



Bob Bennett

*Bill Analysis*  
*Legislative Service Commission*

**Sub. H.B. 405**  
127th General Assembly  
(As Reported by H. Health)

**Reps. Bacon, Setzer, Zehringer, Hughes, J. McGregor, Wagoner, Fessler, Evans, Boyd, Schindel, Uecker, Mecklenborg, DeBose, Fende, Webster**

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**BILL SUMMARY**

- Eliminates a limit under which no more than 400 individuals may receive priority for home and community-based services administered by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) during the 2008 and 2009 biennium on the basis of being less than age 21 and having at least one service need that is unusual in scope or intensity.
- Eliminates a limit under which no more than 40 nursing facility residents who choose to move to another setting may receive priority for ODMR/DD-administered home and community-based services for each year this priority policy is implemented.
- Eliminates the December 31, 2009, sunset of state rules that (1) establish criteria a county board of mental retardation and developmental disabilities (county MR/DD board) may use in determining the order in which individuals with priority for home and community-based services will be offered the services if two or more individuals on a waiting list are to be given priority for the services and (2) specify conditions under which a county MR/DD board, when there is no individual with priority for the services available and appropriate for the services, may offer the services to another individual who is on the waiting list but does not qualify for priority.
- Repeals law governing service substitution lists, ending county MR/DD boards' statutory authority to establish the lists.
- Requires that an individual placed on a county MR/DD board's service substitution list before the bill's effective date for the purpose of

obtaining ODMR/DD-administered home and community-based services be deemed to have been placed on the county MR/DD board's waiting list for the services on the date the individual made a request to the county MR/DD board that the individual receive ODMR/DD-administered home and community-based services.

- Repeals a requirement that county MR/DD boards maintain long-term service planning registries for individuals who wish to record their intention to request in the future a service they are not currently receiving.

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## CONTENT AND OPERATION

### County MR/DD board waiting lists

#### Background

Continuing law requires a county board of mental retardation and developmental disabilities (county MR/DD board) to create waiting lists for the services it offers if the demand for the services exceeds available resources. Separate waiting lists must be created for specified services listed in the Revised Code, such as residential services and supported living. A separate waiting list must be created for other services that are not listed but are determined necessary and appropriate for persons with mental retardation or a developmental disability according to their individual habilitation or service plans.

A county MR/DD board is required to establish four priority policies for its waiting lists.<sup>1</sup> No priority policy, however, may give an individual priority for a service over another individual placed on the waiting list on an emergency status.<sup>2</sup> The following are the four required priority policies:

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<sup>1</sup> A county MR/DD board is permitted to establish other priority policies for making placements on its waiting lists according to an individual's emergency status.

<sup>2</sup> Continuing law defines "emergency" as any situation that creates for an individual with mental retardation or developmental disability a risk of substantial self-harm or substantial harm to others if action is not taken within 30 days. An emergency may include (1) loss of present residence for any reason, (2) loss of present caretaker for any reason, (3) abuse, neglect, or exploitation of the individual, (4) health and safety conditions that pose a serious risk to the individual or others of immediate harm or death, and (5) change in the emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.

(1) For the purpose of obtaining additional federal Medicaid funds for home and community-based services under an Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD)-administered waiver program, an individual who is eligible for ODMR/DD-administered home and community-based services, is age 22 or older, and receives supported living or family supported services is to be given priority over other individuals on a waiting list for such home and community-based services that include supported living, residential services, or family support services.

(2) Also for the purpose of obtaining such additional Medicaid funds, an individual who is eligible for ODMR/DD-administered home and community-based services, resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in the home and community-based services, and receives adult services from the county MR/DD board is to be given priority over other individuals on a waiting list for ODMR/DD-administered home and community-based services that include adult services.

(3) As federal Medicaid funds become available pursuant to implementation of the first two priority policies, an individual who is eligible for ODMR/DD-administered home and community-based services and meets certain requirements is to be given priority for such services over other individuals on a waiting list. The individual must meet one of the following requirements to be given priority for the services: the individual (a) cannot be receiving residential services or supported living, must either need services in the individual's current living arrangement or need services in a new living arrangement, and must have a primary caregiver who is age 60 or older, (b) must be less than age 21 and have at least one service need that is unusual in scope or intensity,<sup>3</sup> or (c) must be age 21 or older, not receive residential services or supported living, and be determined by the county MR/DD board to have intensive needs for ODMR/DD-administered home and community-based services on an in-home or out-of-home basis.

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<sup>3</sup> The individual must have at least one of the following service needs that are unusual in scope or intensity: (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, or (5) a condition the county MR/DD board determines to be comparable in severity to any of the previously listed conditions and places the individual at significant risk of institutionalization.

