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Bill Analysis
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(As Reported by S. Health, Human Services and Aging)

Sens. Spada, White

BILL 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).
- Permits an initial license to be issued for a period not exceeding one year and a renewed license to be issued for a period not exceeding three years.
- Authorizes the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to terminate and refuse to renew MR/DD residential facility licenses.
- Specifies criteria to be considered by ODMR/DD when selecting and administering the licensing sanction to be imposed on a residential facility.
- 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.

* *This analysis was prepared before the report of the Senate Health, Human Services and Aging Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Provides that ODMR/DD may issue an interim license to a qualified MR/DD residential facility when necessary to meet a temporary need.
- Limits interim licenses to one renewal of 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, 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.

**HEALTH CARE SERVICES PERFORMED BY
MR/DD PERSONNEL**

- Requires ODMR/DD to establish a certification program under which MR/DD personnel are trained to administer prescribed medication and perform specified health-related activities and registered nurses are trained to conduct training programs for MR/DD personnel.
- Permits certified MR/DD personnel to administer medication and perform health-related activities without nursing delegation when providing services to recipients of supported living and to residents of residential facilities with five or fewer resident beds.
- Requires MR/DD personnel to act under nursing delegation when providing services to individuals in a sheltered workshop and to residents of residential facilities with six to 16 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.

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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 persons with mental retardation and developmental disabilities 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.¹

Duration of license

(sec. 5123.19(C); Section 3)

Under current law, an MR/DD residential facility license is valid until revoked, voluntarily surrendered, or cancelled. Because licenses are valid indefinitely, there is no procedure for renewal.

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

The bill 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 bill's effective date, the bill provides that the license remains in effect until the Director renews or refuses to renew the license.

The bill requires the Director to adopt rules that establish and specify procedures and criteria for issuing and renewing licenses. The rules must include procedures and criteria for determining the length of each license's licensing period. The Director must adopt rules establishing fees for initial and renewed licenses. The bill also requires the Director to adopt rules establishing a schedule for currently licensed residential facilities to seek renewal. All rules regarding

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

issuance and renewal of licenses are to be adopted in accordance with the Administrative Procedure Act.

Imposition of sanctions

(sec. 5123.19(D))

Current law 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. Current law also permits the Director to deny issuance of a license, order the immediate removal of residents from a facility, and cancel a license.

The bill continues the sanctioning options specified in current law and creates the ability to terminate a license or refuse to renew a license. Rules are to be adopted in accordance with the Administrative Procedure Act establishing and specifying procedures and criteria for imposing sanctions. In some cases, current law includes procedures and criteria to be used by the Director in selecting and administering the sanction to be imposed. The bill continues these procedures and criteria, while specifying additional procedures and criteria. Under the bill, all of the following apply:

--Denial of, refusal to renew, or revocation of a license. The bill 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 bill continues 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. In addition, the bill provides that a license may be terminated if more than 12 consecutive months have elapsed since the residential facility was last occupied.

--Suspension of admissions to a facility. The bill 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 bill provides that the suspension of admissions may be ordered for any other violation specified in rules that are to be adopted under the bill. The Director must rescind an order for the suspension of

admissions when the violation that formed the basis for the order has been corrected.

--Placement of a monitor at a facility. The bill 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 bill. The Director is required to rescind the order when the violation has been corrected.

--Surveys of facilities under the same ownership or operation. Under the bill, 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 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 bill 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 bill 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 as the Director considers necessary 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. At a minimum, public notification must 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 substantially similar violation. The bill requires that the rules 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 has been corrected.

Appeals

(sec. 5123.19(F))

The bill 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 bill 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 a 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 rescind the order for suspension of admissions when the violation is corrected.

Surveys

(sec. 5123.19(H))

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.

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."² 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

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.

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.

Interim licenses

(sec. 5123.19(R))

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. Under the bill, 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 bill permits an interim license to be renewed only once, with a renewal period not exceeding 150 days.

The bill 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 (Revised Code Chapter 119.).

Sources of information

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

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 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 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.

Change of ownership

(sec. 5123.19(J))

Under current law, 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. The Director must notify the applicant of whether the current license will continue in effect or a new license will be required. The bill provides that if a new license is required, the Director must permit the facility to continue to operate under the current license until the new license is issued.

HEALTH CARE SERVICES PERFORMED BY MR/DD PERSONNEL

Background

Under current law, each county board of mental retardation and developmental disabilities must 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, ODMR/DD must adopt a policy on whether workers in intermediate care facilities for the mentally retarded will be allowed to engage in those activities. The Board of Nursing has extensive rule-making authority governing the training requirements for nurses and the workers.



The bill eliminates the duty to adopt a policy on whether workers may engage in the specified health care activities and repeals the corresponding statutes that specify the procedures and limitations that apply to the workers and nurses who delegate to them. In place of those laws, the bill (1) specifies the duties 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. 5123.201 and 5123.202)

The bill authorizes MR/DD personnel to administer prescribed medication, perform health-related activities, or do both, when no other provisions of the Revised Code specifically authorize the personnel to perform those services. For purposes of this provision, the bill specifies that MR/DD personnel are individuals who provide specialized services to individuals with mental retardation and developmental disabilities. As examples of the individuals who are included, the bill specifies the following:

- (1) Direct employees of ODMR/DD or a county board of mental retardation and developmental disabilities;
- (2) Individuals who provide services through an entity under contract with ODMR/DD or a county board;
- (3) Individuals who provide services through direct employment or by being under contract with private entities, including operators of residential facilities and intermediate care facilities for the mentally retarded that are licensed by the Department of Health.

