on Mental Retardation and Developmental Disabilities to study issues relating to the tax equity program and the collective bargaining unit of service and support administrators and to prepare a report for the House Speaker, Senate President, and Governor not later than February 1, 2002.
- Eliminates the requirement that the ODMR/DD Director have the consent of a county MR/DD board to make a grant from the Community Mental Retardation and Developmental Disabilities Trust Fund to a service

provider and permits the Director to make a grant to persons with MR/DD who are to receive the services.

- Authorizes the ODMR/DD Director to make grants from the Community Mental Retardation and Developmental Disabilities Trust Fund based on allocations to county MR/DD boards.
- Requires county MR/DD boards' three-calendar year plan regarding Medicaid-funded services to individuals with MR/DD have a fourth component that specifies the number of individuals to be provided, during the first year that the plan is in effect, ODMR/DD-administered home and community-based services pursuant to priority requirements for county MR/DD board waiting lists and the types of such services the individuals are to receive.
- Requires that county MR/DD boards submit the last of the four components of their plans by July 1, 2002, rather than November 1, 2001.
- Provides that a county MR/DD board has Medicaid local administrative authority automatically rather than on the condition that its plan be approved, but authorizes ODMR/DD to terminate all or part of the board's authority if its plan is disapproved.
- Requires that the amount ODMR/DD assigns to a county MR/DD board of the nonfederal share of Medicaid expenditures for certain habilitation center services provided by a habilitation center with which ODMR/DD had a contract in fiscal year 2001 be no less than the amount ODMR/DD paid the center for each individual who received the services pursuant to the contract and, if the contract was for less than the entire fiscal year, no less than the amount ODMR/DD would have paid the center for each individual who received the services pursuant to the contract had the contract been for the entire fiscal year.
- Revises the priority requirements for county MR/DD board waiting lists.
- Permits the Director of the Ohio Department of Job and Family Services, on the recommendation of the ODMR/DD Director, to seek a Medicaid waiver under which home and community-based services are provided in the form of family support services programs established by county MR/DD boards.

- Requires that ODMR/DD develop a plan to implement the transition, due to the upcoming termination of the Residential Facility Waiver, of individuals who receive services under that waiver to other ODMR/DD-administered home and community-based services.
- Provides that, until a date that ODMR/DD is to specify in its plan to implement the transition of the Residential Facility Waiver termination, the number of ICF/MR beds eligible for Medicaid payment is not to be higher than the number of such beds eligible for such payment on the bill's effective date unless ODJFS issues a waiver for emergency cases.
- Requires each county MR/DD board that has a contract with one or more private or government entities to provide services under the Residential Facility Waiver to develop a plan jointly with the providers for the implementation of the Residential Facility Waiver transition concerning individuals who reside in a residential facility with a licensed capacity of five or fewer beds.
- Provides that adult services include community and supported employment services.
- Requires the entity responsible for the habilitation management included in adult day habilitation services and the program management included in residential services and supported living to monitor for unusual incidents and misappropriation of funds involving an individual under the care of staff providing the services.
- Requires that a county MR/DD board provide service and support administration to each individual at least age three who is eligible for and requests service and support administration and to each individual receiving ODMR/DD-administered home and community-based services and permits a board to provide, in accordance with the service coordination requirements of federal regulations governing the early intervention program for infants and toddlers with disabilities, service and support administration to an individual under age three eligible for early intervention services under the federal regulations.
- Requires that the individual or private entity responsible for supervising the work of investigative agents report to a county MR/DD board superintendent regarding the agents.

- Revises the conditions under which a county MR/DD board may enter into a direct services contract for family support or supported living services under which an individual, agency, or other entity will employ a professional or service employee who is also employed by the county MR/DD board.
- Makes applicable to county MR/DD boards provisions of current law regarding complaints to ODMR/DD involving any of the programs, services, policies, or administrative practices of ODMR/DD or an entity under contract with ODMR/DD.

OTHER PROVISIONS

- Temporarily suspends the deduction for net operating losses by corporations subject to the corporation franchise tax.
- Requires corporations, in computing their taxable income, to add back certain expenses paid to a related entity even if the related entity is not a passive investment company or similar entity.
- Extends the personal income tax to the taxable income of trusts for two years.
- Modifies sales tax as it pertains to affiliated groups.
- Suspends the sales tax for two days, January 26 and 27, 2002, for sales of tangible personal property other than motor vehicles, watercraft, and food to be consumed on the premises.
- Adjusts amounts credited to the local government funds.
- Reduces the minimum percentage at which the Tax Commissioner can set the discount for cigarette dealers buying tax stamps to 1.8% of the stamps' face value (from 3.6%).
- Authorizes the Director of Budget and Management to transfer to the General Revenue Fund in each of fiscal years 2002 and 2003 up to \$120 million of tobacco master settlement agreement revenue that would otherwise be distributed to the Tobacco Use Prevention and Cessation Trust Fund, and extends the schedule for allocating a portion of master settlement agreement revenue to the Prevention and Cessation Trust Fund

to provide that the amounts diverted to the GRF are to be credited to the Trust Fund from 2013 and 2014 receipts.

- Encourages the Administrator of Workers' Compensation to allow employers a one-time 75% premium credit during the next premium period.
- Allows money in the Corporate and Uniform Commercial Code Filing Fund to be used for operating expenses of the Secretary of State's Division of Elections.

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CONTENT AND OPERATION

MRDD PROVISIONS

Membership of county MR/DD boards

(secs. 5126.02 and 5126.021)

Qualifications for membership

(sec. 5126.02)

Each county has a county board of mental retardation and developmental disabilities (county MR/DD board) consisting of seven members. Five members are appointed by the board of county commissioners. The other two are appointed by the county probate judge.

