
DEPARTMENT OF DEVELOPMENTAL DISABILITIES

Closure of developmental centers

- Modifies the procedures to be followed by the Governor when announcing an intent to close a developmental center.
- Provides for the creation of a developmental center closure commission to make recommendations to the General Assembly regarding the closure.
- Repeals a requirement that the Legislative Service Commission prepare a report addressing issues related to the closure of a developmental center.
- Applies the modified closure process to pending closures that have not been completed on the effective date of the modified process.

Medicaid services provided by sheltered workshops

- Requires a Medicaid waiver component administered by the Ohio Department of Disabilities (ODODD) that covers adult day services provided by sheltered workshops on the provision's effective date to continue covering the services.
- Requires that the Medicaid payment rates for adult day services provided by sheltered workshops during fiscal years 2016 and 2017 be no less than the June 30, 2015, Medicaid payment rates for those services.
- Prohibits a sheltered workshop with a Medicaid provider agreement to provide adult day services from decreasing the number of Medicaid recipients it is willing and able to serve.
- Specifies the General Assembly's intent that individuals currently being served through the existing array of adult day services be fully informed of any new home and community-based services and continue receiving services in a variety of settings.

Supported living certificates

- Provides that a person or government entity's authority to provide Medicaid-funded supported living under a supported living certificate is revoked automatically or is to be denied renewal if the person or government entity's Medicaid provider agreement to provide supported living is revoked or denied revalidation.



- Increases to five years (from one year) the period during which a person or government entity is prohibited from applying for a supported living certificate following an order refusing to issue or renew the certificate.

Residential facility licensure

- Repeals certain provisions related to the licensure of residential facilities by ODODD.
- Permits the ODODD Director to assign the responsibility for conducting surveys and inspections to the Ohio Department of Health (ODH).
- Authorizes the renewal of interim licenses for 180 (rather than 150) days.
- Requires a licensee to transfer records to the new licensee or management contractor when the identity of the licensee or contractor changes significantly.

Incentives to convert ICF/IID beds

- Permits the Director to forgive the outstanding balance a county board of developmental disabilities (CBDD) or nonprofit, private agency otherwise owes under an agreement regarding the construction, acquisition, or renovation of a residential facility if certain conditions are met.
- Permits the Director to change the terms of an agreement with a CBDD or private, nonprofit agency regarding the construction, acquisition, or renovation of a residential facility if certain conditions are met.

Consent for medical treatment

- Authorizes a guardian (or court in the absence of a guardian) of a resident of an institution for the mentally retarded who is physically or mentally unable to receive information or who has been adjudicated incompetent to give informed consent to an experimental procedure on the resident's behalf.
- Eliminates provisions requiring informed consent before a resident of an institution for the mentally retarded receives convulsive therapy, major aversive interventions, or unusual or hazardous treatment procedures.

ICF/IID's Medicaid rates for low resource utilization residents

- Specifies the Medicaid rate paid to an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) in peer group 1 for a Medicaid recipient who is admitted to the ICF/IID on or after July 1, 2015, and is placed in the chronic

behaviors and typical adaptive needs classification or the typical adaptive needs and nonsignificant behaviors classification.

Efforts to reduce the number of ICF/IID beds

- Specifies interim benchmarks that ODODD must strive to achieve in converting ICF/IID to be used for home and community-based services (HCBS).

Admissions to ICFs/IID

- Prohibits, with certain exceptions, an ICF/IID with more than eight beds from admitting an individual as a resident unless specified conditions are met.

Enrolling ICF/IID residents

- Requires ODODD to develop and make available to all ICFs/IID a written pamphlet that describes the services that Medicaid covers under the ICF/IID benefit and the HCBS covered by ODODD-administered Medicaid waiver programs.
- Requires ICFs/IID to provide the pamphlet to residents and their guardians, to discuss the pamphlet with them at certain times, and to refer to CBDDs those residents who indicate interest in enrolling in an ODODD-administered Medicaid waiver program.
- Requires a CBDD to enroll the resident in an ODODD-administered Medicaid waiver program if specified conditions are met.
- Makes ODODD responsible for the nonfederal share of the Medicaid expenditures for the HCBS received by such an ICF/IID resident so enrolled in an ODODD-administered Medicaid waiver program.

ICF/IID sleeping room occupancy

- With certain exceptions, prohibits an ICF/IID from allowing more than two residents to share a sleeping room.
- Requires an ICF/IID in which more than two residents share a sleeping room to submit to ODODD a plan to come into compliance with the occupancy limit by June 30, 2025.

Medicaid rates for certain ICFs/IID

- Provides for certain modifications in an ICF/IID's Medicaid payment rate for a certain period following the ICF/IID (1) downsizing, (2) partially converting to a



provider of home and community-based services, or (3) beginning to participate in Medicaid after obtaining beds from certain downsized ICFs/IID.

Service and support administrators

- Prohibits service and support administrators for county boards of developmental disabilities from providing programs or services to individuals with mental retardation or developmental disabilities through self-employment.

ICF/IID franchise permit fees

- Reduces the per bed per day franchise permit fee charged to ICFs/IID from \$18.17 to \$18.07 for fiscal year 2016 and to \$18.02 for fiscal year 2017 and thereafter.
- Requires ODODD to notify, electronically or by U.S. Postal Service, ICFs/IID of (1) the amount of their franchise permit fees and (2) the date, time, and place of hearings to be held for appeals regarding the fees.

Conversion of beds

- Provides that the Medicaid Director is not required to conduct an adjudication when (1) terminating an ICF/IID's provider agreement due to the ICF/IID converting all of its beds to providing HCBS or (2) amending an ICF/IID's provider agreement to reflect its reduced capacity resulting from a conversion of some of its beds.
- Provides that the prohibition against making a Medicaid payment to an ICF/IID for the day a Medicaid recipient is discharged does not apply if the recipient is discharged because all of the beds in the ICF/IID are converted to providing HCBS.
- Revises the requirements and procedures for ODODD to terminate the franchise permit fee of an ICF/IID that converts its beds to providing HCBS.

Priority status for residents

- Specifies that a resident of a nursing facility or ICF/IID receives priority status on the waiting list for home and community-based services provided by a county board of developmental disabilities.

FY 2016 and 2017 Medicaid rates for ICF/IID services

- Modifies the formula to be used in determining the fiscal year 2016 Medicaid payment rates for ICFs/IID in peer groups 1 and 2.
- Provides for the fiscal year 2016 total Medicaid rate paid to an ICF/IID in peer group 1 for services provided to a low resource utilization resident admitted to the



ICF/IID on or after July 1, 2015, to be the lesser of the rate determined with the modifications or a specified flat rate.

- Requires ODODD, if the fiscal year 2016 mean total per Medicaid day rate for ICFs/IID in peer groups 1 and 2 is other than \$283.32, to adjust the total rate by a percentage that equals the percentage by which the mean rate is greater or less than that amount.
- Modifies the formula to be used in determining the fiscal year 2017 Medicaid payment rates for ICFs/IID in peer groups 1 and 2.
- Requires ODODD, if the fiscal year 2017 mean total per Medicaid day rate for ICFs/IID in peer groups 1 and 2 is other than \$288.27 or a larger amount determined by ODODD, to adjust the total rate by a percentage that equals the percentage by which the mean rate is greater or less than that amount.
- Provides for an ICF/IID in peer group 3 that obtained an initial Medicaid provider agreement during fiscal year 2015 to continue to be paid, for services provided during fiscal year 2016, the ICF/IID's total per Medicaid day rate in effect on June 30, 2015.

ICF/IID Medicaid Rate Workgroup

- Requires the ICF/IID Medicaid Rate Workgroup to assist ODODD with its evaluation of revisions to the formula used to determine Medicaid payment rates for ICF/IID services during fiscal years 2016 and 2017.

