



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 567

129th General Assembly  
(As Reported by House Health and Aging)

**Reps.** Sears, Gonzales, Hackett, Hill, Stebelton, Thompson, Carney, Celeste, Garland

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## BILL SUMMARY

- Modifies licensing requirements for professional clinical counselors, professional counselors, and independent social workers.
- Provides for voluntary registration of master's level counselor, social worker, and marriage and family therapy trainees enrolled in practice and internships.
- Generally prohibits an employee in the service of the state from engaging in the practice of professional counseling, social work, or marriage and family therapy without a license issued by the State Counselor, Social Worker, and Marriage and Family Therapist Board unless the employee has two years of service on the bill's effective date.
- Gives state employees practicing prior to the bill's effective date who are not exempt two years to comply with the licensing requirement.
- Specifies that a vocational rehabilitation counselor or a caseworker employed by a public children services agency is not required to be licensed or certified by the Board.
- Revises the membership of the Board and specifies additional qualifications to be eligible to serve on the Board.
- Authorizes the Board to take disciplinary action against (1) an individual who has applied for or holds a certificate of registration as a counselor trainee, social worker trainee, or marriage and family therapist trainee and (2) an individual or entity that has applied for or is registered to provide continuing education programs.

- Expands the professionals who are granted civil immunity when providing volunteer health care services to include professionals licensed by the Board.
- Expands to all professionals licensed or registered by the Board provisions of law regarding reports of abuse or neglect that apply to other professionals regulated by the Board.
- Exempts professionals licensed by the Board from the duty to disclose privileged information between the professional and a client that is related to a felony or knowledge of death.
- Permits professionals licensed by the Board to provide services through certain business entities formed in combination with other health care professionals.
- Permits the Ohio Department of Developmental Disabilities to conduct or contract with another entity to conduct, for the first quarter of calendar year 2013, assessments of all residents of each intermediate care facility for individuals with intellectual disabilities (ICF/IID).
- Provides for the resident assessments to be used in determining ICF/IIDs' case-mix scores for the first quarter of calendar year 2013 and using those case-mix scores for purposes of determining ICF/IIDs' Medicaid rates for direct care costs for the first quarter of fiscal year 2014 and ICF/IIDs' fiscal year 2015 Medicaid rates for direct care costs.

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## CONTENT AND OPERATION

### License requirements

#### Professional clinical counselors

The bill modifies two of the requirements that an applicant must meet to be eligible for a professional clinical counselor license. It revises the number and type of hours of graduate credit in counselor training that must be completed and requires the Counselor, Social Worker, and Marriage and Family Therapist Board to adopt a rule regarding accrediting organizations that will be accepted by the Board for purposes of an applicant meeting educational requirements.

#### Graduate credit

Regarding graduate credit in counselor training, the bill requires an applicant to complete at least 90 quarter hours or 60 semester hours (rather than 90 quarter hours) of graduate credit in counselor training. It requires that an applicant's counselor training include instruction in areas currently specified in statute, but removes the requirement of at least 30 hours of training in the specified areas.<sup>1</sup>

#### Accrediting organizations

Current law provides that to be eligible for a professional clinical counselor license, an individual must hold a graduate degree in counseling from an accredited

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<sup>1</sup> R.C. 4757.22(B)(3).

educational institution.<sup>2</sup> The bill requires the Board to adopt a rule that does all of the following:

(1) Requires that a graduate degree in counseling obtained after January 1, 2018, from an Ohio mental health counseling program be from (a) an institution accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) in clinical mental health counseling or addiction counseling or (b) other accredited counseling programs approved by the Board by rule;

(2) Stipulates that CACREP accredited programs in clinical mental health counseling and, until January 1, 2018, mental health counseling, and other accredited counseling programs approved by the Board by rule are deemed to have met the requirement that an individual complete at least 90 quarter hours or 60 semester hours of graduate credit in counselor training;

(3) Establishes course content requirements for qualifying counseling degrees from counseling programs that are not CACREP accredited clinical mental health or addiction counseling programs and for graduate degrees from other accredited counseling programs approved by the Board by rule.<sup>3</sup>

### **Professional counselors**

The bill modifies two of the requirements an applicant must meet to be eligible for a professional counselor license. It revises the number and type of hours of graduate credit in counselor training that must be completed and requires the Board to adopt a rule regarding accrediting organizations that will be accepted by the Board for purposes of an applicant meeting educational requirements.