Current law requires that at least two of the members appointed by the county commissioners be relatives of persons receiving services provided by the county MR/DD board. Whenever possible, one of these must be a relative of a person receiving adult services and the other a relative of a person receiving services for pre-school or school-age children. The bill requires instead that these members be relatives of a person eligible for (but not necessarily receiving) the adult services. Instead of being related to a person receiving services for pre-school or school-age children, a member may be related to a person eligible for early intervention services. Regarding the two members appointed by the county probate judge, current law requires that at least one be a relative of a person eligible for services in a public or private residential facility subject to regulation or licensure by the Director of Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD). The bill requires instead that at least one be a relative of a person eligible for residential services or supported living. Whereas current law requires that these members appointed by the county commissioners or probate judge be a relative by blood or marriage, the bill provides that a member may be a spouse, parent, parent-in-law, sibling, sibling-in-law, child, child-in-law, grandparent, aunt, or uncle of the person eligible for the specified services.

Disqualifications

(sec. 5126.021)

Certain individuals are ineligible to serve as a county MR/DD board member. Among those ineligible are elected public officials, other than precinct, ward, and district committee members, presidential electors, and delegates to a national convention. The bill additionally permits township trustees and township clerks to serve.

Terms of membership

(sec. 5126.02)

Members are appointed to four-year terms. Current law provides that a member who has served during each of two consecutive terms may not be re-appointed for a subsequent term until one year after ceasing to be a member, except that a member who has served for six years or less within two consecutive terms may be re-appointed for a subsequent term. The bill increases the number of consecutive terms a member may serve to three and the amount of time a member must wait to be re-appointed after serving three, full, consecutive terms to two years. A member who has served for ten years or less within three consecutive terms may be re-appointed to a subsequent term.

Members' terms commence on the date of the stated annual organizational meeting. The bill provides that this is the stated annual organizational meeting in January.

Joint MR/DD Council to study tax equity and collective bargaining issues

(Sections _____ and _____)

The Joint Council on Mental Retardation and Developmental Disabilities is an existing council consisting of three members of the House of Representatives, three members of the Senate, and the ODMR/DD Director. The Council's duties include appointing the original members of the citizen's advisory council at any institution under the control of ODMR/DD that is created after November 15, 1981, conducting reviews and making recommendations to the Director with respect to any disputes between ODMR/DD and entities that have entered into contracts with ODMR/DD for the provision of protective services to individuals with MR/DD, and advocating to the General Assembly, on behalf of the Director, legislative issues about which the Council has provided advice to the Director.

The bill requires that the Council study issues relating to the tax equity program and the collective bargaining unit of service and support administrators.¹ The Council must study the issues in meetings open to the public.

Regarding the tax equity program, the Council is to do all of the following:

(1) Review documents submitted by the Ohio Superintendents of County Boards of Mental Retardation and Developmental Disabilities and Ohio Association of County Boards of Mental Retardation and Developmental Disabilities to the House Finance and Appropriations Committee and the Senate Finance and Financial Institutions Committee regarding the issue of a property tax equalization program for adults only as provided by the biennial budget for fiscal years 2002 and 2003;

(2) Review the concept of Medicaid comparability of care, adult services expenditures within county MR/DD boards, the concept of tax capacity and targeting property taxes to adult services, and the necessity of reducing the disparity in capability of county MR/DD boards to provide adult services;

(3) Establish a reasonable methodology to provide tax equalization for adult services for county MR/DD boards that are below the average on property tax yield.

Regarding the collective bargaining unit of service and support administrators, the Council must do both of the following:

(1) Review the law that prohibits individuals employed or under contract as service and support administrators from being in the same collective bargaining unit as employees who perform duties that are not administrative;

(2) Determine whether the following service and support administration functions are in conflict or incompatible with the functions of employees who perform duties that are not administrative: selection of providers of day services, contracting with applicable providers, reviewing and assuring the quality of services, and monitoring for major unusual incidents.

The Council is required to prepare a report on its responsibilities under the bill. The report must include the Council's findings and recommended actions. The report is to be submitted to the House Speaker, Senate President, and Governor not later than February 1, 2002.

¹ Under the tax equity program, ODMR/DD makes an annual payment to county MR/DD boards that raise less for county MR/DD board services from county levies than the state average. Service and support administrators were formerly called case managers.

Current law requires that ODMR/DD make payments under the tax equity program on or before September 30. The bill requires ODMR/DD to make the payments for fiscal year after the General Assembly revises the law governing the program following the Council's submission of the report, rather than on or before September 30, 2001.

Community Mental Retardation and Developmental Disabilities Trust Fund

(sec. 5126.19)

With money in the Community Mental Retardation and Developmental Disabilities Trust Fund, the ODMR/DD Director is permitted to grant temporary funding for certain purposes, including supported living, family support services, and behavioral or short-term interventions for persons with MR/DD that assist them in remaining in the community by preventing institutionalization. Current law authorizes the Director to grant the funding to a county MR/DD board or, with the consent of a county MR/DD board, individuals and private entities that provide the services for which the funding is granted. The bill eliminates the requirement that the Director have the consent of a county MR/DD board to grant the funding to a service provider and permits the Director to grant the funding to persons with MR/DD who are to receive the services. The bill also provides for the Director to make grants based on allocations to county MR/DD boards.

If the fund contains more than \$10 million on the first day of July, the Director must use \$1 million for payments to county MR/DD boards based on average daily membership in certain programs, \$1 million for the tax equity program, and \$2 million for supported living. Current law requires that the funds be distributed to a county MR/DD board for such purposes in an amount equal to the same percentage of the total amount distributed for the services the board received in the immediately preceding state fiscal year. The bill requires that the funds be allocated, rather than distributed, to the county MR/DD board in an amount equal to the same percentage of the total amount allocated, rather than distributed, to the board in the immediately preceding state fiscal year.