Recipients of health care services by MR/DD personnel

(sec. 5123.202(A))

The bill limits the individuals for whom MR/DD personnel may administer medication and perform health-related activities to the following:

- (1) Recipients of supported living;
- (2) Recipients of sheltered workshop services;

(3) Residents of a residential facility with 16 or fewer beds that is licensed by ODMR/DD as a residential facility or by the Department of Health as an intermediate care facility for the mentally retarded.

Prescribed medication and health-related activities

(sec. 5123.201(B) and (E))

In establishing the authority of MR/DD personnel to perform health care services, the bill specifies that prescribed medication is any drug that is to be administered according to the instructions of a licensed health professional authorized to prescribe drugs. The bill also lists the health-care activities that MR/DD personnel may perform, as follows:

- (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) Routine mouth care;
- (6) Routine care of hair, nails, and skin;
- (7) Use of glucometers;
- (8) External urinary catheter care;
- (9) Emptying and replacing colostomy bags;
- (10) Collection of specimens by noninvasive means.

Certification and training requirements

(sec. 5123.202(B)(1) and (2))

To administer prescribed medication, perform health-related activities, or do both, the bill provides that MR/DD personnel must be appropriately certified by ODMR/DD. An individual is permitted to provide only those services for which the individual's certification was issued.

Before a particular individual may receive services from MR/DD personnel, the MR/DD personnel's employer or other entity with primary responsibility for the services being provided must ensure that each individual

providing the services has been trained specifically with respect to the individual receiving the services.

Nursing delegation requirements

(secs. 4723.071 and 5123.202(B)(3) to (5))

Nursing delegation is described by the bill 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 bill requires the Board to adopt rules as necessary to govern the delegation to MR/DD personnel. The rules, however, must be consistent with the authority the bill grants to MR/DD personnel.

Under the bill, the determination of whether MR/DD personnel are permitted to administer prescribed medication and perform health-related activities with or without nursing delegation depends on the service being provided, as well as the location where the service is provided. The following list summarizes the nursing delegation requirements:

--Supported living and residential facilities with 5 or fewer beds:

Without delegation: Health-related activities.

Topical and oral medication administration.

With delegation: Administration of medication through stable, labeled gastrostomy and jejunostomy tubes.

Routine feedings through stable, labeled gastrostomy and jejunostomy tubes.

Administration of routine doses of insulin through subcutaneous injections and insulin pumps.

--Residential facilities with 6 to 16 beds and sheltered workshops:

With delegation: Health-related activities.

Topical and oral medication administration.

Medication administration through stable, labeled gastrostomy and jejunostomy tubes.

Routine feedings through stable, labeled gastrostomy and jejunostomy tubes.



Training courses for MR/DD personnel and registered nurse trainers

(sec. 5123.203(A))

The bill requires ODMR/DD to develop courses for training MR/DD personnel, as well as courses for training registered nurses to conduct training courses for MR/DD personnel. The Department must adopt rules that specify the content and length of the courses. The rules may establish 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. 5123.203(B))

The medication administration training courses developed under the bill must address at least 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) Requirements for documentation of medication administered to each individual;
- (5) Requirements for documentation and notification of medication errors;
- (6) Information regarding the proper storage and care of medications;
- (7) Requirements for successful demonstration of proficiency in medication administration;
- (8) Information about proper receipt of prescriptions and transcription of prescriptions into an individual's medication administration record.

Certification program

(sec. 5123.204)

The bill requires ODMR/DD to establish a program under which it issues certificates to MR/DD personnel authorizing them to perform health care services. Under the program, ODMR/DD is also to issue certificates to registered nurses

authorizing them to conduct training courses for MR/DD personnel. To be eligible for a certificate, an individual 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.

The program must provide for the issuance of certificates to MR/DD personnel who are qualified under current law to perform health services. The program also must provide for the issuance of certificates to registered nurses who currently conduct training courses for MR/DD personnel. The bill prohibits a registered nurse from training MR/DD personnel to administer insulin until the registered nurse has completed a refresher course developed by ODMR/DD that enables the registered nurse to obtain a certificate to provide training in administering insulin.

Certificates issued by ODMR/DD are to be valid for one year 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.

ODMR/DD must adopt rules as necessary to administer the certification program, including rules for taking disciplinary actions against certificate holders. 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.

Registry

(sec. 5123.204(D))

The bill requires ODMR/DD to establish and maintain a registry that lists the MR/DD personnel and registered nurses who hold valid certificates. The registry must specify the type of certificate held by each individual and any limitations that apply to the individual.

Documentation requirements, complaint procedures

The bill requires ODMR/DD to adopt rules as it considers necessary to implement the authority of MR/DD personnel to administer medication and perform health-related activities. 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. The bill specifies that the rules must include the following:

- (1) Requirements for documentation of each health care service provided by MR/DD personnel pursuant to the authority established by the bill;
- (2) Procedures for reporting errors that occur;

(3) Procedures for ODMR/DD to follow in accepting complaints and conducting investigations of those complaints.

Assistance with self-administration of medication

(sec. 5123.206)

The bill permits MR/DD personnel to provide assistance to individuals with mental retardation and developmental disabilities in their self-administration of medication. To provide that assistance, MR/DD personnel are not required to undergo the bill's training and certification requirements. However, the bill provides 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.

HISTORY

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