### **Graduate credit**

Regarding the number and type of hours of graduate credit in counselor training an applicant must complete to be eligible for a professional counselor license, the bill requires an applicant to complete at least 90 quarter hours or 60 semester hours (rather than 90 quarter hours) of graduate credit in counselor training. The training must include instruction in the following areas: (1) clinical psychopathology, personality, and abnormal behavior, (2) evaluation of mental and emotional disorders, (3) diagnosis of mental and emotional disorders, and (4) methods of prevention, intervention, and

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<sup>2</sup> R.C. 4757.22(B)(2).

<sup>3</sup> R.C. 4757.22(F).

treatment of mental and emotional disorders.<sup>4</sup> These are the same areas of instruction in which an applicant for a professional clinical counselor license must receive training.

### **Accrediting organizations**

Current law provides that to be eligible for a professional counselor license, an individual must hold a graduate degree in counseling from an accredited educational institution.<sup>5</sup> The bill requires the Board to adopt a rule that does all of the following:

(1) Requires that a graduate degree in counseling obtained after January 1, 2018, from an Ohio mental health counseling program be from an institution accredited by (a) CACREP or (b) other CACREP accredited counseling programs approved by the Board by rule;

(2) Establishes that individuals that have graduate degrees in clinical mental health counseling from a CACREP accredited program are deemed to have met the requirement that an individual complete at least 90 quarter hours or 60 semester hours of graduate credit in counselor training;

(3) Establishes requirements for qualifying counseling degrees from counseling programs that are not CACREP accredited programs, and for graduate degrees from other accredited counseling programs approved by the Board by rule.

The bill also requires the Board to adopt rules regarding criteria for the professional standards committee to use in determining whether an applicant's supervised experience should be approved.<sup>6</sup>

### **Independent social workers**

The bill modifies the educational requirements an applicant must meet to be eligible for an independent social worker license. The bill requires an individual to hold a master's degree in social work (rather than a master's or doctorate degree in social work). The master's degree in social work must be from an educational institution accredited by the Council on Social Work Education (CSWE) (rather than from an accredited educational institution).<sup>7</sup>

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<sup>4</sup> R.C. 4757.23(B)(3).

<sup>5</sup> R.C. 4757.23(B)(2).

<sup>6</sup> R.C. 4757.23(F).

<sup>7</sup> R.C. 4757.27(B)(2).

## **Voluntary registration of master's level trainees**

The bill requires the Board to adopt rules for voluntary registration of (1) master's level counselor trainees enrolled in practice and internships, (2) master's level social worker trainees enrolled in fieldwork, practice, and internships, and (3) master's level marriage and family and therapy trainees enrolled in practice and internships. The rules may not require that a trainee register with the Board and, if the trainee has not registered, prohibits any adverse effect regarding a trainee's application for licensure from the Board.<sup>8</sup>

## **Counselor assistant certificates**

The bill removes obsolete references to counselor assistant certificates of registration. These certificates are no longer issued.<sup>9</sup>

## **State employees practicing professional counseling, social work, or marriage and family therapy**

The bill generally prohibits an employee in the service of the state, including public employees eligible for collective bargaining, from engaging in the practice of professional counseling, social work, or marriage and family therapy without a valid license issued by the State Counselor, Social Worker, and Marriage and Family Therapist Board unless the employee has two years of service on the bill's effective date. State employees who were practicing any of the above professions prior to the bill's effective date and are not exempt must comply with the licensing requirement within two years after the effective date. An employee subject to the licensing requirement who fails to comply with it is to be removed from employment.<sup>10</sup>

The bill provides that failure to comply with the licensing requirement constitutes nonfeasance or just cause under a collective bargaining agreement. If guilty of nonfeasance, an employee may under current law be reduced in pay or position, fined, suspended, or removed, or have the employee's longevity reduced or eliminated.<sup>11</sup> The bill specifies that the licensing requirement does not restrict the Director of Administrative Services from developing new classifications related to the

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<sup>8</sup> R.C. 4757.10(F).