County MR/DD board three-year plan

(sec. 5126.054; Section _____; ancillary section: 5111.872)

Each county MR/DD board is required to develop a three-calendar year plan regarding Medicaid-funded services to individuals with MR/DD. The

Medicaid-funded services are habilitation center services, case management services, and ODMR/DD-administered home and community-based services.²

Current law provides for the plan to have three components: an assessment component, a component regarding direct care staff, and a component that provides for the implementation of Medicaid-funded services for individuals who begin to receive the services on or after the date the plan is approved by ODMR/DD.

The bill provides for the plan to have a fourth component, called the preliminary implementation component. The component must specify the number of individuals to be provided, during the first year that the plan is in effect, ODMR/DD-administered home and community-based services pursuant to priority requirements for county MR/DD board waiting lists and the types of such services the individuals are to receive.

The bill requires that county MR/DD boards submit the preliminary implementation component to ODMR/DD not later than January 31, 2002. The bill also postpones the date by which county MR/DD boards must submit the component that provides for the implementation of Medicaid-funded services. A county MR/DD board must submit that component July 1, 2002, rather than November 1, 2001.³ In addition, the bill requires that that component include assurances adequate to ODMR/DD that the county MR/DD board will provide the types of home and community-based services specified in the preliminary implementation component to at least the number of individuals specified in that component.

In the direct care staff component, a county MR/DD board must provide for the recruitment, training, and retention of existing and new direct care staff necessary to implement services included in individualized service plans. Current law provides that the services include habilitation center services. The bill provides instead that the services include habilitation services. Habilitation is the process by which the staff of a facility or agency assists an individual with MR/DD in acquiring and maintaining those life skills that enable the individual to

² *Habilitation center services are services provided by ODMR/DD-certified habilitation centers. These services are also known as the community alternative funding system (CAFS). Case management services refer to such services that the State Medicaid plan requires be provided to individuals with MR/DD.*

³ *The bill prohibits ODMR/DD from taking action against a county MR/DD board on the basis that the board submitted the component that provides for the implementation of Medicaid-funded services after November 1, 2001. ODMR/DD is to take action against a county MR/DD board that fails to submit that component by July 1, 2002.*

cope more effectively with the demands of the individual's own person and environment, and in raising the level of the individual's personal, physical, mental, social, and vocational efficiency. Habilitation includes programs of formal, structured education and training.

Medicaid local administrative authority

(secs. 5123.046, 5126.055, and 5126.056; ancillary sections: 5126.035, 5126.046, 5126.054, 5123.049, 5123.0411, 5126.057, and 5705.44)

ODMR/DD is required by current law to review each three-calendar year county MR/DD board plan and, in consultation with the Ohio Department of Job and Family Services (ODJFS) and Office of Budget and Management (OBM), approve each plan that includes all the required information and conditions. The bill requires instead that ODMR/DD review each component and, in consultation with ODJFS and OBM, approve each component that includes all the required information and conditions. If ODMR/DD approves all four components, the plan is approved, otherwise, it is disapproved.

Current law provides that a county MR/DD board with an approved plan has Medicaid local administrative authority regarding Medicaid-funded services for individuals with MR/DD.⁴ The bill provides instead that a county MR/DD board has the Medicaid local administrative authority automatically. As under current law, however, a county MR/DD board's authority, or part of the authority, may be terminated under certain circumstances.

All or part of a county MR/DD board's Medicaid local administrative authority may be terminated if it fails to correct a deficiency in its implementation of the authority, or submit an acceptable plan of correction regarding its implementation, within a required amount of time. The bill specifies the following are additional circumstances under which the authority may be terminated:

- (1) Failure to submit all the components of its three-year plan to ODMR/DD within the required time;
- (2) ODMR/DD disapproval of the three-year plan;⁵

⁴ *A county MR/DD board with Medicaid local administrative authority is required to perform certain functions regarding Medicaid-funded services for individuals with MR/DD, including performing assessments and evaluations, monitoring the services, and, under certain circumstances, paying the nonfederal share for the services.*

⁵ *Current law provides that if a county MR/DD board fails to submit all of the plan's components within the required time or ODMR/DD disapproves the plan, ODMR/DD*

(3) Failure to update and renew its three-year plan in accordance with a schedule ODMR/DD develops;

(4) Failure to implement its initial or renewed three-year plan approved by ODMR/DD.

One of the actions ODMR/DD may take if it terminates all or part of a county MR/DD board's Medicaid local administrative authority is to appoint an administrative receiver to administer the services for which the county MR/DD board's authority is terminated. To the extent necessary for ODMR/DD to appoint an administrative receiver, ODMR/DD is permitted to utilize certain individuals. Current law provides that this includes individuals who are not employed by or affiliated in any manner with a private or government entity that provides Medicaid-funded services to individuals with MR/DD pursuant to a contract with a county MR/DD board. Under the bill, ODMR/DD may utilize an individual employed by or affiliated with a government entity that provides such services pursuant to such a contract.

Another action ODMR/DD may take if it terminates all or part of a county MR/DD board's Medicaid local administrative authority is to contract with a contracting authority that the board recommends. The contracting authority is to administer the services for which the county MR/DD board's authority is terminated. The bill provides that if ODMR/DD rejects a county MR/DD board's recommendation regarding a contracting authority, the board is permitted to appeal the rejection, using the complaint process available under current law to individuals and private entities who have a complaint with ODMR/DD involving any of the programs, services, policies, or administrative practices of ODMR/DD or any of the entities under contract with ODMR/DD.

Assignment of nonfederal share of expenditures for habilitation center services

(sec. 5123.048)

ODMR/DD is required to assign to a county MR/DD board the nonfederal share of Medicaid expenditures for habilitation center services that a private habilitation center provides if (1) the individuals who receive the services also received the services from the center pursuant to a contract the center had with ODMR/DD in state fiscal year 2001, (2) the county MR/DD board determines that the individuals who receive the services are eligible for county MR/DD board

may withhold all or part of any funds ODMR/DD would otherwise allocate to the county MR/DD board. The bill provides for ODMR/DD to terminate all or part of the county MR/DD board's Medicaid local administrative authority instead.

services, and (3) the county MR/DD board contracts with the center to provide the services after the center's contract with ODMR/DD ends.

