DEPARTMENT OF AGING

Record checks

- Makes a regional long-term care ombudsman program the responsible party for purposes of database reviews and criminal records checks for individuals who are under final consideration for employment with the regional program or employed by the regional program.

- Excludes persons whose sole duties are transporting individuals under R.C. Chapter 306. from the definition of "direct-care position."

- Specifies that the requirements applicable to database reviews and criminal records checks regarding community-based long-term care services covered by Department of Aging (ODA) administered programs apply to:

  (1) A person applying for employment with (or referred by an employment service to);

  (2) A community-based long-term care provider; and

  (3) If ODA rules so require, a person already employed by (or referred to) such a provider when the person seeks or holds a direct-care position involving (a) in-person contact with one or more consumers or (b) access to one or more consumers' personal property or records.

- Makes the database review and criminal records check requirements applicable to:

  (1) Persons under final consideration for employment in a direct-care position with an area agency on aging (AAA), PASSPORT administrative agency (PAA), or subcontractor; and

  (2) Persons referred to an AAA, PAA, or subcontractor by an employment service for a direct-care position.

- Permits the ODA Director to adopt rules making the database review and criminal records check requirements applicable to a person (1) employed in a direct-care position by an AAA, PAA, or subcontractor or (2) working in a direct-care position following referral by an employment service to an AAA, PAA, or subcontractor.

- Provides that the database review and criminal records check requirements do not apply to individuals subject to the criminal records check requirement for individuals applying for direct-care positions with nursing homes, residential care

facilities, county or district homes, or other Department of Health-regulated long-term care facilities or adult day-care programs.

- Provides that the ODA Director or the Director's designee may obtain the report of a criminal records check regarding an applicant for a direct-care position with a Department of Health-regulated long-term care facility if the facility is also a community-based long-term care services provider.

- Specifies that the Excluded Parties List System, which is to be reviewed as part of a database review regarding certain types of employment, is available at the federal web site known as the System for Award Management.

PASSPORT and assisted living programs

- Requires the PASSPORT program to include a structured family caregiver component under which a PASSPORT enrollee may choose a family member to serve as the enrollee's caregiver.

- Requires generally that the component be available as a pilot program in three rural PASSPORT regions not later than January 1, 2014.

- Requires ODA to establish new appeal procedures for the state-funded components of the PASSPORT and assisted living programs.

- Provides that, if the Choices Program is terminated, ODA is authorized to suspend new enrollments and transfer existing participants to either the PASSPORT program or a unified long-term services and support Medicaid waiver component.

- Requires an applicant for the Medicaid-funded or state-funded component of the Assisted Living Program to undergo an assessment to determine whether the applicant needs an intermediate level of care.

- Requires the Department of Medicaid to enter into an interagency agreement with ODA under which ODA performs assessments to determine if a person requires a nursing facility level of care.

- Permits ODA to design and utilize a payment method for PAA operations that includes a pay-for-performance component.

- Specifies that the spending for PAAs site operating functions for PASSPORT, Choices, Assisted Living, and PACE are to be 105% of the level provided in fiscal year 2013.

- Requires the Medicaid payment rates for services provided under the PASSPORT program, other than adult day-care services, during fiscal years 2014 and 2015 to be not less than 98.5% of the Medicaid payment rates for the services in effect on June 30, 2011.

- Requires the Medicaid payment rates for adult day-care services provided under the PASSPORT program during fiscal years 2014 and 2015 to be 20% higher than the amount of the Medicaid payment rates for the services in effect on June 30, 2013.

Other provisions

- Bases the annual fee paid by a long-term care facility on the number of beds the facility was licensed or otherwise authorized to maintain for the previous year, rather than the number of beds maintained for use by residents.

- Eliminates the requirement that ODA prepare an annual report on individuals who, after long-term care consultations, elect to receive home and community-based services covered by ODA-administered Medicaid components.

- Replaces "ombudsperson" with "ombudsman" for ODA programs.

Ombudsman-related criminal records checks

(R.C. 173.27 (primary) and 109.57)

As a condition of employment with the Office of the State Long-Term Care Ombudsman[8] program in a position that involves providing ombudsman services, an individual must undergo a database review and, unless the individual fails the database review and therefore cannot be employed, a criminal records check. An existing employee must undergo a database review and criminal records check only if so required by Department of Aging (ODA) rules.