<sup>9</sup> R.C. 4757.29(B) and (C).

<sup>10</sup> R.C. 4757.41(A), (C), and (D).

<sup>11</sup> R.C. 124.34, not in the bill.

licensing requirement or from reassigning an affected employee to appropriate classification based on the employee's duties and qualifications.<sup>12</sup>

Within one year after its effective date, the Office of Collective Bargaining in the Department of Administrative Services is required by the bill to implement the changes made by the bill. Within 90 days after the bill's effective date, the Office of Collective Bargaining must negotiate with each state agency and the affected union to reach a mutually agreeable resolution for employees impacted by the changes. Notwithstanding state job classification law or any other contrary provision of law, for state employees who are impacted by the changes, the Director of Administrative Services may implement any or all of the provisions of the resolutions.

Also within 90 days after the bill's effective date, the Director is to develop and assign new classifications as needed and reassign impacted employees to appropriate classifications based on the employee's duties and qualifications.<sup>13</sup>

### **Exemptions**

In addition to the professionals exempt from licensing under current law, the bill provides that the prohibition on practicing as a professional counselor, social worker, or marriage and family therapist without a license does not apply to a vocational rehabilitation professional who provides vocational rehabilitation counseling or services to handicapped individuals.<sup>14</sup> The bill also specifies that a caseworker employed by a public children services agency is not required to be licensed or certified.<sup>15</sup>

### **Displaying license and fee schedule**

The bill requires each individual who engages in the practice of professional counseling, social work, or marriage and family therapy to prominently display, in a conspicuous place in the office or place where a major portion of the individual's practice is conducted, and in such a manner as to be easily seen and read, the license granted to the individual by the Board.<sup>16</sup>

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<sup>12</sup> R.C. 4757.41(C).

<sup>13</sup> Section 3.

<sup>14</sup> R.C. 4757.41(A)(11).

<sup>15</sup> R.C. 4757.41(E).

<sup>16</sup> R.C. 4757.13(A).

The bill also requires a license holder engaged in a private individual practice, partnership, or group practice to prominently display the license holder's fee schedule in the office or place where a major portion of the holder's practice is conducted. The bottom of the first page of the fee schedule must include the following statement, which is to be followed by the name, address, and telephone number of the Board:

"This information is required by the Counselor, Social Worker, and Marriage and Family Therapist Board, which regulates the practices of professional counseling, social work, and marriage and family therapy in this state."<sup>17</sup>

## **Counselor, Social Worker, and Marriage and Family Therapist Board**

### **Members**

The bill modifies the membership of the Counselor, Social Worker, and Marriage and Family Therapist Board. Currently, the Board consists of 15 members appointed by the Governor, with the advice and consent of the Senate. Four members must be professional clinical counselors or professional counselors, two members must be independent marriage and family therapists, two members must be marriage and family therapists, two members must be independent social workers, and two members must be licensed social workers. The remaining three members must be representatives of the general public who have not practiced professional counseling, marriage and family therapy, or social work and have not been involved in the delivery of professional counseling, marriage and family therapy, or social work services.<sup>18</sup>

The bill eliminates a requirement that the counselor membership include at least two licensed professional clinical counselors.<sup>19</sup>

In place of current law's requirement that two members be independent marriage and family therapists and two members be marriage and family therapists, the bill requires that four members be independent marriage and family therapists or marriage and family therapists. The bill specifies that at all times, the marriage and family therapist membership must include one educator who holds a teaching position in a master's degree marriage and family therapy program at an accredited educational institution recognized by the Board.<sup>20</sup>

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<sup>17</sup> R.C. 4757.13(B).

<sup>18</sup> R.C. 4757.03(A).

<sup>19</sup> R.C. 4757.03(A)(1).

<sup>20</sup> R.C. 4757.03(A)(2).