Medicaid rates for homemaker/personal care services

- Provides for the Medicaid rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee of the Individual Options (IO) waiver program to be, for 12 months, 52¢ higher than the rate for such services provided to an IO enrollee who is not a qualifying enrollee.
- Permits the Medicaid rate for routine homemaker/personal care services covered by ODODD-administered Medicaid waiver programs and provided during the period beginning January 1, 2016, and ending June 30, 2017, to be, subject to available funds, 6% higher than the rate in effect on June 30, 2015.

ICF/IID payment methodology transformation

- Requires ODODD, not later than July 31, 2015, to issue a request for proposals for an entity to develop a plan to transform the Medicaid payment formula for ICF/IID



services with a goal of beginning implementation of the transformation by July 1, 2017.

Quality Incentive Workgroup

- Requires the Director to create the ICF/IID Quality Incentive Workgroup to study the issue of establishing, as part of the Medicaid payment formula for ICF/IID services, accountability measures that act as quality incentives.

County board share of expenditures

- Requires the Director to establish a methodology to be used in fiscal years 2016 and 2017 to estimate the quarterly amount each CBDD is to pay of the nonfederal share of the Medicaid expenditures for which the CBDD is responsible.

Developmental centers

- Permits a developmental center to provide services to persons with mental retardation and developmental disabilities living in the community or to providers of services to these persons.

Innovative pilot projects

- Permits the Director to authorize, in fiscal years 2016 and 2017, innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and CBDDs.

Use of county subsidies

- Requires, under certain circumstances, that the Director pay the nonfederal share of a claim for ICF/IID services using subsidies otherwise allocated to CBDDs.

Updating statute citations

- Provides that the Director is not required to amend any rule for the sole purpose of updating the citation in the Ohio Administrative Code to its authorizing statute to reflect that the bill renumbers the authorizing statute or relocates it to another Revised Code section.

Closure of developmental centers

(R.C. 5123.032; Section 803.360)

The bill modifies the procedures for closing a developmental center run by the Ohio Department of Developmental Disabilities (DODD). It repeals a requirement that the Legislative Service Commission, when the Governor announces an intent to close a developmental center, conduct an independent study and prepare a report regarding issues related to the closure of the developmental center. The bill also repeals existing procedures regarding the Governor's notice to the General Assembly of that intent.

Instead, under the bill, if the Governor determines that one or more developmental centers should be closed, the Governor must notify the General Assembly and DODD of that determination and its rationale. If the rationale for the closure is expenditure reductions or budget cuts, the notice must specify the anticipated savings to be obtained. Under the bill, "closure" is defined as a situation in which a developmental center ceases operations or DODD transfers control of a developmental center to a private entity.

The bill specifies that the modified closure process established by the bill applies to a developmental center for which the Governor has given notice of the Governor's intention to close the developmental center, but for which the closure of the center has not been completed. And, the bill requires the officials who are to appoint members to a developmental center closure commission to appoint those members not later than seven days after the effective date of the modified closure process.

Creation and duties of developmental center closure commission

Within seven days of the Governor's notice of the intended closure, a developmental center closure commission is to be created.

The commission must meet as often as necessary to make its determination, and may take testimony and consider all relevant information. Within 90 days after the Governor's notice, the commission must prepare and provide to the General Assembly, the Governor, and DODD a report containing its recommendations regarding the developmental center. In making its recommendations, the commission must consider the following:

- (1) Whether there is a need to reduce the number of developmental centers;
- (2) The availability of alternate facilities;
- (3) The cost effectiveness of the developmental center;



(4) The opportunities for, and barriers to, transitioning staff to other appropriate employment;

(5) The geographic factors associated with the center and its proximity to other similar facilities;

(6) The utilization and maximization of resources;

(7) Continuity of the staff and the ability to serve the center's population;

(8) Continuing costs following closure of the center;

(9) The impact of the closure on the local economy;

(10) Alternatives and opportunities for consolidation with other centers or facilities;

(11) Any other factors the commission considers appropriate.

The commission may recommend closure for expenditure reductions or budget cuts only if the anticipated savings is approximately the same as the anticipated savings in the Governor's notice. If the Governor identifies more than one facility for closure, the Commission must list them in order of its preference for closure. Upon providing the report, the commission ceases to exist.

Action on receipt of report

Upon receipt of a report recommending closure, the Governor may close developmental centers that are identified in the commission's recommendation. The bill prohibits the Governor from closing any developmental center that is not listed in the recommendation, and from closing multiple centers in any order other than as specified by the commission. If the Governor determines that a significant change in circumstances makes the commission's recommendation infeasible, the Governor may call for a new commission regarding the developmental center. The new commission must be created and function in the same manner as the initial commission.

Membership

Appointments to a commission must be made within seven days after the Governor's notice, and the commission must meet as soon as possible after the appointments. Each commission consists of 13 members as follows: (1) three members of the House, with two members of the House majority political party appointed by the Speaker and one member of the House minority political party appointed by the House Minority Leader, (2) three members of the Senate, with two members of the Senate



majority political party appointed by the Senate President and one member of the Senate minority political party appointed by the Senate Minority Leader, (3) the Director of Budget and Management, (4) the Director of Developmental Disabilities, (5) four members with experience in the work of DODD, with one being appointed by the Speaker of the House, one being appointed by the House Minority Leader, one being appointed by the Senate President, and one being appointed by the Senate Minority Leader, and (6) one representative of the employees' association representing the largest number of DODD employees, as certified by the Director, appointed by the president of that association. Of the four members having experience in the work of DODD, one such member must be a family member of a person living in the developmental center. This family member is deemed, because of that familial connection, to have met the experience requirement.

The commission members serve without compensation. At the commission's first meeting, the members must organize and appoint a chairperson and vice-chairperson.

Medicaid services provided by sheltered workshops

(R.C. 5123.621 and 5166.24; Section 259.290)

The bill requires Medicaid programs administered by the Ohio Department of Developmental Disabilities (DODD) to continue covering adult day services provided by sheltered workshops if the program covers those services on the provision's effective date. Additionally, the Medicaid payment rates for adult day services provided by sheltered workshops from July 1, 2015 through June 30, 2017, are required to be no less than the payment rates for those services on June 30, 2015.

The bill prohibits a sheltered workshop with an agreement to provide adult day services from decreasing the number of Medicaid recipients it is willing and able to serve.

The bill specifies the General Assembly's intent that individuals currently being served through the existing array of adult day services (including those delivered in sheltered workshops) (1) be fully informed of any new home and community-based services and their option to receive those services and (2) continue receiving services in a variety of settings if those settings offer opportunities for community integration.



Supported living certificates

(R.C. 5123.1610 (primary), 5123.033, 5123.16, 5123.161, 5123.162, 5123.163, 5123.164, 5123.166, 5123.167, 5123.169, and 5123.1611)

Continuing law prohibits a person or government entity from providing supported living without a valid supported living certificate issued by the Ohio Department of Developmental Disabilities (ODODD) Director. Supported living providers also may have a Medicaid provider agreement with the Ohio Department of Medicaid (ODM) to provide supported living under the Medicaid program.

Automatic suspensions and revocations

The bill provides that both of the following apply if ODM terminates or refuses to revalidate a Medicaid provider agreement that authorizes a person or government entity to provide supported living under the Medicaid program:

(1) In the case of a terminated provider agreement, the person or government entity's authority to provide Medicaid-funded supported living under a supported living certificate is automatically revoked on the date that the provider agreement is terminated.