Current law provides that the amount ODMR/DD must assign to a county MR/DD board be adequate to ensure that the habilitation center services the individuals receive are comparable in scope to the services they received when the habilitation center was under contract with ODMR/DD. The amount assigned may not be less than the amount ODMR/DD paid the center for the individuals in fiscal year 2001. The bill provides that the amount assigned may not be less than the amount ODMR/DD paid the center for each individual who received the services pursuant to the contract ODMR/DD had with the center in fiscal year 2001. If the contract was for less than the entire fiscal year, the amount assigned may not be less than the amount ODMR/DD would have paid the center for each individual who received the services pursuant to the contract had the contract been for the entire fiscal year.

Service waiting list priorities

(sec. 5126.042; ancillary section: 5111.872)

If a county MR/DD board determines that available resources are not sufficient to meet the needs of all eligible individuals who request services available through the board, the board is required to establish waiting lists. The county MR/DD board is required, with an exception and certain limitations, to give certain categories of individuals priority on a waiting list in accordance with the board's ODMR/DD-approved, three-year plan.⁶ The bill requires that the county MR/DD board give priority to the individuals in accordance with the ODMR/DD-approved, assessment component of the plan.

One of the categories of individuals given priority are individuals eligible for ODMR/DD-administered home and community-based services who meet any of certain specified conditions. Current law provides that one of the conditions is that the individual be less than 22, not receive residential services or supported living, reside in his or her family's home, and have one or more specific service needs that are unusual in scope or intensity.⁷ The bill eliminates from this

⁶ *The exception is that no individual may receive such priority over an individual placed on the waiting list on an emergency status.*

⁷ *The specific service needs are (1) severe behavior problems for which a behavior support plan is needed, (2) an emotional disorder for which anti-psychotic medication is needed, (3) a medical condition that leaves the individual dependent on life-support medical technology, (4) a condition affecting multiple body systems for which a combination of specialized medical, psychological, educational, or habilitation services are needed, and (5) a condition the county MR/DD board determines to be comparable in*

condition the prohibition that the individual not receive residential services or supported living and the requirement that the individual reside in his or her family's home. Another condition under current law is that the individual be at least 22 and have, as determined by the county MR/DD board, intensive needs for residential services on an in-home or out-of-home basis. The bill alters this condition by requiring the individual to have intensive needs for home and community-based services rather than residential services and adding a prohibition against the individual receiving residential services or supported living.

Under current law, an individual who satisfies the conditions for priority in the category discussed above is to receive priority for the services over any other individual on the waiting list other than an individual with an emergency status or given priority under a different category. This other category is for individuals eligible for ODMR/DD-administered home and community-based services who (1) are at least 22 and receive supported living or family support services or (2) reside in their own home or the home of their family, will continue to reside in that home after enrollment in the services, and receive adult services from the county MR/DD board. The bill eliminates the restriction that an individual in the first-discussed category of priority not receive priority over an individual in the second-discussed category. If two or more individuals on a waiting list for ODMR/DD-administered home and community-based services have priority for the services pursuant to the first-discussed or second-discussed priority category, a county MR/DD board is permitted to use, until December 31, 2003, criteria specified in ODMR/DD rules in determining the order in which the individuals will be offered the services. Otherwise, the county MR/DD board must offer the services to such individuals in the order they are placed on the waiting list. ODMR/DD is required to adopt the rules no later than December 31, 2001.⁸ The rules cease to have effect December 31, 2003.

The bill also alters a limitation on the first-discussed priority category. Whereas current law provides that no more than 200 individuals may receive priority during state fiscal years 2002 and 2003 pursuant to that category, the bill provides that no more than 400 individuals may receive such priority during the 2002 and 2003 biennium.

severity to any of the preceding conditions and places the individual at significant risk of institutionalization.

⁸ *The rules must also specify conditions under which a county MR/DD board, when there is no individual with priority for the services pursuant to the first-discussed or second-discussed category available and appropriate for the services, may offer the services to an individual on a waiting list for the services but not given such priority.*



The bill creates a new priority category. A county MR/DD board is permitted to provide an individual with MR/DD priority over any other individual on a waiting list for ODMR/DD-administered home and community-based services, other than an individual placed on the waiting list on an emergency status, if two conditions exist. First, the individual receiving the priority must (1) reside in an intermediate care facility for the mentally retarded (ICF/MR) or nursing facility at the time of application for the home and community-based services, (2) have intensive needs and be eligible for home and community-based services, and (3) not be given priority for the services under the priority category in existence for fiscal years 2002 and 2003 only.⁹ Second, another individual with MR/DD who has priority for home and community-based services under other categories must choose, instead, to seek admission to an ICF/MR or nursing facility, be eligible to have Medicaid pay for the services of such a facility, and be admitted to the facility.¹⁰

An individual may receive priority under the bill-created priority category regardless of whether the individual admitted to an ICF/MR or nursing facility resides in the same or different county. If the individuals reside in different counties, the county MR/DD boards serving the counties in which the individuals reside must enter into a collaborative agreement with each other as necessary to implement the priority category. One or more other county MR/DD boards are permitted to enter into the collaborative agreement with the other two boards.