Regional long-term care ombudsman programs

The bill distinguishes individuals applying for employment with, or employed by, the Office of the State Long-Term Care Ombudsman program from individuals applying for employment with, or employed by, regional long-term care programs.

[8] Due to a legislative directive in 1995 requiring that Revised Code sections be gender neutralized as they are amended, some references to "ombudsman" in the Revised Code have been changed to "ombudsperson." For consistency, since the bill restores the use of the term "ombudsman" in reference to programs operated by the Department of Aging, that term is used throughout this analysis.

Under the bill, regional programs have responsibilities regarding the database reviews and criminal records checks that are currently assigned to the State Long-Term Care Ombudsman. For example, the State Long-Term Care Ombudsman, or the Ombudsman's designee, is required by current law to provide information regarding the database reviews and criminal records checks to each individual under final consideration for employment in a position for which a database review and criminal records check must be conducted. Under the bill, a regional long-term care ombudsman program, or the program's designee, must provide the information when the individual is under final consideration for employment in such a position with the regional program. The head of a regional program may not act as the program's designee when the head is the employee for whom a database review or criminal records check is being conducted.

System for Award Management web site

Continuing law specifies various databases that are to be checked as part of a database review. The ODA Director is permitted to specify additional databases in rules. The Excluded Parties List System is one of the databases specified in statute. It is maintained by the U.S. General Services Administration. The bill specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.

Standards that permit a disqualified individual to be employed

Current law requires the ODA Director to adopt rules specifying circumstances under which the State Long-Term Care Ombudsman program may employ an individual who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for, a disqualifying offense but meets personal character standards. The bill requires that the ODA Director instead adopt rules specifying standards that an individual must meet for the State Long-Term Care Ombudsman **or a regional long-term care ombudsman** program to be permitted to employ the individual if the employee is found to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for, a disqualifying offense.

Community-based long-term care, AAA, and PAA record checks

(R.C. 173.38 (primary), 109.57, 109.572, 173.14, 173.39, 173.391, 173.392, 3701.881, 3721.121, 5164.34, and 5164.342; Sections 110.20, 110.21, and 110.22)

Current law requires an individual to undergo a database review and criminal records check when the individual is under final consideration for employment with a community-based long-term care agency (renamed "provider" by the bill) in a position

that involves providing direct care to an individual, or is referred to such an agency by an employment service for such a position. (The criminal records check is unnecessary if the results of the database review show that the individual cannot be employed in the position.) The ODA Director is permitted to adopt rules also requiring individuals employed by providers in such positions to undergo database reviews and criminal records checks. A provider is a person or government entity that provides community-based long-term care services under an ODA-administered program. Community-based long-term care services are health and social services provided to persons in their own homes or in community care settings.

Direct-care positions

As discussed above, current law's database review and criminal records check requirements apply to individuals under final consideration for employment in positions that involve providing direct care with (or referred by an employment service to) community-based long-term care agencies (providers), and, if so required by ODA rules, individuals already employed by providers. Current law does not specify what a direct-care position is. The bill defines "direct-care position" as an employment position in which an employee has either or both of the following: (1) in-person contact with one or more consumers and (2) access to one or more consumers' personal property or records. "Direct-care position" does not include a person whose sole duties are transporting individuals under R.C. Chapter 306.

Criminal records checks applied to AAAs, PAAs, and subcontractors

The bill requires additional individuals to undergo database reviews and criminal records checks. The additional individuals are individuals under final consideration for employment with (or referred by employment services to) any of the following in a full-time, part-time, or temporary direct-care position: (1) area agencies on aging (AAAs), (2) PASSPORT administrative agencies (PAAs), and (3) subcontractors.[9] The ODA Director is permitted to adopt rules requiring individuals to undergo database reviews and criminal records checks also when **employed** by AAAs, PAAs, and subcontractors in full-time, part-time, or temporary direct-care positions. The database reviews and criminal records checks are to be conducted for the additional individuals in the same manner as they are conducted for employees (if so required by rules) and prospective employees of community-based long-term care agencies (providers).

[9] The ODA Director is to define "subcontractor" in rules.

Subcontractors that are also home health agencies or waiver agencies

Continuing law establishes similar database review and criminal records check requirements for home health agencies and waiver agencies. A home health agency is a person or government entity (other than a nursing home, residential care facility, hospice care program, or pediatric respite care program) that has the primary function of providing certain services, such as skilled nursing care and physical therapy, to a patient at a place of residence used as the patient's home. A waiver agency is a person or government entity that provides home and community-based services under a Medicaid waiver program, other than (1) such a person or government entity certified under the Medicare program and (2) an independent provider of those services.