(2) In the case of a provider agreement that expires because ODM refuses to revalidate it, the person or government entity's authority to provide Medicaid-funded supported living under a supported living certificate is automatically revoked on the date that the provider agreement expires, unless the expiration date of the provider agreement is the same as the expiration date of the supported living certificate, in which case the ODODD Director must refuse to renew the person or government entity's authority to provide Medicaid-funded supported living under the certificate.

The bill provides that the ODODD Director is not required to issue an adjudication order in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to do either of the following pursuant to this provision of the bill:

(1) Revoke a person or government entity's authority to provide Medicaid-funded supported living;

(2) Refuse to renew a person or government entity's authority to provide Medicaid-funded supported living.

The bill provides that this provision does not affect a person or government entity's authority to provide non-Medicaid funded supported living under a supported living certificate.



Reapplication period for supported living certificate

The bill increases to five years the period during which a person or government entity, and a related party of the person or government entity, is prohibited from applying for a supported living certificate following an adjudication order issued by the ODODD Director in which the Director refused to issue or renew a supported living certificate. The bill makes this provision consistent with an existing provision that applies when a supported living certificate is revoked. Under current law, a person or government entity, and a related party of the person or government entity, cannot apply for a supported living certificate for a one-year period following the Director's refusal to issue or renew the certificate.

The bill also provides that, if a person or government entity's authority to provide Medicaid-funded supported living is revoked or renewal of the authority is refused, neither the person or government entity nor a related party of the person or government entity may apply for authority to provide Medicaid-funded supported living within five years after the date the authority is revoked or expired.

Residential facility licensure

(R.C. 5123.19, 5123.196, and 5123.198)

The bill makes several changes to the law governing the licensure of residential facilities by ODODD. The bill repeals provisions that require ODODD to do all of the following:

- (1) Establish procedures for public notice of certain actions taken by the Director;
- (2) Adopt rules establishing certification procedures for licensees and management contractors and requirements for the training of facility personnel;
- (3) Perform surveys when multiple facilities that are owned or operated by the same person or entity are not in compliance with the law;
- (4) Establish procedures to notify interested parties regarding facilities that are closing or losing their license.

The bill permits the Director to assign the responsibility for conducting residential facility surveys and inspections to the Ohio Department of Health (ODH). Current law allows the Director to assign the responsibility to county boards of developmental disabilities only.



The bill prohibits a person or government entity and related parties whose application for a license has been denied from applying for a license within five years of the denial. Current law prohibits application within one year of the denial.

The bill requires a licensee to transfer records to the new licensee or management contractor when the identity of the licensee or management contractor changes significantly.

Incentives to convert ICF/IID beds

(R.C. 5123.376)

Continuing law authorizes ODODD to assist with construction projects regarding services to individuals with developmental disabilities. The assistance is provided in accordance with an agreement between the ODODD Director and a county board of developmental disabilities (CBDD) or private, nonprofit agency incorporated to provide developmental disability services. Generally, the agreement may provide for ODODD to pay 90% of the total project cost where circumstances warrant.²⁵

The bill authorizes the ODODD Director to make changes to the terms of an agreement regarding the construction, acquisition, or renovation of a residential facility for individuals with developmental disabilities if certain conditions are met, including all of the following conditions:

(1) The agreement must have been entered into during the period beginning January 1, 1975, and ending December 31, 1984.

(2) The agreement must require the CBDD or private, nonprofit agency to use the residential facility as a residential facility for at least 40 years.

(3) The agreement must concern a residential facility that is an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) with a Medicaid-certified capacity of at least 16.

(4) The CBDD or private, nonprofit agency must apply to the ODODD Director for the change in the agreement's terms.

The ODODD Director may authorize a CBDD or private, nonprofit agency not to repay the amount of an outstanding balance otherwise owed pursuant to the agreement if the CBDD or agency meets the following additional condition: the residential facility must have converted all of its ICF/IID beds to beds that provide home and community-

²⁵ R.C. 5123.36, not in the bill.

based services under an ODODD-administered Medicaid waiver program. The ODODD may change other terms in the agreement, including terms regarding the length of time the residential facility must be used as a residential facility, if the CBDD or private, nonprofit agency meets the following additional condition: the residential facility must have converted at least 50% of its ICF/IID beds to beds that provide home and community-based services under an ODODD-administered Medicaid waiver program.

Consent for medical treatment

(R.C. 5123.86)

Current law authorizes the guardian of a resident of an institution for the mentally retarded who is physically or mentally unable to receive information or who has been adjudicated incompetent to receive information on and consent to surgery on the resident's behalf. If the resident lacks a guardian, current law authorizes a court to receive the information and give the consent. If a court consents, it must notify the Ohio protection and advocacy system and the resident of the right to consult with legal counsel and the right to contest the recommendation of the institution's chief medical officer.

The bill extends a guardian's or court's authority to give consent on a resident's behalf, under the conditions described above, to those procedures that are experimental in nature. Under current law, only the resident may consent to experimental procedures.

The bill also eliminates provisions requiring informed consent before a resident receives convulsive therapy, major aversive interventions, or unusual or hazardous treatment procedures. According to ODODD staff, those therapies, interventions, and procedures are no longer available to residents.²⁶

Finally, the bill eliminates a provision prohibiting an Ohio Department of Mental Health and Addiction Services (ODMHAS) or ODODD employee or official who serves as a resident's guardian from giving consent to a resident's surgery.

ICF/IIDs' Medicaid rates for low resource utilization residents

(R.C. 5124.155 (primary) and 5124.15)

The bill establishes a potentially lower Medicaid payment rate for ICF/IID services provided by an ICF/IID in peer group 1 to a Medicaid recipient who is

²⁶ Telephone interview with Ohio Department of Developmental Disabilities staff (January 28, 2015).



admitted to the ICF/IID on or after July 1, 2015, and is placed in the chronic behaviors and typical adaptive needs classification or the typical adaptive needs and nonsignificant behaviors classification established for the grouper methodology that is used in determining ICF/IIDs' rates for direct care costs. The Medicaid payment rate for ICF/IID services provided by an ICF/IID in peer group 1 to such a recipient is to be the lesser of the regular rate for ICF/IID services determined in accordance with statutory formula or the following flat rate:

(1) \$206.90 in the case of ICF/IID services the ICF/IID provides to a recipient in the chronic behaviors and typical adaptive needs classification;

(2) \$174.88 in the case of ICF/IID services the ICF/IID provides to a recipient in the typical adaptive needs and nonsignificant behaviors classification.

Efforts to reduce the number of ICF/IID beds

(R.C. 5124.67; Section 803.05)

Continuing law requires ODODD to strive to achieve, not later than July 1, 2018, the following statewide reductions in ICF/IID beds:

(1) At least 500 beds in ICFs/IID that, before downsizing, have 16 or more beds;

(2) At least 500 beds in ICFs/IID with any number of beds that convert some or all of their beds from providing ICF/IID services to providing home and community-based services (HCBS) under an ODODD-administered Medicaid waiver program.

The bill requires ODODD to strive to achieve the reductions in beds through the conversion process in accordance with the following interim time frames:

(1) At least 250 ICF/IID beds converted by June 30, 2016;

(2) At least 125 additional ICF/IID beds converted by June 30, 2017 (for a total of at least 350 beds converted by that date).

Admissions to ICFs/IID in peer group 1

(R.C. 5124.68)

Prohibition

The bill prohibits, with certain exceptions, an ICF/IID with a Medicaid-certified capacity exceeding eight (i.e., an ICF/IID in peer group 1) from admitting an individual as a resident unless all of the following apply:

(1) The ICF/IID provides written notice about the individual's potential admission, and all information about the individual in the ICF/IID's possession, to the CBDD serving the county in which the individual resides at the time the notice is provided.

(2) The CBDD has provided to the individual and ODODD a copy of the findings about the individual that the bill requires the CBDD to make.