The bill adds the bill-created priority category to the provision that permits a county MR/DD board to use, until December 31, 2003, criteria specified in ODMR/DD rules in determining the order in which individuals will be offered home and community-based services if two or more individuals on a waiting list have priority for the services pursuant to different priority categories. The bill also adds the bill-created priority category to a provision of current law that requires ODMR/DD, when allocating enrollment numbers to a county MR/DD board for ODMR/DD-administered home and community-based services, to do what it

⁹ *The 2002 and 2003 fiscal years priority category is available to individuals who reside in an ICF/MR or nursing facility, choose to move to another setting with the help of home and community-based services, and are capable of residing in the other setting.*

¹⁰ *The other priority categories are available to individuals who (1) receive residential services or supported living, either need services in the individual's current living arrangement or will need services in a new living arrangement, and have a primary caregiver who is 60 or older or (2) are 22 or older, do not receive residential services or supported living, and are determined to have intensive needs for home and community-based services on an in-home or out-of-home basis.*

considers necessary to enable county MR/DD boards to provide the services to individuals in accordance with the requirements of the priority categories.

Residential Facility Waiver transition

(Sections _____ and _____)

The bill requires that ODMR/DD develop a plan to implement the transition, due to the upcoming termination of the Residential Facility Waiver, of individuals who receive services under that waiver to other ODMR/DD-administered home and community-based services. ODMR/DD must develop the plan consistent with the Medicaid redesign plan that ODJFS submitted to the Centers for Medicaid and Medicare Services to comply with an audit conducted by the Centers.¹¹ The plan must identify how the needs of individuals to be transferred are to be met, including ways that the waiver's service capacity can be reconfigured on a statewide, regional, or county specific basis. ODMR/DD must complete the plan in time for the Executive Branch Committee on Medicaid Redesign and Expansion MRDD Services to review the plan and submit recommended changes to ODMR/DD by May 31, 2002. The Committee is required to finish its review and submit suggested changes to ODMR/DD not later than that date. Not later than 60 days after the Committee submits suggested changes, ODMR/DD and ODJFS must establish protocols for county MR/DD boards and private and government entities under contract with a board to provide services under the waiver to follow in implementing the plan.

Until a date that ODMR/DD is to specify in its plan to implement the transition of the Residential Facility Waiver termination, the number of ICF/MR beds eligible for Medicaid payment is not to be higher than the number of such beds eligible for such payment on the bill's effective date. The date ODMR/DD specifies may not be later than September 1, 2002. Even before that date, however, ODJFS is permitted to issue one or more waivers of the moratorium on additional ICF/MR beds eligible for Medicaid payments in the event that an emergency, as determined by ODJFS, exists. In determining whether to issue a waiver, ODJFS is required to consider the recommendation of ODMR/DD.

The bill also requires that ODMR/DD identify costs associated with the Residential Facility Wavier transition plan and sources of funding available to pay the costs.

¹¹ *The Centers for Medicaid and Medicare Services is the federal office, formerly known as the Health Care Financing Administration, that administers Medicare and Medicaid.*

Each county MR/DD board that has a contract with one or more private or government entities to provide services under the Residential Facility Waiver is required to develop a plan jointly with the providers for the implementation of the Residential Facility Waiver transition as it concerns individuals who reside in a residential facility with a license capacity of five or fewer beds. The plan must be developed in accordance with a protocol ODJFS and ODMR/DD are to establish jointly. February 8, 2002, is the plan's due date.

Family support provided as home and community-based services

(Section 3)

Current law authorizes the Director of ODJFS to apply to the United States Secretary of Health and Human Services for one or more Medicaid waivers under which home and community-based services are provided to individuals with MR/DD as an alternative to placement in an ICF/MR. ODJFS is required to enter into an interagency agreement with ODMR/DD with regard to any of the waivers the United States Secretary grants. Under the agreement, ODMR/DD is to administer the waivers.

The bill permits the Director of ODJFS, on the recommendation of the Director of ODMR/DD, to seek one or more such waivers, including a waiver under which home and community-based services are provided in the form of family support services programs established by county MR/DD boards.

The Director of ODJFS is required to adopt rules establishing statewide fee schedules for ODMR/DD-administered home and community-based services. Current law requires that the Director adopt the rules not later than the effective date of the first of any ICF/MR-alternative home and community-based services waivers the United States Secretary grants. The bill provides that the Director is not required to adopt the rules by the effective date of the waiver under which home and community-based services are provided in the form of family support services programs.

Adult services

(sec. 5126.01)

One of the services available through a county MR/DD board is adult services. Adult services include adult day habilitation services, adult day care, prevocational services, sheltered employment, and educational experiences and training obtained through entities and activities that are not expressly intended for individuals with MR/DD. Current law provides that adult services do not include

community or supported employment services.¹² The bill provides that adult services do include community and supported employment services.

Administrative oversight duties included in certain management responsibilities

(sec. 5126.14)

The entity responsible for the habilitation management included in adult day habilitation services and the program management included in residential services and supported living is required to provide administrative oversight by taking certain actions. Current law provides that one of the actions is monitoring for major unusual incidents and causes of abuse, neglect, or exploitation involving an individual under the care of staff providing the services; taking immediate actions as necessary to maintain the health, safety, and welfare of the individual; and providing notice of major unusual incidents and suspected cases of abuse, neglect, or exploitation to the county MR/DD board's investigative agent. The bill requires that the action also include monitoring for unusual (in addition to major unusual) incidents and misappropriation of funds. The entity must provide notice of unusual and major unusual incidents and suspected cases of abuse, neglect, exploitation, or misappropriation of funds to the county MR/DD board, rather than to the investigative agent.

Service and support administration

(sec. 5126.15)

Current law requires a county MR/DD board to provide service and support administration to each individual who is eligible for other services of the board. The bill requires instead that a county MR/DD board provide service and support administration to each individual at least age three who is eligible for service and support administration if the individual requests, or a person on the individual's behalf requests, service and support administration. A county MR/DD board must also provide service and support administration to each individual receiving ODMR/DD-administered home and community-based services. A county MR/DD board is permitted to provide, in accordance with the service coordination requirements of federal regulations governing the early intervention program for

¹² *Community and supported employment services are job training and other services related to employment outside a sheltered workshop. They include (1) job training resulting in the attainment of competitive work, supported work in a typical work environment, or self-employment, (2) supervised work experience through an employer paid to provide the supervised work experience, (3) ongoing work in a competitive work environment at a wage commensurate with workers without disabilities, and (4) ongoing supervision by an employer paid to provide the supervision.*

infants and toddlers with disabilities, service and support administration to an individual under age three eligible for early intervention services under the federal regulations.

