



Alan Van Dyne

*Bill Analysis*  
*Legislative Service Commission*

## **S.B. 191**

124th General Assembly  
(As Introduced)

**Sens. Spada, White**

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### **BILL SUMMARY**

- Provides that an initial license to operate a residential facility for persons with mental retardation and developmental disabilities (MR/DD residential facility) is valid for one year and a renewed license is valid for three years.
- Authorizes the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to terminate MR/DD residential facility licenses.
- Provides for ODMR/DD to conduct surveys, rather than inspections, of MR/DD residential facilities.
- Requires the ODMR/DD Director to initiate disciplinary action against an ODMR/DD employee who causes the notification of an unannounced survey, rather than to suspend an employee for at least three days for causing the notification of an unannounced inspection.
- Eliminates (1) a requirement that ODMR/DD notify certain local officials before issuing a license to an MR/DD residential facility that will accommodate more than one person and (2) a prohibition against ODMR/DD issuing the license for ten days in order to give the local officials time to comment.
- Provides that ODMR/DD may issue an interim license to a qualified MR/DD residential facility when necessary to meet a temporary need.
- Eliminates a restriction under which interim licenses are not to be renewed more than twice.

- Authorizes ODMR/DD, if it is determined that an individual or private entity's operation of two or more MR/DD residential facilities is not in compliance with state statutes or rules, to suspend admissions to each MR/DD residential facility that the individual or entity operates.
- Eliminates a requirement that certain information on which ODMR/DD may rely to determine compliance with state law be obtained in the course of investigating a major unusual incident.
- Requires ODMR/DD to adopt rules establishing procedures for receipt, referral, investigation, and disposition of complaints relating to MR/DD residential facilities, rather than requiring ODMR/DD to acknowledge receipt of a complaint and notify the complainant of the action that will be taken.
- Eliminates a prohibition against the substance of a complaint being provided to a licensee until an inspection or investigation is commenced.

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## CONTENT AND OPERATION

### Background

Each individual, private entity, and government agency desiring to operate a residential facility for persons 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, an MR/DD residential facility is a home or facility in which a person with MR/DD resides. The exceptions are a home of a relative or legal guardian, certified respite care homes, county and district homes, and dwellings in which the residents with MR/DD are in an independent living arrangement or are being provided supported living services. The requirement of ODMR/DD licensure also does not apply to the following: (1) certain institutions and associations for children that are subject to certification by the Department of Job and Family Services, (2) hospitals subject to licensure by the Department of Mental Health, and (3) nursing homes (other than, except under certain circumstances, any portion of such a home certified as an intermediate care facility for the mentally retarded), residential care facilities, and adult care facilities subject to licensure by the Department of Health.<sup>1</sup>

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<sup>1</sup> 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

### Duration of license

(sec. 5123.19(C) and (G); Section 3)

Under current law, an MR/DD residential facility license is valid until revoked, voluntarily surrendered, or cancelled for failure to provide notification of a significant change in ownership or the identity of the licensee or management contractor. Because licenses are valid indefinitely, there is no procedure for renewal. Under the bill, a license is valid for a definite period of time and ODMR/DD is given authority to renew licenses.<sup>2</sup> An initial license is to be valid for one year. A renewed license is to be valid for three years.

Both initial and renewed licenses are subject to revocation and voluntary surrender as under current law, but are also subject to termination, rather than cancellation, under the bill. The Director of MR/DD is required to adopt rules specifying circumstances under which a license is to be terminated rather than revoked. The circumstances are to include failure to provide notification of a significant change in ownership or the identity of the licensee or management contractor. The Director is also to adopt rules establishing procedures for terminating licenses. As is the case with appeals from proceedings initiated to revoke a license, an appeal from a proceeding to terminate a license must be conducted in accordance with the Administrative Procedure Act.

### Surveys

(sec. 5123.19(D))

Current law provides for ODMR/DD 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.