(3) Not later than seven business days after the ICF/IID provides the CBDD notice about the individual's potential admission, ODODD determines that the individual chooses to receive ICF/IID services from the ICF/IID after being fully informed of all available alternatives.

The bill permits an ICF/IID to provide a CBDD written notices about multiple individuals' potential admissions at the same time.

CBDD evaluations and findings

A CBDD must do both of the following not later than five business days after receiving notice about an individual's potential admission to an ICF/IID in peer group 1:

(1) Using information included in the notification and additional information, if any, ODODD is authorized to specify, evaluate the individual and counsel the individual about the nature, extent, and timing of the services that the individual needs and the least restrictive environment in which the individual could receive the needed services.

(2) Using a form ODODD is required to prescribe, make findings about the individual based on the evaluation and counseling and provide a copy of the findings to the individual and ODODD.

Exceptions

The bill provides that the prohibition regarding admissions to ICFs/IID in peer group 1 does not apply under the following circumstances:

(1) When the individual seeking admission is a Medicaid recipient receiving ICF/IID services on the date immediately preceding the date the individual is admitted to the ICF/IID.

(2) When the individual seeking admission is a Medicaid recipient returning to the ICF/IID following a temporary absence for which the ICF/IID, pursuant to continuing law, is paid to reserve a bed for the individual or during which the individual received rehabilitation services in another health care setting.



(3) When ODODD, despite receiving the CBDD's findings about the individual within the required time, fails to meet the deadline for making a determination of whether the individual seeking admission chooses to receive ICF/IID services from the ICF/IID after being fully informed of all available alternatives.

Enrolling ICF/IID residents in ODODD Medicaid waiver programs

(R.C. 5124.69 and 5126.0510)

The bill requires ODODD to develop and make available to all ICFs/IID a written pamphlet that describes all of the items and services covered by Medicaid as ICF/IID services and as HCBS available under ODODD-administered Medicaid waiver programs. ODODD must develop the pamphlet in consultation with persons and organizations interested in matters pertaining to individuals eligible for ICF/IID services and HCBS.

Each ICF/IID is required to provide the pamphlet to its residents who receive ICF/IID services and the guardians of such residents. An ICF/IID must discuss the items and services described in the pamphlet with those residents and their guardians (1) at least annually, (2) any time the resident or guardian requests to receive the pamphlet and to discuss the items and services described in it, and (3) any time the resident or guardian expresses to the ICF/IID an interest in HCBS.

If an ICF/IID resident who receives ICF/IID services, or the resident's guardian, indicates to an ICF/IID an interest in enrolling the resident in an ODODD-administered Medicaid waiver program that covers HCBS, the ICF/IID is required by the bill to refer the resident or guardian to the CBDD serving the county in which the resident would reside while enrolled in the Medicaid waiver program. The CBDD, not later than 30 days after being contacted by the resident or guardian and notwithstanding its waiting list for the Medicaid waiver program, must enroll the resident in the program if all of the following apply:

- (1) The resident is eligible and chooses to enroll in the program;
- (2) The program has an available slot;
- (3) The ODODD Director determines that ODODD has the funds necessary to pay the nonfederal share of the Medicaid expenditures for the HCBS provided to the resident under the program.

A CBDD is required, under certain circumstances, to pay the nonfederal share of Medicaid expenditures for HCBS provided under an ODODD-administered Medicaid waiver program to an individual the CBDD determines is eligible for CBDD services.



The circumstances include when the CBDD provides the HCBS and when the HCBS are provided by another provider to an individual for whom there is in effect an agreement between the CBDD and ODODD for the CBDD to pay the nonfederal share. The bill provides that a CBDD is not required to pay the nonfederal share when the HCBS are provided to an individual who enrolls in the Medicaid waiver program pursuant to a referral made under this provision of the bill. Under continuing law, ODODD is to be responsible for the nonfederal share instead.²⁷

ICF/IID sleeping room occupancy

(R.C. 5124.70)

The bill prohibits, with limited exceptions, an ICF/IID from allowing more than two residents to share a sleeping room. The bill specifically exempts those ICFs/IID that, by January 1, 2015, reduced their Medicaid-certified capacities by 20% by becoming either a downsized ICF/IID or a partially converted ICF/IID. An ICF/IID's sleeping room is also exempt if (1) all of the sleeping room's residents are under age 21 and (2) the parents or guardians of the residents consent to the residents sharing a sleeping room with two or more other residents.

If more than two ICF/IID residents share a sleeping room on the effective date of the occupancy limit, the ICF/IID may continue to allow the residents to share the sleeping room until January 1, 2016. To permit the residents to continue sharing a sleeping room on and after that date, the ICF/IID must submit, by December 31, 2015, a plan to ODODD detailing how the ICF/IID will come into compliance with the limit by June 30, 2025. The residents may continue to share a sleeping room until June 30, 2025, if ODODD has not yet decided whether to approve the plan or ODODD has approved the plan and the ICF/IID is complying with it. After June 30, 2025, the ICF/IID may permit more than two residents to continue sharing a sleeping room if ODODD waives the occupancy limit. ODODD must waive the limit if (1) more than two residents share the sleeping room on June 30, 2025, (2) the same residents have continuously resided in the sleeping room since the effective date of this provision of the bill, and (3) ODODD determines that at least three of the residents want to continue to share the same sleeping room.

An ICF/IID's plan to come into compliance with the occupancy limit must include the following:

(1) Detailed descriptions of the actions that will be taken to come into compliance, including a plan to reduce the ICF/IID's Medicaid-certified capacity either

²⁷ R.C. 5123.047, not in the bill.



by downsizing its capacity or converting some of its beds to providing HCBS under the Individual Options (IO) waiver;

(2) A discharge planning process that provides residents with information regarding HCBS;

(3) The ICF/IID's projected Medicaid-certified capacity for each year covered by the plan, which must demonstrate that the ICF/IID will make regular progress toward coming into compliance;

(4) Additional interim steps the ICF/IID will take to demonstrate the ICF/IID is making regular progress toward coming into compliance;

(5) The date by which the plan is to be completed, which is to be no later than June 30, 2025.

The plan cannot include the creation of a new ICF/IID that has a Medicaid-certified capacity that is greater than six unless ODODD determines that a new ICF/IID would need a larger Medicaid-certified capacity to be financially viable. Such a new ICF/IID cannot have a Medicaid-certified capacity that is greater than eight.

The bill requires ODODD to review each plan it receives from an ICF/IID. In deciding whether to approve a plan, ODODD is to consider whether the plan includes the required information and whether the plan's successful implementation is feasible. If ODODD approves an ICF/IID's plan, the ICF/IID must submit to ODODD annual reports regarding the plan's implementation.

The bill permits ODODD to issue a written order to an ICF/IID suspending new admissions to the ICF/IID if ODODD has approved the ICF/IID's plan and the ICF/IID fails to (1) submit an annual report or (2) meet, to ODODD's satisfaction, the projected Medicaid-certified capacity for the ICF/IID for a year as specified in the plan and the failure is due to factors within the ICF/IID's control.

Medicaid rates for downsized, partially converted, and new ICFs/IID

(R.C. 5124.101 and 5124.15)

Continuing law establishes conditions under which an ICF/IID in peer group 1 or peer group 2 that, on or after July 1, 2013, becomes a downsized ICF/IID, partially converted ICF/IID, or new ICF/IID may file with ODODD a Medicaid cost report sooner than it otherwise would. A downsized ICF/IID is an ICF/IID that permanently reduced its Medicaid-certified capacity pursuant to a plan approved by ODODD. A partially converted ICF/IID is an ICF/IID that converted some, but not all, of its beds to home and community-based services beds under the Individual Options Medicaid waiver program. Peer group 1



consists of ICFs/IID with more than eight beds. Peer group 2 consists of ICFs/IID with no more than eight beds, other than ICFs/IID in peer group 3. Peer group 3 consists of ICFs/IID (1) that are first certified after July 1, 2014, (2) that have a Medicaid-certified capacity not exceeding six, (3) that have contracts with ODODD that are for 15 years and include a provision for ODODD to approve all admissions to, and discharges from, the ICF/IID, and (4) whose residents are admitted directly from a developmental center or have been determined by ODODD to be at risk of admission to a developmental center.