Investigative agent

(sec. 5126.221)

Each county MR/DD board is required to employ at least one investigative agent or contract with a private or government entity for the services of an investigative agent. An investigative agent conducts investigations of reports of abuse, neglect, or major unusual incidents involving individuals with MR/DD when circumstances specified in ODMR/DD rules exist.

Current law requires an investigative agent to report directly to a county MR/DD board's superintendent. The bill requires instead that the individual or private entity responsible for supervising the work of investigative agents report to the superintendent regarding the agents.

Direct services contract

(sec. 5126.033)

A county MR/DD board may not enter into a direct services contract for family support or supported living services under which an individual, agency, or other entity will employ a professional or service employee who is also employed by the county MR/DD board unless a number of conditions are met.¹³ Under current law, one of the conditions is that the employee may not hold any administrative or supervisory position in the employ of the county MR/DD board, may not have held such a position during the period the contract was developed, and must agree not to take such a position while the contract is in effect. The bill provides instead that the employee may not be employed by the county MR/DD board during the period the contract is developed as an administrator or supervisor responsible for approving or supervising services to be provided under the contract and agree not to take such a position while the contract is in effect. The bill also

¹³ A county MR/DD board employee is considered to be a professional employee if the employee holds a position for which either a bachelor's degree from an accredited college or university or a license or certificate issued by a state occupational licensing board is a minimum requirement. A county MR/DD board employee is considered to be a service employee if the employee holds a position that may require evidence of registration but for which a bachelor's degree from an accredited college or university is not required.

establishes an additional condition. The employee must be in management level two or three according to ODMR/DD rules.

County MR/DD board complaints against ODMR/DD

(sec. 5123.043)

Current law authorizes a person who has a complaint involving any of the programs, services, policies, or administrative practices of ODMR/DD or an entity under contract with ODMR/DD to file a complaint with ODMR/DD.¹⁴ Prior to commencing a civil action regarding the complaint, the person is required to attempt to have the complaint resolved through the administrative resolution process established in ODMR/DD rules. After exhausting the administrative resolution process, the person may commence a civil action if the complaint is not settled to the person's satisfaction. The bill provides that these provisions are also applicable to a county MR/DD board that has a complaint involving any of the programs, services, policies, or administrative practices of ODMR/DD or an entity under contract with ODMR/DD.

Miscellaneous corrections

(secs. 5126.036, 5126.05, 5126.055, 5126.06, and 5126.357)

The bill corrects cross reference and other errors in the provisions of Am. Sub. H.B. 94 of the 124th General Assembly regarding Medicaid-funded services for individuals with MR/DD.

OTHER PROVISIONS

Net operating loss deduction temporarily suspended

(secs. 5733.04(I) and 5733.043)

The corporation franchise tax is imposed on the basis of a measure of the net income or net worth of a corporation (or other entity taxed as a corporation). A corporation pays the franchise tax on the basis of the measure that yields the greater tax. In computing net income under current law, a corporation may deduct net operating losses to the extent that the deduction reduces the corporation's income to zero. Any remaining amount may be carried over and deducted for up to 15 succeeding years.

¹⁴ *An ODMR/DD employee may not file, under this provision of law, a complaint related to the employee's terms and conditions of employment.*

The bill suspends each corporation's net operating loss deduction for two years. The deduction is disallowed for tax year 2002 for any corporation having a taxable year ending on or after November 30, 2001, but before January 8, 2002. If a corporation's tax year 2002 liability is computed on the basis of a taxable year ending on another date, the deduction is not disallowed for tax year 2002 but it is disallowed for tax year 2004 instead. The deduction is disallowed for tax year 2003 for every corporation regardless of when its taxable year ends.

Net operating losses (NOLs) that may not be deducted because of the suspension may be recovered beginning in 2004, but only to the extent that, without the suspension, the corporation's tax on the basis of net income would have been greater than its tax on the basis of net worth. Specifically, if a corporation's tax on the basis of net worth is greater than its tax on the basis of net income would be after deducting the NOL, then it is not entitled to recover the deduction (because it would have paid tax on the basis of net worth and therefore would not be entitled to claim the NOL anyway). If a corporation's tax on the basis of net worth is less than its tax on the basis of net income after deducting the NOL, then the corporation is entitled to recover the suspended deduction by deducting the difference between its taxable income without the NOL and with the NOL. If a corporation's tax on the basis of net worth is greater than its tax on the basis of net income after deducting the NOL, but is less than its tax on the basis of net income without deducting the NOL, then the corporation may recover an amount that, if deducted from its taxable income without the NOL, would cause its taxable income to be reduced to the extent that its tax on the basis of net income equals its tax on the basis of net worth.

The recoverable amount is referred to as the "suspended tax benefit portion of net operating loss deduction." If the NOL deduction was disallowed to a corporation for tax year 2002 (i.e., the corporation's taxable year ended between November 30, 2001 and January 7, 2002), it may be recovered as a deduction from the corporation's Ohio taxable income beginning with tax year 2004. If the NOL deduction was not disallowed for a corporation for tax year 2002 because the corporation's taxable year ended before November 30, 2001, it may be recovered for tax year 2006. For NOL deductions disallowed for tax year 2003, the suspended tax benefit may be recovered for tax year 2005. The suspended tax benefit, once claimed, may be carried over for up to 15 years.