It is possible for a community-based long-term care agency (provider) to be, in addition, a home health agency, waiver agency, or both. Continuing law provides that the database review and criminal records check requirements regarding providers do not apply to individuals subject to the database review and criminal records check requirements regarding home health agencies and that a provider that is also a waiver agency may provide for employees and prospective employees to undergo database reviews and criminal records checks in accordance with the requirements regarding waiver agencies rather than the requirements regarding providers. The ODA Director, or the Director's designee, may receive the results of a criminal records check conducted in accordance with the requirements regarding home health agencies or waiver agencies when the subject of the check is an employee or prospective employee of a provider that is also a home health agency or waiver agency.

It is possible for a community-based long-term care subcontractor to be, in addition, a home health agency or waiver agency. The bill applies to such subcontractors the provisions discussed above regarding providers.

Exception for individual subject to other criminal records check

Continuing law requires the chief administrator of a nursing home, residential care facility, county or district home, or other Department of Health-regulated long-term care facility and the chief administrator of an adult day-care program to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of each person under final consideration for employment with the facility or program in a direct-care position. The bill provides that an individual who is subject to such a criminal records check is not also required to undergo a database review and criminal records check otherwise required for an individual under final consideration for employment with a community-based long-term care agency (provider) in a direct-care position. The ODA Director or the Director's designee is permitted by the bill, however, to obtain the report of a criminal

records check conducted for an individual under final consideration for a direct-care position with a Department of Health-regulated long-term care facility if the criminal records check is requested by the chief administrator of such a facility that is also a community-based long-term care agency (provider).

System for Award Management web site

Continuing law specifies various databases that are to be checked as part of a database review. The ODA Director is permitted to specify additional databases in rules. The Excluded Parties List System is one of the databases specified in statute. It is maintained by the U.S. General Services Administration. The bill specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.

Standards that permit a disqualified individual to be employed

Current law requires the ODA Director to adopt rules specifying circumstances under which a community-based long-term care agency (provider) may employ an individual who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for, a disqualifying offense but meets personal character standards. The bill requires instead that the ODA Director adopt rules specifying standards that an individual must meet for a provider, subcontractor, AAA, or PAA to be permitted to employ the individual if the employee is found to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

PASSPORT program's structured family caregiver component

(R.C. 173.525 (primary) and 173.51)

The PASSPORT program provides home and community-based services as an alternative to nursing facility placement for eligible individuals who are aged and disabled. The bill requires that the PASSPORT program include a structured family caregiver component under which an individual enrolled in the PASSPORT program may choose a family member to provide home and community-based services that the individual receives under the PASSPORT program. To be eligible as a family caregiver under the PASSPORT program, a family member must do all of the following:

- Complete all the training, obtain all required credentials, and satisfy all other applicable requirements to be a PASSPORT provider;
- Arrange for an agency that is a PASSPORT provider to do all of the following:

(1) Assist the family member with the requirements to be a family caregiver;

(2) Provide or arrange professional staff training to or for the family member;

(3) If possible, include the family member in electronic records used for the PASSPORT program;

(4) Provide professional staff support that is appropriate for the PASSPORT enrollee's care needs to the enrollee for whom the family member serves as a family caregiver.

- Comply with any other applicable requirements specified in rules.

Under the bill, an individual may serve as the family caregiver for not more than two PASSPORT enrollees. A family caregiver may provide the services in the home of either the caregiver or the PASSPORT enrollee.

The bill requires that the structured family caregiver component be available as a pilot program in three rural PASSPORT regions not later than January 1, 2014. It further specifies that the payment rate for the component must be adequate to pay the family caregiver a stipend and reimburse the agency provider for the costs of providing the professional staff support required by the bill.

State-funded PASSPORT and assisted living programs – appeals

(R.C. 173.523, 173.545, and 173.56)

Appeal procedures

The bill requires ODA to adopt rules establishing new procedures for appeals of adverse actions related to services requested or provided under the state-funded components of the PASSPORT and assisted living programs. The rules are to be adopted under R.C. 111.15, which does not require public notice or hearings on proposed rules.

The state-funded components of the PASSPORT and assisted living programs have limited eligibility. In the case of the assisted living program, eligibility is limited to 90 days. The assisted living program provides assisted living services to eligible individuals.