For a downsized or partially converted ICF/IID to be allowed to file a Medicaid cost report sooner than it otherwise would, the ICF/IID must have, as of the day it downsizes or partially converts, (1) a Medicaid certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately before the day it downsizes or partially converts or (2) at least five fewer ICF/IID beds than it had on the day immediately before the day it downsizes or partially converts. For a new ICF/IID to be allowed to file a Medicaid cost report sooner than it otherwise would, the ICF/IID's beds must be from a downsized ICF/IID that has, as of the day it downsizes or partially converts, (1) a Medicaid-certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately before the day it downsizes or (2) at least five fewer ICF/IID beds than it had on the day immediately before the day it downsizes.

The bill requires ODODD to make certain modifications to the formula used to determine an ICF/IID's Medicaid payment rate when it accepts from the ICF/IID a Medicaid cost report that the ICF/IID is allowed to file sooner than it otherwise would be allowed to file. The modifications apply to the direct care and capital costs components of the formula.

The modification with respect to direct care costs concerns the case mix score that is a factor in determining an ICF/IID's payment rate for direct care cost. In place of the annual average case mix score that would otherwise be used, an ICF/IID's case mix score in effect on the last day of the calendar quarter that ends during the period the Medicaid cost report covers (or, if more than one calendar quarter ends during that period, the last of those calendar quarters) is to be used.

The modification with respect to capital costs is to be made only for downsized and partially converted ICFs/IID (not for new ICFs/IID) and concerns limits on costs of ownership, capitalized costs of nonextensive renovations, and efficiency incentives. A downsized or partially converted ICF/IID is not to be subject to the limit on the costs of ownership per diem payment rate or the limit on the payment rate for per diem capitalized costs of nonextensive renovations that otherwise would apply. However, the ICF/IID, regardless of whether it is in peer group 1 or peer group 2, is to be subject to the limit on the total payment rate for costs of ownership, capitalized costs of nonextensive renovations, and efficiency incentive that applies only to ICFs/IID in peer group 2 under current law.

The modifications to the payment formula are to be used to determine the Medicaid rates to be paid for ICF/IID services provided during the period that begins and ends as follows:

(1) In the case of a downsized or partially converted ICF/IID:

(a) The beginning date is the day that the ICF/IID downsizes or partially converts if that day is the first day of the month or, if not, the first day of the month immediately following the month that the ICF/IID downsizes or partially converts;

(b) The ending date is the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID is to file its first regular Medicaid cost report after downsizing or partially converting.

(2) In the case of a new ICF/IID:

(a) The beginning date is the day that the ICF/IID's Medicaid provider agreement takes effect.

(b) The ending date is the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID is to file its first regular Medicaid cost report.

Service and support administrators – county boards

(R.C. 5126.15 and 5126.202)

Under continuing law not modified by the bill, county boards of developmental disabilities are authorized, and in certain instances required, to provide service and support administration to individuals with mental retardation or developmental disabilities (MR/DD). Service and support administrators are required to assist individuals in receiving services, including assessing individual needs for services, establishing an individual's eligibility for services, and ensuring that services are effectively coordinated. They are prohibited from being employed by or serving in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with MR/DD. The bill also prohibits service and support administrators from providing programs or services to individuals with MR/DD through self-employment.

ICF/IID franchise permit fees

Permit fee rate

(R.C. 5168.60)

Continuing law imposes an annual assessment on ICFs/IID. The assessment is termed a "franchise permit fee." Revenue raised by the franchise permit fee is to be used for the expenses of the programs ODODD administers and ODODD's administrative expenses.²⁸

The bill reduces the rate at which the ICF/IID franchise permit fee is assessed. Under current law, the rate is \$18.17 per bed per day. Under the bill, the rate is \$18.07 for fiscal year 2016 and \$18.02 for fiscal year 2017 and thereafter.

Notice of fees

(R.C. 5168.63 and 5168.67)

Under current law, ODODD is required to mail each ICF/IID notice of the amount of its franchise permit fee not later than the first day of each September. If an ICF/IID requests an appeal regarding its franchise permit fee, ODODD must mail a notice of the date, time, and place of the hearing to the ICF/IID.

The bill requires that these notices be provided electronically or by the U.S. Postal Service.

Conversion of ICF/IID beds to HCBS beds

(R.C. 5124.60, 5124.61, 5164.38, and 5168.64)

Continuing law includes provisions aimed at increasing the number of slots for HCBS that are available under ODODD-administered Medicaid waiver programs. An ICF/IID is permitted to convert some or all of its beds from providing ICF/IID services to providing HCBS if a number of requirements are met. For example, the ICF/IID must provide its residents certain notices, provide the ODH Director and ODODD Director at least 90 days' notice of the intent to convert the beds, and receive the ODODD Director's approval. An individual who acquires, through a request for proposals issued by the ODODD Director, an ICF/IID for which a residential facility license was previously surrendered or revoked also may convert all or some of its beds if similar requirements are met.

²⁸ R.C. 5168.69, not in the bill.



ODM adjudication not required

Continuing law requires the ODH Director, when an ICF/IID converts some or all its beds under the provisions discussed above, to (1) terminate the ICF/IID's Medicaid certification if all of the ICF/IID's beds are converted or (2) reduce the ICF/IID's Medicaid certified-capacity by the number of beds converted if some but not all of the ICF/IID's beds are converted. The ODH Director is required to notify the Medicaid Director when terminating an ICF/IID's Medicaid certification or reducing an ICF/IID's Medicaid certified-capacity. On receipt of the ODH Director's notice, the Medicaid Director must (1) terminate the ICF/IID's Medicaid provider agreement if the ODH Director terminated the ICF/IID's Medicaid certification or (2) amend the ICF/IID's provider agreement to reflect the ICF/IID's reduced Medicaid-certified capacity if the ODH Director reduces the ICF/IID's capacity.

Current law provides that an ICF/IID is not entitled to notice or a hearing under the Administrative Procedure Act (R.C. Chapter 119.) before the Medicaid Director terminates the ICF/IID's Medicaid provider agreement following the ICF/IID's total conversion. Current law also provides, in the case of an ICF/IID that is acquired through a request for proposals issued by the ODODD Director following the surrender or revocation of the ICF/IID's residential facility license, that the ICF/IID is not entitled to notice or a hearing before the Medicaid Director amends the ICF/IID's provider agreement to reflect its reduced Medicaid-certified capacity resulting from the ICF/IID's partial conversion. The bill provides instead that the Medicaid Director is not required to conduct an adjudication in accordance with the Administrative Procedure Act when terminating an ICF/IID's provider agreement following the ICF/IID's total conversion or when amending an ICF/IID's provider agreement to reflect its reduced Medicaid-certified capacity resulting from a partial conversion. This is to apply regardless of whether the ICF/IID was acquired through a request for proposals issued by the ODODD Director following the surrender or revocation of the ICF/IID's residential facility license.

Medicaid payment to an ICF/IID for day of discharge

Current law prohibits a Medicaid payment from being made to an ICF/IID for the day a Medicaid recipient is discharged from the ICF/IID. The bill provides that this prohibition does not apply if the Medicaid recipient is discharged because all of the ICF/IID's beds are converted to providing HCBS under the provisions discussed above.