Addback for certain inter-company expenses

(secs. 5733.042 and 5733.055; Section 18)

Current law

Under current corporation franchise tax law, a corporation may be required to include in its Ohio taxable income certain kinds of expenses it pays to another related company. Similarly, a corporation may be required to include losses it incurs in certain kinds of transactions with a related company. To the extent that such expenses or losses are deductible for federal income tax purposes, they would not be included in Ohio taxable income, and so would reduce the income taxable by Ohio. Frequently, the provisions authorizing these deductions enable a taxpayer to transfer otherwise taxable income from Ohio to another state where the tax is lower or there is no tax at all on corporations or other companies (e.g., Delaware). For example, an Ohio corporation may incur expenses payable to a related company in another state, thus reducing the Ohio corporation's taxable income; to the related company, the receipts from the transaction constitute income, but the income is either not taxed as heavily or is not taxed at all by the other state. To reduce the potential for such tax avoidance transactions, current Ohio law requires corporations to add such expenses or losses in computing their Ohio taxable income.

Whether an expense or loss must be added back depends on the nature of the expense or loss, the nature of the related company, and the relationship between the corporation and the related company. Generally, the addback is required only for interest expenses and expenses or losses associated with acquiring, managing, or disposing of intangibles (e.g., royalties, patents, copyright fees, licensing fees) to the extent that those expenses or losses are deducted in computing a corporation's federal taxable income. The addback may be avoided if the corporation can demonstrate that the transaction resulting in the expense or loss was not principally motivated by tax avoidance and that in the same year the related company paid the expense to, or incurred the loss with respect to, another party that is not related. And any additional tax that may result from such addbacks cannot exceed the tax that the corporation and the related company would have owed if they had been eligible to file, and had filed, a combined tax report. (Combined tax reporting may be requested by, or required of, two or more related corporations if the combined report more accurately reflects the business activity in Ohio; particularly, it can be used to indicate and account for inter-company transactions.)

To be subject to the addback requirement, the interest or intangible expenses must have been paid or accrued to certain "related members" of the corporation that are known as "passive investment companies." Generally, a

related member is a business entity (corporate or noncorporate) that substantially owns, or is substantially owned by, the corporation, either through direct ownership or through a chain of other business entities. Specifically, a related member is any of the following: (1) an individual owning at least 50% of the corporation's stock (alone or together with his or her family members), (2) an individual's corporation, partnership, trust, or estate that, considered as a group, own at least 50% of the corporation's stock, (3) a second corporation owning at least 50% of the corporation's stock, including any third entity related to the second corporation in such a way that federal law would attribute ownership of the second corporation to that entity, or vice-versa, if federal law were modified to require a 20% rather than 5% share ownership threshold, (4) a second corporation related to the corporation through the common ownership or control of each corporation's stock through one or more other corporations (with 80% stock ownership generally constituting ownership or control).

Corporations must add back only those interest and intangible expenses paid to related members that are passive investment companies. These related members include those whose primary business in any one state is maintaining and managing intangible investments; domestic and foreign (relative to the United States) personal holding companies; noncorporate entities that are owned by domestic or foreign personal holding companies; related members paying similar intangible or interest expenses to any of the foregoing kinds of related members; and related members charging the corporation "excess" interest rates.

The bill

The bill expands the addback requirement to cover expenses and losses transacted between a corporation and *any* other company satisfying the "related member" criterion explained above, even if they are not so-called passive investment companies. The bill does not change the kinds of expenses or losses that must be added back, and continues to permit corporations to avoid the addback by showing the transaction was not principally motivated by tax avoidance and that the related member paid the expense to (or incurred the loss with respect to) an unrelated entity in the same year. The existing limit on the tax resulting from the addback continues, except that the bill modifies the language to reflect that at least one of the companies involved in an addback-related transaction is likely not to be subject to the Ohio corporation franchise tax, and therefore the companies would be eligible to file a combined report under sec. 5733.052(A) rather than 5733.052(B). (The bill does not require corporations to request combined reporting, or that the Tax Commissioner approve the request, in order for the limit on the additional tax liability to apply.)

The expanded addback requirement first applies to tax year 2003.

Taxation of trusts

(secs. 5747.01 and 5747.02)

The personal income tax currently applies to the income of individuals and estates. Income of a trust is not taxed at the trust level, but distributions from a trust to a beneficiary are taxable to the beneficiary to about the same extent that they are taxable under the federal income tax. One particular kind of taxable distribution is a distribution of income that has accumulated in a complex trust.¹⁵ The beneficiary of an accumulation distribution is taxed under a modified "throwback rule" intended to prevent tax avoidance, such as may result from a trust shifting distributions to a year when the beneficiary may be subject to a lower marginal tax rate.

The bill applies the income tax to trusts for two years. The tax applies to the "taxable income" of a trust, which is the trust's federal taxable income with some additions and deductions. The taxable income of a trust is computed in the same manner as it is computed for estates. Generally, the taxable income of a trust is the income that is not distributed by the trust. Since distributions from a trust to a beneficiary generally are deducted before arriving at the trust's taxable income, imposing the tax on trusts does not mean that income is necessarily taxed twice--once in the hands of the trust and again in the hands of the beneficiary; instead, it is taxed either in the hands of the trust or in the hands of the beneficiary. The tax applies to trusts only for a trust's taxable years beginning in 2002 or 2003.

If part of a trust is taxed as an electing small business trust (i.e., at least part of the trust consists of S corporation shares), all income from that part is taxed at the highest income tax rate; income from the remaining part is taxed on the basis of the graduated tax rates for taxable years beginning in 2002 or 2003.

The existing addback for a beneficiary's accumulation under the modified throwback rule no longer applies to a beneficiary's taxable years beginning in 2002 or 2003, but begins to apply again for taxable years beginning in 2004 or thereafter.

A trust is a "resident" of Ohio if it is domiciled in Ohio. The residency status of a trust determines whether it is entitled to claim the resident credit for income taxes paid to another state, or to claim the nonresident credit for income received outside Ohio. The bill does not specify how domicile is determined for

¹⁵ A complex trust is a trust that is not required to distribute its income on a current basis, as the income accrues; thus, income can accumulate in the trust. By contrast, a simple trust is a trust that is required to distribute all of its income on a current basis.

trusts, but it does specify that the domicile rules for individuals do not apply to trusts.

