
DEPARTMENT OF DEVELOPMENTAL DISABILITIES

Technology First Task Force and technology first policy

- Declares that it is the policy of the state to provide individuals with developmental disabilities with access to innovative technology solutions.
- Requires the Department of Developmental Disabilities to coordinate with other state agencies to implement the policy.
- Requires the Director of Developmental Disabilities to establish, in coordination with other state agencies, the Technology First Task Force.

Medicaid rates for services in an intermediate care facility for individuals with intellectual disabilities (ICF/IID)

- Eliminates a formula for determining an ICF/IID's Medicaid payment rate that expired on July 1, 2021.
- For FY 2022, establishes varying Medicaid rates for ICFs/IID depending on whether an ICF/IID meets certain criteria.
- Provides that the mean FY 2023 Medicaid rates for all ICFs/IID after certain modifications are made cannot exceed \$365.05.
- Requires the Department to reduce the FY 2022 and FY 2023 Medicaid rates for ICFs/IID if the federal government requires that the ICF/IID franchise permit fee be reduced or eliminated.

ICF/IID franchise permit fee

- Requires the Department to adjust the franchise permit fee rate and associated ICF/IID invoices so as not to exceed the indirect guarantee percentage if that percentage is adjusted by the U.S. Secretary of Health and Human Services at any time during a fiscal year.

Medicaid rates for waiver services (VETOED)

- For FY 2022, would have specified that the Medicaid payment rate for adult day services and residential services provided under a Department-administered waiver equal the rates for the services in effect on June 30, 2021, increased by 2%.
- For FY 2023, would have specified that the Medicaid payment rate for adult day services and residential services provided under a Department-administered waiver equal the rates for the services in effect on June 30, 2022, increased by 2%.

Transfer of residential facility license

- Requires the Director of Developmental Disabilities to issue a residential facility license to an ICF/IID that meets enumerated conditions.
- Prohibits the Director from issuing more than five such licenses.

Developmental centers services and cost recovery

- Permits a developmental center to provide services to (1) individuals with developmental disabilities who reside in the community and (2) providers who provide services to such individuals.
- Permits the Department to establish a method for recovering the costs associated with providing these services.

County board waiver allocation plan

- Eliminates a requirement that each county board of developmental disabilities (county DD board) submit an annual plan to the Department for approval.
- Instead, requires county DD boards to annually submit to the Department (1) a waiver allocation projection and (2) assurances that the board employs or contracts with both a business manager and a Medicaid services manager, or has an agreement with another county DD board that employs or contracts with those individuals.

County DD board business manager

- Eliminates the ability of a county DD board to receive a subsidy from the Department for employing a business manager.

County DD boards annual cost reports

- Permits, rather than requires, the Department, or an entity designated by it, to audit annual cost reports submitted by a regional council or county DD board.
- Specifies that any audit conducted must utilize methodology approved by the U.S. Centers for Medicare and Medicaid Services.
- Eliminates a duplicative provision of law requiring county DD boards to submit annual cost reports to the Department.

Release of records and reports by county DD boards

- Permits disclosure of a certificate, application, record, or report that identifies a resident of an institution for persons with intellectual disabilities when needed for a guardianship proceeding.
- Permits the release of a record or report maintained by a county DD board or an entity under contract with a board when requested by a probate court for a guardianship proceeding or by the Department for certain purposes.

County share of nonfederal Medicaid expenditures

- Requires the Director to establish a methodology to estimate in FY 2022 and FY 2023 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

County subsidies used in nonfederal share

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

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 in the Individual Options Medicaid waiver program to be, for 12 months, 52¢ higher than the rate for services to an enrollee who is not a qualifying enrollee.

Innovative pilot projects

- Permits the Director to authorize, in FY 2022 and FY 2023, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards.

Ohio Developmental Disabilities Council

- Updates citations to federal law regarding the creation and operation of the Ohio Developmental Disabilities Council.

Technology First Task Force and technology first policy

(R.C. 5123.025 and 5123.026)

The act declares that it is the policy of the state that individuals with developmental disabilities have access to innovative technology solutions. As part of the policy, it provides that technology can ensure that individuals with developmental disabilities have increased opportunities to live, work, and thrive in their homes, communities, and places of employment through the use of state of the art planning, innovative technology, and supports that focus on these individuals' talents, skills, and interests.

The act requires the following entities to implement the technology first policy: the Departments of Developmental Disabilities, Education, Medicaid, Job and Family Services, Mental Health and Addiction Services, and Transportation, the Opportunities for Ohioans with Disabilities Agency, and any other state agency that provides technology services to individuals with developmental disabilities.

As the primary agency responsible for implementing this policy, the act requires the Department of Developmental Disabilities to partner with the Office of InnovateOhio to coordinate the actions taken by other state agencies to implement the policy. The Department and other state agencies may adopt rules to implement this policy. The Department must ensure that other agencies fully implement the policy and, in coordination with the Technology First Task Force established under the act, must compile and annually submit data to the Governor and Lieutenant Governor regarding the policy's implementation.

The act requires the Director of Developmental Disabilities to establish the Technology First Task Force, which is tasked with (1) expanding innovative technology solutions within the operation and delivery of services to individuals with developmental disabilities, (2) using technology to reduce the barriers individuals with developmental disabilities experience, and (3) aligning policies for all state agencies that are members of the task force.