Termination or redetermination of fee after a conversion

The bill revises the law governing the termination or redetermination of an ICF/IID's franchise permit fee when it converts to providing HCBS. Under current law, ODODD is required to terminate or redetermine an ICF/IID's franchise permit fee if it



converts one or more of its beds to providing HCBS during the period beginning on the first day of May of a calendar year and ending on the first day of January of the immediately following calendar year. ODODD must terminate the ICF/IID's franchise permit fee if the ICF/IID's Medicaid certification is terminated because of the conversion. The termination is to take effect on the first day of the quarter immediately following the quarter in which ODODD receives ODH's notice of the conversion. ODODD must redetermine the ICF/IID's franchise permit fee if the ICF/IID's Medicaid certified capacity is reduced because of the conversion. The redetermination applies for the second half of the fiscal year for which the franchise permit fee is assessed.

ODODD is required by the bill to terminate an ICF/IID's franchise permit fee if all of the ICF/IID's beds are converted to providing HCBS and its Medicaid provider agreement is terminated as a consequence. ODODD must terminate the franchise permit fee regardless of when the conversion takes place. The termination is to take effect on the first day of the quarter immediately following the quarter in which the conversion takes place.

Under current law, the requirement to terminate or redetermine an ICF/IID's franchise permit fee because of a conversion does not apply when the conversion occurs under the statute regarding an ICF/IID that was acquired, through a request for proposals issued by the ODODD Director, after the ICF/IID's residential facility license was previously surrendered or revoked. The bill makes the termination and redetermination requirement also apply when the conversion occurs under that statute.

Priority status for residents of ICFs/IID and nursing facilities

(R.C. 5126.042)

Current law requires that a CBDD establish a waiting list for home and community-based services if it determines that available resources are insufficient to meet the needs of all individuals who request those services. Under existing law, the following individuals receive priority status on the waiting list: (1) an individual who has an emergency status, (2) an individual who is receiving supported living, family support services, or adult services for which no federal financial participation is received under the Medicaid program, (3) an individual whose primary caregiver is at least 60 years of age, and (4) an individual who has intensive needs as determined by the ODODD. The bill provides that an individual who resides in a nursing facility or an ICF/IID also receive priority status on the waiting list.

FY 2016 and 2017 Medicaid rates for ICF/IID services

(Sections 259.160, 259.170, and 259.180)

ICFs/IID are placed in three different peer groups for the purpose of Medicaid payment rates. Peer group 1 consists of ICFs/IID with a Medicaid-certified capacity exceeding eight. Peer group 2 consists of ICFs/IID with a Medicaid-certified capacity not exceeding eight, other than ICFs/IID in peer group 3. Peer group 3 consists of ICFs/IID (1) that are first certified after July 1, 2014, (2) that have a Medicaid-certified capacity not exceeding six, (3) that have contracts with ODODD that are for 15 years and include a provision for ODODD to approve all admissions and discharges, and (4) whose residents are admitted directly from a developmental center or have been determined by ODODD to be at risk of admission to a developmental center.

Fiscal year 2016 Medicaid rates for ICFs/IID in peer groups 1 and 2

The bill includes provisions governing the fiscal year 2016 Medicaid payment rates for ICFs/IID in peer groups 1 and 2. The provisions make modifications to the statutory formula used to determine the rates, provide for the rates for ICF/IID services provided to low resource utilization residents not to exceed certain amounts, require ODODD to adjust rates if the mean rate for the ICFs/IID is other than a certain amount, and requires ODODD to reduce the rates if CMS requires the ICF/IID franchise permit fee to be reduced or eliminated.

Modifications to rate formula

The bill requires ODODD to modify the formula used in determining the fiscal year 2016 Medicaid payment rates for ICFs/IID in peer groups 1 and 2. One set of modifications applies to existing ICFs/IID (i.e., ICFs/IID that have valid Medicaid provider agreements on June 30, 2015 and during fiscal year 2016 and ICFs/IID that undergo a change of operator that takes effect during fiscal year 2016, for which the exiting operators have valid provider agreements on the day immediately preceding the effective date of the change of operator, and for which the entering operators have valid provider agreements during fiscal year 2016). Another set of modifications applies to new ICFs/IID for which initial provider agreements are obtained during fiscal year 2016.

An existing ICF/IID's rate is to be adjusted as follows:

(1) The efficiency incentive for capital costs is to be reduced by 50%.

(2) In place of the maximum cost per case-mix unit established for its peer group, the maximum costs per case-mix unit is to be an amount ODODD is to determine. In



making this determination, ODODD is required to strive to the greatest extent possible to avoid rate reductions under the bill's provision regarding rate adjustments (see "**Adjustment to rates if mean is other than a certain amount for fiscal year 2016,**" below) and to have the amount so determined result in payment of all desk-reviewed, actual, allowable direct care costs for the same percentage of Medicaid days for ICFs/IID in peer group 1 as for ICFs/IID in peer group 2 as of July 1, 2015, based on May 2015 Medicaid days.

(3) In the place of the inflation adjustment otherwise calculated in determining its rate for direct care costs, an inflation adjustment of 1.014 is to be used.

(4) In place of the efficiency incentive otherwise calculated in determining its rate for indirect care costs, its efficiency incentive is to be \$3.69 if it is in peer group 1 and \$3.19 if it is in peer group 2.

(5) In place of the maximum rate for indirect care costs established for its peer group, the maximum rate is to be \$68.98 if it is in peer group 1 and \$59.60 if it is in peer group 2.

(6) In place of the inflation adjustment otherwise calculated in determining its rate for indirect care costs, an inflation adjustment of 1.014 is to be used.

(7) In place of the inflation adjustment otherwise made in determining its rate for other protected costs, its other protected costs (excluding the franchise permit fee component of those costs) from calendar year 2014 are to be multiplied by 1.014.

A new ICF/IID's rate is to be adjusted as follows:

(1) In place of the initial rate for direct care costs otherwise determined for it when there is no cost or resident assessment data for it, its initial rate for direct care costs is to be determined as follows:

(a) The median of the costs per case-mix units is to be determined for each peer group.

(b) The median determined above for its peer group is to be multiplied by the median annual average case-mix score for its peer group for calendar year 2014.

(c) The product determined above is to be multiplied by 1.014.

(2) In place of the initial rate for indirect care costs otherwise determined for it, its initial rate for indirect care costs is to be \$68.98 if it is in peer group 1 or \$59.60 if it is in peer group 2.



(3) In place of the initial rate for other protected costs otherwise determined for it, its initial rate for other protected costs is to be 115% of the median fiscal year 2016 rate determined for existing ICFs/IID.

The bill provides that a new ICF/IID's initial rate for fiscal year 2016 is to be adjusted in accordance with continuing law governing the adjustment of initial rates. If the adjustment affects the new ICF/IID's fiscal year 2016 rate, the modifications made under the bill to the rates of existing ICFs/IID are to apply to the new ICF/IID's adjusted rate.

Low resource utilization residents

Under the bill, the total per Medicaid day rate for ICF/IID services an ICF/IID in peer group 1 provides in fiscal year 2016 to a low resource utilization resident admitted to the ICF/IID on or after July 1, 2015, is to be the lesser of the rate determined with the modifications discussed above or a certain flat rate. A low resource utilization resident is a resident who is placed in the chronic behaviors and typical adaptive needs classification or the typical adaptive needs and nonsignificant behaviors classification established for the grouper methodology used in determining rates for direct care costs. The following are the flat rates:

(1) \$206.90 for ICF/IID services the ICF/IID provides to a Medicaid recipient in the chronic behaviors and typical adaptive needs classification;

(2) \$174.88 for ICF/IID services the ICF/IID provides to a Medicaid recipient in the typical adaptive needs and nonsignificant behaviors classification.