(4) An individual who is eligible for ODMR/DD-administered home and community-based services, resides in a nursing facility, and chooses to move to another setting with the help of such services is to be given priority over other individuals who are on a waiting list for the services and do not meet these criteria. This policy is to be implemented beginning on a date specified in rules ODMR/DD is required to adopt and continue for a number of years specified in the ODMR/DD rules. The number of years may not exceed five. To date, ODMR/DD has not set a date for this priority to begin implementation or specified the number of years it is to be implemented.

#### **Limitations on priorities**

Current law establishes a limit on part of the third priority policy (the policy of giving certain individuals priority for ODMR/DD-administered home and community-based services as federal Medicaid funds become available pursuant to implementation of the first two priority policies). The limit is that no more than 400 individuals may receive such priority during the 2008 and 2009 biennium on the basis of being less than age 21 and having at least one service need that is unusual in scope or intensity. The bill eliminates this limitation for the remainder of the biennium. (R.C. 5126.042(G)(2).)

Current law also establishes a limit on the fourth priority policy (the policy of giving an individual who is eligible for ODMR/DD-administered home and community-based services, resides in a nursing facility, and chooses to move to another setting with the help of such services priority for the services). The limit is that no more than 40 individuals may receive such priority for each year the policy is implemented. The bill eliminates this limit. (R.C. 5126.042(G)(4).)

#### **Order individuals receive services when multiple persons have priority**

ODMR/DD is required to adopt rules establishing criteria a county MR/DD board may use in determining the order in which individuals with priority for ODMR/DD-administered home and community-based services will be offered the services if two or more individuals on a waiting list are to be given priority for the services. The rules must also specify conditions under which a county MR/DD board, when there is no individual with priority for the services available and appropriate for the services, may offer the services to another individual who is on the waiting list but does not qualify for priority. The rules are to cease to have effect December 31, 2009, at which time county MR/DD boards are to stop using the criteria. The bill provides for the rules to continue in effect on and after December 31, 2009. This means that the county MR/DD boards may continue to use the criteria after that date. (R.C. 5126.042(F) and (K)(2).)

### **Removal of obsolete priority**

There was a fifth priority policy that county MR/DD boards were required to implement in fiscal years 2002 and 2003. Under that policy, a county MR/DD board was to give certain individuals priority for ODMR/DD-administered home and community-based services over other individuals on a waiting list for the services. To receive priority, an individual had to have been eligible for ODMR/DD-administered home and community-based services, resided in an intermediate care facility for the mentally retarded or nursing facility, chosen to move to another setting with the help of ODMR/DD-administered home and community-based services, and been determined by ODMR/DD to be capable of residing in the other setting. Not more than a total of 75 individuals were permitted to receive such priority. ODMR/DD was required to identify the individuals to receive the priority, assess the individuals' needs, and notify county MR/DD boards of the individuals so identified and their assessed needs. A county MR/DD board, as part of its Medicaid local administrative authority, was required to assist ODMR/DD in expediting the identified individuals' transfer to the ODMR/DD-administered home and community-based services. These provisions are now obsolete because they were applicable in fiscal years 2002 and 2003 only. The bill removes the provisions from the Revised Code. (R.C. 5126.042(D)(3) and (G)(3) and 5126.055(A)(2).)

### **Service substitution lists**

A county MR/DD board is prohibited by current law from placing an individual on a waiting list if the individual is already receiving a service but would like to change to another service. Instead, the individual is to be placed on a service substitution list. A county MR/DD board must work with the individual, service providers, and all appropriate entities to facilitate the change in service as expeditiously as possible. A county MR/DD board is permitted to establish priorities for making placements on its service substitution lists according to an individual's emergency status.

The bill repeals the law governing service substitution lists, ending county MR/DD boards' authority to establish the lists. And, the bill requires that an individual placed on a county MR/DD board's service substitution list before the bill's effective date for the purpose of obtaining ODMR/DD-administered home and community-based services be deemed to have been placed on the county MR/DD board's waiting list for the services on the date the individual made a request to the county MR/DD board that the individual receive ODMR/DD-administered home and community-based services instead of the services the individual received at the time the request for the ODMR/DD-administered home and community-based services was made to the county MR/DD board. (R.C. 5126.042(A)(2) and (B).)

**Long-term service planning registries**

Each county MR/DD board is required to maintain a long-term service planning registry for individuals who wish to record their intention to request in the future a service they are not currently receiving. The purpose of the registry is to enable the board to document requests and plan appropriately. A county MR/DD board is prohibited from placing an individual on the registry if the individual is eligible for the services on an emergency basis.

The bill repeals the law governing the long-term service planning registries. Under it, county MR/DD boards are not required to maintain the registries. (R.C. 5126.042(B).)

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**HISTORY**

ACTION	DATE
Introduced	12-04-07
Reported, H. Health	01-31-08

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