The rules ODA is to adopt must require notice and an opportunity for a hearing. They may allow appeal hearings to be conducted by telephone and permit ODA to record telephone hearings. Revised Code Chapter 119., which establishes procedures

for appeals of administrative rulings, is to apply to hearings only to the extent provided for in the rules.

The bill provides that an appeal is commenced by submission of a written request for a hearing to the ODA Director within the time specified in the rules adopted by ODA. The hearing may be recorded, but neither the recording nor a transcript of the recording is part of the official record of the proceeding. The Director must notify the individual bringing the appeal of the Director's decision and of the procedure for appealing the decision.

The Director's decision may be appealed to a court of common pleas. The appeal is to be governed by Ohio's Administrative Procedure Act (R.C. Chapter 119.) except as follows:

(1) The appeal is to be in the court of common pleas of the county in which the individual who brings the appeal resides or, if the individual does not reside in Ohio, to the Franklin County common pleas court.

(2) The notice of appeal must be mailed to ODA and filed with the court not later than 30 days after ODA mails notice of the Director's decision. For good cause shown, the court may extend the time for mailing and filing the notice of appeal, but the time cannot exceed six months from the date ODA mails the notice of the Director's decision.

(3) If the court grants an individual's application for designation as an indigent, the individual is not to be required to furnish the costs of the appeal.

(4) ODA is required to file a transcript of the testimony of the state hearing with the court only if the court orders that the transcript be filed. The court may make such an order only if it finds that ODA and the individual bringing the appeal are unable to stipulate to the facts of the case and that the transcript is essential to a determination of the appeal. ODA must file the transcript not later than 30 days after such an order is issued.

When an appeal may be brought

Under the bill, an individual who is an applicant for or participant or former participant in the state-funded component of the PASSPORT or assisted living program may appeal an adverse action taken or proposed to be taken by ODA or an entity designated by ODA concerning participation in or services provided under the component if the action will result in any of the following:

(1) Denial of enrollment or continued enrollment in the component;

(2) Denial of or reduction in the amount of services requested by or offered to the individual under the component;

(3) Assessment of any patient liability payment pursuant to rules adopted by ODA.

The appeal is to be made in accordance with the bill and rules adopted by ODA.

When an appeal may not be brought

An appeal may not be brought by an individual if any of the following is the case:

(1) The individual has voluntarily withdrawn the application for enrollment in the component;

(2) The individual has voluntarily terminated enrollment in the component;

(3) The individual agrees with the action being taken or proposed;

(4) The individual fails to submit a written request for a hearing to the Director within the time specified in the rules;

(5) The individual has received services under the component for the maximum time permitted.

Transfer of participants from Choices to PASSPORT

(R.C. 173.53)

H.B. 153 of the 129th General Assembly (the main operating appropriations act for 2011-2013) required the Department of Medicaid (ODM) to seek federal permission to create a unified long-term services and support Medicaid waiver program to provide home and community-based services to eligible individuals of any age who require the level of care provided by nursing facilities. H.B. 153 also provided that, should the waiver component be created, ODA and ODM are to determine whether the Choices program should continue to operate as a separate Medicaid waiver component or be terminated.

The bill provides that, if the Choices program is terminated, ODA, no sooner than six months before Choices ceases to exist, is authorized to do both of the following:

(1) Suspend new enrollment in Choices;

(2) Transfer Choices participants to the unified long-term services and support Medicaid waiver component or, if that component is not created, transfer them to the Medicaid-funded component of the PASSPORT program.

Assisted Living Program assessments

(R.C. 173.546 (primary), 173.42, 173.54, 173.541, and 173.544)

The Assisted Living Program is a program administered by ODA that provides assisted living services to eligible individuals living in residential care facilities. The program has a Medicaid-funded component and a state-funded component. ODA administers both components. The Medicaid-funded component is administered pursuant to an interagency agreement between ODA and the Department of Medicaid (ODM).

An individual must need an intermediate level of care, and meet other requirements, to qualify for the Medicaid-funded or state-funded component of the Assisted Living Program. Under current law, whether an individual needs an intermediate level of care is determined in accordance with an ODM rule. The bill establishes in statute an assessment process for determining whether an individual needs an intermediate level of care.

The bill's assessment process requires each applicant for the Medicaid-funded or state-funded component of the Assisted Living Program to undergo the assessment to determine whether the applicant needs an intermediate level of care. The assessment may be performed concurrently with a long-term care consultation provided under a program developed by ODA.