Adjustment to rates if mean is other than a certain amount for fiscal year 2016

If the mean total per Medicaid day rate for all ICFs/IID in peer groups 1 and 2, weighted by May 2015 Medicaid days and determined in accordance with the modifications and limits discussed above as of July 1, 2015, is other than \$283.32, ODODD must adjust, for fiscal year 2016, the total per Medicaid day rate for each ICF/IID in peer group 1 or 2 by a percentage that is equal to the percentage by which the mean total per Medicaid day rate is greater or less than \$283.32.

Rate reduction if franchise permit fee is reduced or eliminated

The bill requires ODODD, if CMS requires that the ICF/IID franchise permit fee be reduced or eliminated, to reduce the amount it pays ICFs/IID in peer groups 1 and 2 for fiscal year 2016 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.



Fiscal year 2017 Medicaid rates for ICFs/IID in peer groups 1 and 2

The bill includes provisions governing the fiscal year 2017 Medicaid payment rates for ICFs/IID in peer groups 1 and 2. The provisions make modifications to the statutory formula used to determine the rates, require ODODD to adjust rates if the mean rate for the ICFs/IID is other than a certain amount, and require ODODD to reduce the rates if CMS requires the ICF/IID franchise permit fee to be reduced or eliminated.

Modifications to rate formula

The bill requires ODODD to modify the formula used in determining the fiscal year 2017 Medicaid payment rates for ICFs/IID in peer groups 1 and 2. One set of modifications applies to existing ICFs/IID (i.e., ICFs/IID that have valid Medicaid provider agreements on June 30, 2016 and during fiscal year 2017 and ICFs/IID that undergo a change of operator that takes effect during fiscal year 2017, for which the exiting operators have valid provider agreements on the day immediately preceding the effective date of the change of operator, and for which the entering operators have valid provider agreements during fiscal year 2017). Another set of modifications applies to new ICFs/IID for which initial provider agreements are obtained during fiscal year 2017.

An existing ICF/IID's rate is to be adjusted as follows:

- (1) The efficiency incentive for capital costs is to be reduced by 50%.
- (2) In place of the maximum cost per case-mix unit established for its peer group, the maximum costs per case-mix unit is to be the maximum amount ODODD determines for the ICF/IID's peer group for fiscal year 2016. (See "**Fiscal year 2016 Medicaid rates for ICFs/IID in peer groups 1 and 2**," above.)
- (3) In the place of the inflation adjustment otherwise calculated in determining its rate for direct care costs, an inflation adjustment of 1.014 is to be used.
- (4) In place of the efficiency incentive otherwise calculated in determining its rate for indirect care costs, its efficiency incentive is to be \$3.69 if it is in peer group 1 and \$3.19 if it is in peer group 2.
- (5) In place of the maximum rate for indirect care costs established for its peer group, the maximum rate is to be \$68.98 if it is in peer group 1 and \$59.60 if it is in peer group 2.
- (6) In place of the inflation adjustment otherwise calculated in determining its rate for indirect care costs, an inflation adjustment of 1.014 is to be used.



(7) In place of the inflation adjustment otherwise made in determining its rate for other protected costs, its other protected costs (excluding the franchise permit fee component of those costs) from calendar year 2015 are to be multiplied by 1.014.

(8) After all of the modifications specified above have been made, its total per Medicaid day rate is to be increased by the direct support personnel payment. The direct support personnel payment is to be a percentage, as determined by ODODD, of the ICF/IID's direct care costs. In determining the percentage, ODODD must, to the greatest extent possible, avoid rate reductions under the bill's provision regarding rate adjustments (see "**Adjustments to rates if mean is other than a certain amount for fiscal year 2017**," below) and use the same percentage for all ICFs/IID in peer groups 1 and 2.

A new ICF/IID's rate is to be adjusted as follows:

(1) In place of the initial rate for direct care costs otherwise determined for it when there is no cost or resident assessment data for it, its initial rate for direct care costs is to be determined as follows:

(a) The median of the costs per case-mix units is to be determined for each peer group.

(b) The median determined above for its peer group is to be multiplied by the median annual average case-mix score for its peer group for calendar year 2015.

(c) The product determined above is to be multiplied by 1.014.

(2) In place of the initial rate for indirect care costs otherwise determined for it, its initial rate for indirect care costs is to be \$68.98 if it is in peer group 1 or \$59.60 if it is in peer group 2.

(3) In place of the initial rate for other protected costs otherwise determined for it, its initial rate for other protected costs is to be 115% of the median fiscal year 2017 rate determined for existing ICFs/IID.

(4) After all of the modifications specified above have been made, its initial total per Medicaid day rate is to be increased by the median direct support personnel payment for all ICFs/IID in peer groups 1 and 2. (See (8) above in the discussion of how an existing ICF/IID's rate is to be adjusted for fiscal year 2017.)

The bill provides that a new ICF/IID's initial rate for fiscal year 2017 is to be adjusted in accordance with continuing law governing the adjustment of initial rates. If the adjustment affects the new ICF/IID's fiscal year 2017 rate, the modifications made

under the bill to the rates of existing ICFs/IID are to apply to the new ICF/IID's adjusted rate.

Adjustment to rates if mean is other than a certain amount for fiscal year 2017

If the mean total per Medicaid day rate for all ICFs/IID in peer groups 1 and 2, weighted by May 2016 Medicaid days and determined in accordance with the modifications discussed above as of July 1, 2016, is other than \$288.27 or a larger amount that ODODD, in its sole discretion, decides to use for this purpose, ODODD must adjust, for fiscal year 2017, the total per Medicaid day rate for each ICF/IID in peer group 1 or 2 by a percentage that is equal to the percentage by which the mean total per Medicaid day rate is greater or less than \$288.27 or the larger amount ODODD may use. In determining whether to use an amount larger than \$288.27, ODODD may consider any of the following:

(1) The reduction in the total Medicaid-certified capacity of all ICFs/IID that occurs in fiscal year 2016, and the reduction that is projected to occur in fiscal year 2017, as a result of ICFs/IID downsizing or ICFs/IID converting beds to providing HCBS under the IO Medicaid waiver program;

(2) The increase in Medicaid payments made for ICF/IID services provided during fiscal year 2016, and the increase that is projected to occur in fiscal year 2017, as a result of the modifications of the payment rates made under the bill's provision discussed above under the heading "**Medicaid rates for downsized, partially converted, and new ICFs/IID**";

(3) The total reduction in the number of ICF/IID beds that occurs pursuant to continuing law that requires ODODD to strive to achieve statewide reductions in ICF/IID beds (see "**Efforts to reduce the number of ICF/IID beds**," above);

(4) Other factors ODODD determines to be relevant.

Rate reduction if franchise permit fee is reduced or eliminated

The bill requires ODODD, if CMS requires that the ICF/IID franchise permit fee be reduced or eliminated, to reduce the amount it pays ICFs/IID in peer groups 1 and 2 for fiscal year 2017 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

Fiscal year 2016 Medicaid rates for ICFs/IID in peer group 3

The bill provides for ICFs/IID in peer group 3 that obtained initial Medicaid provider agreements during fiscal year 2015 to continue to be paid, for services provided during fiscal year 2016, their total per Medicaid day rates in effect on June 30,



2015. However, if CMS requires that the ICF/IID franchise permit fee be reduced or eliminated, ODODD is required to reduce the amount it pays such ICFs/IID for fiscal year 2016 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

ICF/IID Medicaid Rate Workgroup

(Section 259.200)

For fiscal years 2016 and 2017, the bill retains the previously created ICF/IID Medicaid Rate Workgroup to assist ODODD with its evaluation of revisions to the formula used to determine Medicaid payment rates for ICF/IID services. ICF/IID services include items and services furnished in an intermediate care facility for individuals with intellectual disabilities if certain conditions specified in federal law are met.²⁹

The bill requires ODODD and the Workgroup to (1) focus on serving individuals with complex challenges that ICFs/IID are eligible to meet and pursue, and (2) try to reduce the Medicaid-certified capacity of individual ICFs/IID and the total number of ICF/IID beds in the state in order to increase service choices and community integration of individuals eligible for ICF/IID services. The Workgroup is no longer required to consider the impact of exception reviews conducted under Ohio law on ICFs/IID's case-mix scores.