The bill requires that the counselor, social worker, and marriage and family therapist members be persons who during the five years preceding appointment to the Board, have actively engaged in the practice of their respective professions, in educating and training master's, doctoral, or postdoctoral students of their respective professions, or in research in their professions, and, during the two years immediately preceding appointment, have devoted the majority of their professional time to the activity while residing in Ohio.<sup>21</sup>

The bill also requires that at least three members, one from each professional standards committee, during the five years preceding appointment, be persons who have practiced at a public agency or at an organization that is certified or licensed by the Department of Developmental Disabilities, the Department of Alcohol and Drug Addiction Services, the Department of Job and Family Services, or the Department of Mental Health.<sup>22</sup>

### **Term**

The bill provides that a Board member appointed to fill a vacancy prior to the end of a term holds office until the date the member's successor takes office. Current law provides for a member to do so until the earlier of the date the member's successor takes office or until 60 days have elapsed.<sup>23</sup>

### **Application review and continuing education**

The bill requires the professional standards committees of the Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) concerning the process for reviewing an application to determine whether the applicant meets the eligibility requirements for any license or registration issued by the Board.<sup>24</sup>

Current law requires the Board's professional standards committees to adopt rules establishing standards and procedures to be followed by the committees in conducting the continuing education approval process. The bill specifies that the standards and procedures must include registering individuals and entities to provide approved continuing education programs.<sup>25</sup>

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<sup>21</sup> R.C. 4757.03(B).

<sup>22</sup> R.C. 4757.03(C).

<sup>23</sup> R.C. 4757.03(G).

<sup>24</sup> R.C. 4757.16(B).

<sup>25</sup> R.C. 4757.33(A).

## **Disciplinary action**

In addition to the professionals covered by current law, the bill authorizes disciplinary action to be taken by the professional standards committees of the Board against (1) an individual who has applied for or holds a certificate of registration as a counselor trainee, social worker trainee, or marriage and family therapist trainee and (2) an individual or entity that has applied for or is registered to provide continuing education or programs.<sup>26</sup>

The appropriate professional standards committee is authorized to take disciplinary action against a professional licensed or registered by the Board for a number of reasons, including suspension or revocation of the professional's license or registration by another state or jurisdiction for an offense that would violate Ohio laws governing that profession. The bill authorizes the committee to take disciplinary action against a professional if disciplinary action has been taken against the professional in another state or jurisdiction for an offense that would violate those laws.<sup>27</sup>

## **Reinstatement of license or registration**

Continuing law permits an individual to apply to the appropriate professional standards committee of the Board for reinstatement of a suspended or revoked license or registration. The bill provides that the committee may approve (rather than accept) or deny (rather than refuse) an application for reinstatement.<sup>28</sup>

## **Fees**

In addition to other fees the Board is currently authorized to establish and adjust, the bill authorizes the Board to establish and adjust fees for late completion of counselor, social worker, or marriage and family therapy continuing education.<sup>29</sup>

## **Civil immunity for volunteers**

Current law grants immunity in a tort or other civil action to a health care professional who volunteers to provide health care services to an indigent and uninsured person, unless the action or omission constitutes willful or wanton misconduct. By expanding the definition of "health care professional" the bill extends this qualified immunity to all of the following: (1) professional clinical counselors,

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<sup>26</sup> R.C. 4757.36(A) and (B).

<sup>27</sup> R.C. 4757.36(C).

<sup>28</sup> R.C. 4757.36(D).

<sup>29</sup> R.C. 4757.31(A)(10).

(2) professional counselors, (3) independent social workers, (4) social workers, (5) independent marriage and family therapists, (6) marriage and family therapists, (7) psychologists, and (8) individuals licensed or certified to provide chemical dependency counseling or alcohol and other drug prevention services.<sup>30</sup>

## **Threats**

Existing law provides that a mental health professional or mental health organization that provides mental health services may be held liable in damages in a civil action, or may be subject to disciplinary action by an entity with licensing or other regulatory authority over the professional or organization, for serious harm or death resulting from failure to predict, warn of, or take precautions to provide protection from the violent behavior of a mental health client or patient only under specified circumstances. These circumstances may exist if the professional or organization receives information from a client or patient or a knowledgeable person about a threat of violence.<sup>31</sup>

The bill expands the definition of "mental health service" to include marriage and family therapy with the result that independent marriage and family therapists and marriage and family therapists may be subject to civil liability or disciplinary action only as described above. Under current law, "mental health service" means a service provided to an individual or group of individuals involving the application of medical, psychiatric, psychological, professional counseling, social work, nursing principles, or certain procedures related to mental health.<sup>32</sup>

## **Duty to report abuse or neglect**

Of the persons currently licensed or registered by the Board, only professional clinical counselors, professional counselors, independent social workers, social workers, and social work assistants are required to report abuse or neglect of certain persons. The bill extends the reporting requirements to independent marriage and family therapists and marriage and family therapists. Specifically, the bill requires all professionals licensed or registered by the Board to do all of the following:

(1) Note in a patient's or client's records the professional's knowledge or belief that the patient or client has been a victim of domestic violence;

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<sup>30</sup> R.C. 2305.234.