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*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. ICF/MR beds added to a nursing home after those exempt from ODMR/DD licensure are subject to ODMR/DD licensure.*

<sup>2</sup> *The ODMR/DD Director is required by the bill to adopt rules establishing procedures and fees for renewing licenses. The Director must also adopt rules establishing a schedule for MR/DD residential facilities licensed on the bill's effective date to seek renewal of the license in accordance with the bill. The rules are to be adopted in accordance with the Administrative Procedure Act.*

The bill provides for ODMR/DD to conduct surveys rather than inspections. Current law does not define "inspection" and the bill does not define "survey."<sup>3</sup> Other than a requirement that a licensed MR/DD residential facility be surveyed at least once during the period its license is valid, rather than be inspected at least once each year, the bill does not make a survey different from an inspection. For example, as under current law regarding inspections, a survey includes, but is not limited to, an on-site examination and evaluation of the facility, its personnel, and the services provided there. ODMR/DD continues to be permitted to conduct additional inspections as needed.

The ODMR/DD Director is required by current law to suspend without pay for a period of at least three days any ODMR/DD employee who causes the notification, to an unauthorized person, of an unannounced inspection. The bill requires instead that the Director initiate disciplinary action if an ODMR/DD employee causes the notification of an unannounced survey.

**Notification of proposed licenses to local authorities**

(sec. 5123.19(J))

Under current law, ODMR/DD must, before issuing a license to an MR/DD residential facility that will accommodate more than one person with MR/DD, notify certain local officials by first class mail. If the facility will be located in a municipal corporation, notification must go to the clerk of the municipal corporation's legislative authority. If the facility will be located in unincorporated territory, the notice must go to the clerk of the appropriate board of county commissioners and the clerk of the appropriate board of township trustees.

ODMR/DD is prohibited from issuing the license for ten days after mailing the notice, excluding weekends and holidays, in order to give the notified local officials time to comment on the proposed issuance. If ODMR/DD receives written comments from a notified local official within that ten-day period, ODMR/DD is required to make written findings concerning the comments and ODMR/DD's decision on issuing the license.

The bill eliminates these requirements and prohibitions.

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<sup>3</sup> *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.

### **Interim licenses**

(sec. 5123.19(N))

Current law authorizes ODMR/DD to issue an interim license to operate an MR/DD residential facility if (1) an emergency exists that requires immediate placement of persons in an MR/DD residential facility and insufficient licensed beds are available, (2) the facility meets the interim license standards established in rules, and (3) the facility is likely to 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.

The bill provides that ODMR/DD may also issue an interim license when necessary to meet a temporary need for an MR/DD residential facility if the facility meets the interim license standards established in rules. Under the bill, an interim license continues to be valid for 30 days, but the limitation on the number of times it can be renewed is eliminated.

### **Suspension of admissions**

(sec. 5123.19(D))

ODMR/DD is authorized by current law to take such steps as are necessary if it is determined that an MR/DD residential facility is not being operated in compliance with state statutes or rules. The actions that may be taken include suspension of admissions to the facility, placement of a monitor at the facility, and the initiation of license revocation proceedings. The bill authorizes ODMR/DD, if it is determined that an individual or private entity's operation of two or more MR/DD residential facilities is not in compliance with state law or rules, to suspend admissions to each MR/DD residential facility that the individual or entity operates.

### **Major unusual incidents**

(sec. 5123.19(D))

In determining whether an MR/DD residential facility is being operated in compliance with state 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 bill eliminates the requirement that the information be obtained in the course of investigating major unusual incidents. The bill also eliminates a requirement that the ODMR/DD Director adopt rules specifying what constitutes "major unusual incidents."

**Complaints**

(sec. 5123.19(H))

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 state statutes or rules relating to MR/DD residential facilities. Under current law, ODMR/DD must 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 bill 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 bill eliminates a prohibition against the substance of a complaint being provided to a licensee until an inspection or investigation is commenced but 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.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	11-06-01	p. 1038

S0191-I.124/jc