Medicaid rates for homemaker/personal care services

(Sections 259.213 and 259.220)

Rates for services provided to qualifying enrollees

The bill requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services that a Medicaid provider provides to a qualifying enrollee of the Individual Options (IO) Medicaid waiver program to be, for 12 months, 52¢ higher than the rate for services that a Medicaid provider provides to an IO enrollee who is not a qualifying enrollee. The higher rate is to be paid for the first 12 months, consecutive or otherwise, that the provider provides the services to the qualifying IO enrollee during the period beginning July 1, 2015, and ending June 30, 2017.

An IO enrollee is a qualified IO enrollee for the purpose of this provision of the bill if all of the following apply:

²⁹ R.C. 5124.01(Y) and 42 Code of Federal Regulations 440.150, not in the bill.



(1) The enrollee resided in a developmental center, converted ICF/IID,³⁰ or public hospital immediately before enrolling in the IO Medicaid waiver program.

(2) The enrollee did not receive before July 1, 2011, routine homemaker/personal care services from the Medicaid provider that is to receive the higher Medicaid rate.

(3) The ODODD Director has determined that the enrollee's special circumstances (including the enrollee's diagnosis, service needs, or length of stay at the developmental center, converted ICF/IID, or public hospital) warrants paying the higher Medicaid rate.

General rate increase

The bill permits the Medicaid payment rate for routine homemaker/personal care services covered by ODODD-administered Medicaid waiver programs and provided during the period beginning January 1, 2016, and ending June 30, 2017, to be 6% higher than the rate in effect on June 30, 2015. The increase is subject to the availability of funds. The increase, if any, is in addition to the rate increase discussed above for such services provided to qualifying enrollees under the IO Medicaid waiver program.

ICF/IID payment methodology transformation

(Section 259.260)

The bill requires ODODD to issue a request for proposals (RFP) for an entity, pursuant to a contract with ODODD, to develop a plan to transform the formula used to determine Medicaid payment rates for ICFs/IID services. The RFP must be issued not later than July 31, 2015. Any contract ODODD enters into under the RFP is to require all of the following:

(1) That the plan include quality incentive measures, have payments be based on health outcomes, promote ICF/IID services that are provided in the most integrated setting appropriate to the needs of each Medicaid recipient receiving the services, and include recommendations for specific changes to the resident assessment instrument and the grouper methodology which are used in determining Medicaid payment rates for the direct care costs of ICFs/IID;

³⁰ A converted ICF/IID is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing HCBS under the IO Medicaid waiver program.

(2) That the entity developing the plan consider the recommendations of the ICF/IID Medicaid Rate Workgroup³¹ and the ICF/IID Quality Incentive Workgroup (see "**ICF/IID Quality Incentive Workgroup**," below);

(3) That the plan be developed with the goal of beginning implementation of the transformation on July 1, 2017.

ICF/IID Quality Incentive Workgroup

(Section 259.270)

The bill requires the ODODD Director to create the ICF/IID Quality Incentive Workgroup to study the issue of establishing, as part of the Medicaid payment formula for ICF/IID services, accountability measures that act as quality incentives for ICFs/IID. The Director, or the Director's designee, is to be the Workgroup's chairperson. The Director is permitted to appoint one or more ODODD staff members to also serve on the Workgroup and is required to appoint to the Workgroup one or more persons with developmental disabilities who advocate for such persons and representatives of the following:

(1) The Ohio Centers for Intellectual Disabilities formed by the Ohio Health Care Association;

(2) The Values and Faith Foundation;

(3) The Ohio Association of County Boards Serving People with Developmental Disabilities;

(4) The Ohio SIBS;

(5) The Arc of Ohio;

(6) The Ohio Provider Resource Association.

Members of the Workgroup are to serve without compensation or reimbursement, except to the extent that serving on the Workgroup is considered part of their usual job duties.

³¹ The ICF/IID Medicaid Rate Workgroup was created to assist with a study of ICF/IID issues mandated by H.B. 153 of the 129th General Assembly. H.B. 59 of the 130th General Assembly required ODODD to retain the workgroup for the purpose of a study of the Medicaid program's rate formula for ICF/IID services.

The bill requires the Workgroup to complete its study, and complete a report with recommendations regarding accountability measures for ICFs/IID, not later than November 4, 2015. The Workgroup must submit copies of the report to the Governor and General Assembly.

County board share of nonfederal Medicaid expenditures

(R.C. 5126.0510; Section 259.60)

The bill requires the ODODD Director to establish a methodology to be used in fiscal years 2016 and 2017 to estimate the quarterly amount each CBDD is to pay of the nonfederal share of the Medicaid expenditures for which the CBDD is responsible. With certain exceptions, continuing law requires the CBDD to pay this share for home and community-based services provided to an individual who the CBDD determines is eligible for CBDD services. ODODD was similarly required to establish the methodology for fiscal years 2014 and 2015 under H.B. 59 of the 130th General Assembly.

Each quarter, the Director must submit to the CBDD written notice of the amount for which the CBDD is responsible. The notice must specify when the payment is due.

Developmental center services

(Section 259.130)

The bill permits an ODODD-operated residential center for persons with mental retardation and developmental disabilities (i.e., a developmental center) to provide services to persons with mental retardation and developmental disabilities living in the community or to providers of services to these persons. ODODD is permitted to develop a method for recovery of all costs associated with the provision of the services. A similar provision was included in H.B. 59 of the 130th General Assembly.

Innovative pilot projects

(Section 259.150)

For fiscal years 2016 and 2017, the bill permits the ODODD Director to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and CBDDs. Under the bill, a pilot project may be implemented in a manner inconsistent with the laws or rules governing ODODD and CBDDs; however, the Director cannot authorize a pilot project to be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds. Before



authorizing a pilot project, the Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, Ohio Health Care Association Ohio Centers for Intellectual Disabilities, the Values and Faith Alliance, and ARC of Ohio. A similar provision was included in H.B. 59 of the 130th General Assembly.

Use of county subsidies to pay nonfederal share of ICF/IID services

(Section 259.210)

The bill requires the ODODD Director to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to CBDDs if (1) Medicaid covers the ICF/IID services, (2) the ICF/IID services are provided to a Medicaid recipient who is eligible for the ICF/IID services and the recipient does not occupy a bed in the ICF/IID that used to be included in the Medicaid-certified capacity of another ICF/IID certified by the Director of Health before June 1, 2003, (3) the ICF/IID services are provided by an ICF/IID whose Medicaid certification by the Director of Health was initiated or supported by a CBDD, and (4) the provider of the ICF/IID services has a valid Medicaid provider agreement for the services for the time that the services are provided. A similar provision was included in H.B. 59 of the 130th General Assembly.

Updating authorizing statute citations

(Section 259.230)

The bill provides that the ODODD Director is not required to amend any rule for the sole purpose of updating the citation in the Ohio Administrative Code to the statute that authorizes the rule to reflect that the bill renumbers the authorizing statute or relocates it to another Revised Code section. The citations must be updated as the Director amends the rules for other purposes.