ODM or an agency under contract with ODM is to conduct the assessments. ODM is permitted to contract with one or more agencies to perform the assessments. A contract must specify the agency's responsibilities regarding the assessments.

An applicant or applicant's representative is given the right to appeal an assessment's findings. If an applicant is applying for the Medicaid-funded component of the Assisted Living Program, the appeal is to be made in accordance with an appeals process ODM is to select for the Medicaid program. The bill defines "representative" as a person acting on behalf of an applicant for the Medicaid-funded or state-funded component of the Assisted Living Program. A representative may be a family member, attorney, hospital social worker, or any other person chosen to act on an applicant's behalf.

ODM or the agency under contract with ODM must provide written notice of the right to appeal to an applicant or applicant's representative and the residential care

facility in which an applicant intends to reside if enrolled in the Assisted Living Program. The notice must include an explanation of the appeal procedures. ODM or the agency under contract with ODM is required to represent the state in any appeal of an assessment's findings.

Long-term care assessments

(Section 209.20)

Current law requires a Medicaid recipient who applies or intends to move to a nursing facility to receive an assessment to determine if the recipient requires a nursing facility level of care. ODM must conduct the assessment or contract with another entity to conduct the assessment. The bill requires ODM to enter into an interagency agreement with ODA under which ODA performs the assessment.

Performance-based reimbursement for PASSPORT operations

(Section 209.20)

PASSPORT administrative agencies provide assistance for the unified long-term care budget and administer programs on behalf of ODA. The bill permits ODA to design and utilize a payment method for PASSPORT administrative agency operations that include a pay-for-performance incentive component that is earned by a PASSPORT administrative agency when defined consumer and policy outcomes are achieved.

Spending levels for PASSPORT administrative agencies' functions

(Section 323.53)

The bill requires that for fiscal years 2014 and 2015, spending for PASSPORT administrative agencies' site operating functions relating to screening, assessments, general administration, and provider relations for the Medicaid waiver-funded PASSPORT program, Choices program, Assisted Living program, and PACE program be at 105% of the level provided in fiscal year 2013.

Payment rates for PASSPORT services

(Section 323.263)

The bill requires that the Medicaid payment rates for services provided under the PASSPORT program, other than adult day-care services, during fiscal years 2014 and 2015 be not less than 98.5% of the Medicaid payment rates for the services in effect on June 30, 2011. The Medicaid payment rates for adult day-care services provided

during fiscal years 2014 and 2015 are to be 20% higher than the amount of the Medicaid payment rates for the services in effect on June 30, 2013.

Long-term care facility bed fee

(R.C. 173.26)

The bill changes the number of beds used to determine a long-term care facility's annual fee from the number of beds maintained by the facility for use by residents during any part of the previous year to the number of beds the facility was licensed or otherwise authorized to maintain during any part of that year. The fee of six dollars per bed is paid to ODA to be used to operate regional long-term care ombudsman programs.

The bed fee is paid by several types of long-term care facilities, including residential care facilities, nursing homes, and homes for the aging. A residential care facility is a home that provides accommodations to up to 17 individuals, at least three of whom need supervision and personal care services. A nursing home is a home that provides skilled nursing care, as well as accommodations and personal care services. A home for the aging is a home that provides services as a residential care facility and as a nursing home. The bill eliminates the requirement that homes for the aging pay the annual fee.

Report on long-term care consultations

(R.C. 173.425 (repealed))

Under ODA's long-term consultation program, individuals receive information about options available to meet long-term care needs and factors to consider when making long-term care decisions. The bill eliminates a requirement that ODA prepare an annual report on individuals who are the subjects of long-term care consultations and elect to receive home and community-based services covered by ODA-administered Medicaid components. The report being eliminated addresses the following: (1) the total savings realized by providing the home and community-based services, rather than nursing facility services, (2) the average number of days the services are received before and after receiving nursing facility services, and (3) a categorical analysis of the acuity levels of the recipients of the services.

Replacing references to "ombudsperson"

(R.C. 109.57, 173.14, 173.17, 173.19, 173.20, 173.21, 173.23, 173.25, 173.26, 173.27, 173.28, 173.99, 3721.027, 3721.12, 3721.16, 4751.03, 5119.22, and 5165.69)

The bill replaces the term "ombudsperson" with "ombudsman" throughout the Revised Code for programs within the programs governed by ODA, such as the State Long-term Care Ombudsman Program.