<sup>31</sup> R.C. 2305.51.

<sup>32</sup> R.C. 2305.51(A)(1)(e).

(2) Report the abuse, neglect, or misappropriation of property of a person residing in a nursing home or residential care facility;

(3) Report the abuse or neglect of an adult who is over age 60.<sup>33</sup>

Current law requires social workers to report the abuse or neglect of a person with mental retardation or a developmental disability. The bill extends this requirement to professional clinical counselors, professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists.<sup>34</sup>

### **Privileged information**

In general, a person who fails to report information on a felony or who fails, on the request of a law enforcement officer, to provide information on the circumstances of a death is guilty of a misdemeanor. The requirement that this information be disclosed, however, does not apply if the information was privileged, such as information provided under certain professional relationships, including attorney and client or doctor and patient.

The bill provides that information between a client and a professional clinical counselor, professional counselor, independent social worker, social worker, independent marriage and family therapist or marriage and family therapist is privileged information.<sup>35</sup>

### **Patient access to records and fees for copies**

Of the persons currently regulated by the Board, only professional clinical counselors, professional counselors, independent social workers, social workers, and social work assistants are subject to the laws governing a patient's access to his or her records and the fees that may be charged for providing copies of the records to a patient, the patient's personal representative, or other person the patient authorizes. The bill extends these laws governing patient access to records and copying fees to independent marriage and family therapists and marriage and family therapists.<sup>36</sup>

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<sup>33</sup> R.C. 2921.22, 3721.21, and 5101.61.

<sup>34</sup> R.C. 5123.61.

<sup>35</sup> R.C. 2921.22.

<sup>36</sup> R.C. 3701.74(A) and 3701.741, not in the bill.

The bill expands an exception to a patient's access to his or her records that under current law applies only to a physician or chiropractor. Under the bill, a psychologist, professional clinical counselor, professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist (in addition to a physician or chiropractor) who has treated a patient and determines that disclosure of a record is likely to have an adverse affect on the patient must provide the record to a physician, psychologist, professional clinical counselor, professional counselor, independent social worker, social worker, independent marriage and family therapist, marriage and family therapist, or chiropractor designated by the patient.<sup>37</sup>

### **Combined businesses**

The bill permits the professionals licensed by the Board to provide services through a corporation, limited liability company, partnership, or professional association that is formed for the purpose of providing services in combination with optometrists, psychologists, chiropractors, nurses, pharmacists, physical therapists, occupational therapists, mechanotherapists, physicians, or podiatrists.<sup>38</sup>

### **ICF/IID resident assessments**

The bill permits the Ohio Department of Developmental Disabilities (ODODD) to conduct or contract with another entity to conduct, for the first quarter of calendar year 2013, assessments of all residents of each intermediate care facility for individuals with intellectual disabilities (ICF/IID), regardless of payment source, who are in the ICF/IID, or on hospital or therapeutic leave from the ICF/IID, on the last day of the quarter.<sup>39</sup> Until recently, ICFs/IID were called intermediate care facilities for the mentally retarded (ICFs/MR). Resident assessments are used in determining ICF/IIDs' case-mix scores which are a factor in calculating their Medicaid rates for direct care costs.

Current law requires ICF/IID providers, rather than ODODD, to conduct the resident assessments each quarter. The bill requires ODODD, if it chooses to conduct or contract with another entity to conduct the assessments for the first quarter of calendar year 2013, to notify each ICF/IID provider that the provider is permitted but not required to conduct assessments for that quarter. A provider's assessments for that quarter would be in addition to ODODD's assessments for that quarter. No provider is

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<sup>37</sup> R.C. 3701.74(B).