The tax applies to all trusts that are subject to federal income taxation. The tax does not apply to a trust that is exempted from the federal income tax on the basis of it satisfying section 501(c)(3) of the Internal Revenue Code (i.e., it is organized exclusively for charitable, religious, educational, scientific, and certain other purposes, none of its net income inures to the benefit of any private person, and it is not engaged in propaganda, lobbying, or political campaigning).

Modification of sales tax as it pertains to affiliated groups

(secs. 5739.01, 5739.02, and 5741.01)

Under current law, an affiliated group, for sales tax purposes, is a group of persons (including corporations) in which one member of the group owns or controls the business operation of another member. The bill specifies that such control may be direct or indirect, and provides that a member of an affiliated group that purchases tangible personal property for lease or rental to another member of the group is the consumer. As such, it may not claim a resale exception to the sales tax for the purchase of the rental property, although it may claim any exception or exemption that the other member could have claimed if that member had purchased the property. For sales of tangible personal property between members of an affiliated group, other than leases or rentals, where the property is being sold in the same form in which the purchaser receives it, the bill defines "price" as the greater of the amount the selling member paid for it or the amount the selling member charges the buying member. If the selling member produced the property (by manufacturing, assembling, or refining), "price" is the greater of cost of production or the amount charged to the buying member.

Existing law exempts from taxation the sale, lease, repair, and maintenance of motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire, as well as parts used in such vehicles. The bill excludes from "highway transportation for hire" the transportation of property by one member of an affiliated group for another member.

Sales tax holiday

(Section 17)

The amendment suspends the sales and use tax for two days, January 26 and 27, 2002, on sales for personal, nonbusiness use, of tangible personal property other than motor vehicles, watercraft, and food to be consumed on the premises

where purchased. The Tax Commissioner is to adopt rules as needed to implement the provision, and make informational bulletins available to vendors.

Adjustments to local government funds

(Sections 9 and 10)

A provision of Am. Sub. H.B. 94 froze the amount of income tax revenue transferred from the General Revenue Fund to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund at the previous biennium's levels. If the economy had been strong, the result of the provision would have been to reduce the amounts credited to these funds below the amounts that would normally have been credited under the Revised Code. However, since the economy has been weak, the "frozen" amounts are actually higher than those that would have been credited under the Revised Code.

The amendment provides a formula by which the Tax Commissioner reduces the amounts of the transfers to the local government funds from GRF. For the period July 2001 to February 2002, if the money actually credited to each local government fund, minus each fund's proportionate share of \$64,092,000, is greater than the amount that would normally have been credited under the Revised Code, the Commissioner must subtract the difference from the amounts credited to those funds in February 2002. (\$64,092,000 is the amount transferred in January 2001, from the Income Tax Reduction Fund to the local government funds.) For the period February 2002 to May 2002, if the amounts credited to the local government funds together (with amounts subtracted during the preceding period) exceeds the amount that would have been credited under the Revised Code, the Commissioner must subtract the difference from the amounts credited in June 2002. The Commissioner must make analogous adjustments for the periods June 2002 to January 2003 and January 2003 to June 2003. (There appear to be a number of reference errors in this provision.)

Reduction in tobacco stamp discount

(sec. 5743.05)

The cigarette excise tax is paid by the purchase of tax stamps (or meter impressions of the stamps), which must be affixed to each package of cigarettes. Current law authorizes the Tax Commissioner to grant a discount to the tobacco dealers who buy the stamps or meter impressions of not less than 3.6% or more than 10% of their face value, as a commission for affixing and canceling the stamps or impressions.

The bill reduces the minimum percentage at which the Commissioner can set the discount to 1.8%.

Tobacco settlement payments to General Revenue Fund

(sec. 183.02 and Section 20)

Current law provides for the money the state receives from the master lawsuit settlement agreement with the major tobacco companies to be distributed in specified percentages and amounts to several trust funds. One of these funds is the Tobacco Use Prevention and Cessation Trust Fund, which is used by a state agency named the Tobacco Use Prevention and Control Foundation for research and programs related to preventing or controlling tobacco use. A portion of the state's annual receipts of master settlement agreement money is allocated to the trust fund each year through 2006 and again in 2012.

The bill authorizes the Director of Budget and Management to transfer to the General Revenue Fund in each of fiscal years 2002 and 2003 up to \$120 million that would otherwise be distributed to the trust fund. The bill also extends the schedule for allocating a portion of master settlement agreement receipts to the trust fund, to provide that master settlement agreement revenue equal to the amounts diverted to the GRF are to be credited to the trust fund from 2013 and 2014 receipts.

Workers' Compensation premium credit

(Section 22)

The bill includes a statement by the General Assembly encouraging the Administrator of Workers' Compensation to apply a 75% premium credit for employers (except self-insuring employers) for the period when employer premiums are next due.

Uses of the Corporate and Uniform Commercial Code Filing Fund

(sec. 1309.528)

Current law requires businesses to file certain documents with the Secretary of State, for such things as registering trade names or recording articles of incorporation or secured transactions. The Secretary of State charges a fee for such filings, and all fees collected under R.C. Title XIII (the Uniform Commercial Code) or Title XVIII (the Corporation and Other Business Entity Code) must be deposited into the state treasury to the credit of the Corporate and Uniform Commercial Code Filing Fund. The fund is used for expenses related to

processing the filings, and also for Secretary of State office operations. But it cannot be used for operations of the Division of Elections.

The bill eliminates the prohibition against using money in the Corporate and Uniform Commercial Code Filing Fund for expenses of the Division of Elections.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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Reported, H. Finance & Appropriations	10-30-01	p. 1047

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