<sup>38</sup> R.C. 1701.03, 1705.03, 1705.04, 1785.01, 1785.02, 1785.03, 4723.16, 4725.33, 4731.226, 4731.65, 4732.28, 4734.17, 4755.47, and 4757.37.

<sup>39</sup> Section 4.

to be treated as having failed, for that quarter, to timely submit data obtained from assessments if ODODD conducts or contracts with another entity to conduct the assessments for that quarter.

The bill requires ODODD to take a number of actions if it conducts or contracts with another entity to conduct resident assessments for the first quarter of fiscal year 2013. The required actions are discussed below.

### **Use of inter-rater reliable process**

In conducting the assessments, ODODD must provide for a resident assessment instrument prescribed in rules to be used in accordance with an inter-rater reliable process. The bill does not specify what an inter-rater reliable process is.

### **Determination of case-mix scores**

ODODD is required to use the data obtained from the resident assessments to determine each ICF/IID's case-mix score for the first quarter of calendar year 2013.

### **Determination of Medicaid rates for Q1 of FY 2014**

An ICF/IID's case-mix score for a quarter is a factor in determining the ICF/IID's Medicaid rate for direct care costs. For the purpose of determining each ICF/IID's Medicaid rate for direct care costs for the first quarter of fiscal year 2014, ODODD is to use the ICF/IID's case-mix score determined using the data obtained from the resident assessments ODODD conducts or contracts with another entity to conduct.

### **Determination of Medicaid rates for FY 2015**

Current law provides for the calculation of an annual average case-mix score for each ICF/IID. An ICF/IID's four quarterly case-mix scores for a calendar year are used in determining the ICF/IID's average case-mix score for that calendar year. An ICF/IID's average case-mix score for calendar year 2013 is to be a factor in determining its Medicaid rate for direct care costs for fiscal year 2015. For the purpose of determining each ICF/IID's fiscal year 2015 Medicaid rates for direct care costs, ODODD is to use the following when determining an ICF/IID's average case-mix score for calendar year 2013:

(1) For the first quarter of calendar year 2013, the ICF/IID's case-mix score determined using the data from the resident assessments ODODD conducts or contracts with another to conduct;

(2) For the last three quarters of calendar year 2013, the ICF/IID's case-mix scores determined in accordance with continuing law (i.e., case-mix scores that are either

determined using data from resident assessments the ICF/IID conducts or assigned to the ICF/IID).

### **ICF/IIDs to receive resident assessment results**

After the assessments of all of an ICF/IID's residents are completed, ODODD must provide, or have the entity (if any) with which it contracts to conduct the assessments provide, the results of the assessments to the ICF/IID provider.

### **Hearings**

ODODD is required to conduct a hearing for any ICF/IID provider who submits a written request for the hearing to ODODD not later than 15 days after the provider receives the resident assessments' results. The request must include (1) a detailed explanation of the items in the results that the provider disputes, (2) copies of relevant supporting documentation from specific resident records, and (3) the provider's proposed resolution of the disputes.

When conducting a hearing requested by a provider, ODODD is to consider (1) the historic results of resident assessments performed by the provider, (2) all the materials the provider includes in the hearing request, and (3) all other matters ODODD determines necessary for consideration. ODODD must issue a written decision regarding the hearing not later than the sooner of (1) 30 days after ODODD receives the hearing request and (2) June 1, 2013. ODODD's decision is final and not subject to further appeal.

### **Limit on Medicaid rate reductions**

The bill limits Medicaid rate reductions that may occur as a result of the case-mix scores determined using the resident assessments conducted by ODODD or entity (if any) with which ODODD contracts. Regardless of what an ICF/IID's case-mix score for the first quarter of calendar year 2013 is determined to be, no such case-mix score is to cause either of the following to be less than 90% of an ICF/IID's June 30, 2013, Medicaid rate for direct care costs:

- (1) The ICF/IID's Medicaid rate for direct care costs for the first quarter of fiscal year 2014;
- (2) The ICF/IID's fiscal year 2015 Medicaid rate for direct care costs.

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## HISTORY

### ACTION

### DATE

Introduced  
Reported, H. Health & Aging

06-13-12  
11-29-12

H0567-RH-129.docx/emr