The Technology First Task Force consists of representatives from the Office of InnovateOhio, the Departments of Developmental Disabilities, Education, Medicaid, Job and Family Services, Mental Health and Addiction Services, and Transportation, and the Opportunities for Ohioans with Disabilities Agency. The act permits the Department of Developmental Disabilities to enter into interagency agreements with any of the agencies that are members of the task force. These agreements may specify the roles and responsibilities of the members of the task force, including any financial contributions for which each member is responsible, and the projects and activities the task force will undertake.

Medicaid rates for services in intermediate care facilities for individuals with intellectual disabilities (ICF/IID)

(Repealed R.C. 5124.171, 5124.195, 5124.196, 5125.197, 5124.198, 5124.199, 5124.211, 5124.231, and 5124.28; conforming changes in R.C. 5124.01, 5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 5124.21, 5124.23, 5124.29, 5124.30, 5124.38, 5124.39, 5125.40, 5124.41, and 5124.46; Section 261.150)

Under former law, an ICF/IID's Medicaid payment rate was to be the higher of two rates determined under two different formulas. The older formula predated H.B. 24 of the 132nd General Assembly, which enacted the newer one in 2018. The older formula expired, and an ICF/IID's rate is now exclusively determined under the newer formula. The act eliminates language regarding the older formula (which became obsolete on July 1, 2021), and makes corresponding changes to law retained by the act to reflect the elimination.

The act requires the Department of Developmental Disabilities to make certain modifications to the new formula. For FY 2022, the act establishes three different categories of ICFs/IID and sets varying Medicaid day rates for those categories. For an ICF/IID that has a valid Medicaid provider agreement in effect on June 30, 2021, the act specifies that the Medicaid day rate for FY 2022 equals the rate in effect for the ICF/IID on June 30, 2021, increased by two per cent. For an ICF/IID that undergoes a change of operator during FY 2022, and both the existing operator and entering operator have valid Medicaid provider agreements, the Medicaid day rate for FY 2022 equals the rate in effect for the ICF/IID on the day immediately preceding the effective date of the change of operator. For an ICF/IID that obtains an initial provider agreement during FY 2022, the Medicaid day rate equals \$357.89.

For FY 2023, the act requires the Department to adjust the per Medicaid day rate for all ICFs/IID if the mean total per Medicaid day rate for ICFs/IID exceeds \$365.05. If the mean total per Medicaid day rate is greater than \$365.05, the Department must adjust the rate by the percentage by which the mean total per Medicaid day rate exceeds \$365.05.

Finally, regarding the franchise permit fee that continuing law requires ICFs/IID to pay (see below), the act provides that if the U.S. Centers for Medicare and Medicaid Services

requires that the franchise permit fee be reduced or eliminated, the Department must reduce the Medicaid payment rate for ICFs/IID. The reduction must reflect the loss to the state of the revenue and federal Medicaid funds generated from the franchise permit fee.

ICF/IID franchise permit fee

(R.C. 5168.60 and 5168.61)

Law unchanged by the act imposes a franchise permit fee on ICFs/IID, which is assessed quarterly. The franchise permit fee is a healthcare related tax imposed on ICFs/IID, which is used to help fund the state share of the Medicaid program for Medicaid services utilized by ICFs/IID. Any healthcare related tax must comply with federal requirements to be considered a permissible source of revenue to pay for a portion of the state share for Medicaid, including that it must (1) be broad-based, (2) be uniformly imposed throughout the state, and (3) not hold the taxpayer harmless.

Under federal law, a healthcare related tax is considered to hold a taxpayer harmless if the state provides for a payment, offset, or waiver that guarantees to hold taxpayers harmless for greater than 6% of the cost of the tax imposed. This 6% threshold is known as the indirect guarantee percentage.²⁸

The act provides that in the event that the U.S. Secretary of Health and Human Services adjusts the indirect guarantee percentage (to a percentage other than 6%) at any time during a fiscal year, the Department must adjust the franchise permit fee rate and any associated ICF/IID invoices so as not to exceed the new percentage.

Medicaid rates for waiver services (VETOED)

(Section 261.170)

The Governor vetoed a provision that would have set the Medicaid payment rates for adult day services and residential services provided under a Medicaid waiver administered by the Department for FY 2022 and FY 2023 equal the rates for those services in effect on June 30, 2021 (for FY 2022), and June 30, 2022 (for FY 2023), increased by 2%. These rates would have applied to the following adult day services: (1) adult day support services, (2) career planning services, (3) group employment support, (4) individual employment support, (5) nonmedical transportation services, and (6) vocational habilitation services. They also would have applied to the following residential services: (1) homemaker/personal care services, (2) informal, community, or residential respite services, (3) on-site/on-call services, (4) shared living services, and (5) transportation services.

²⁸ 42 U.S.C. 1396b(w)(4)(C).

Transfer of residential facility license

(R.C. 5123.19)

The act requires the Director of Developmental Disabilities to issue a residential facility license to a facility that meets the following conditions:

- The facility will be certified as an ICF/IID;
- The building where the facility will be located was operated as a residential facility under a lease for at least 20 years before the date of the new license application;
- The former operator of the facility relocated beds from the facility to another site that will be licensed as a residential facility;
- The facility will be located in Preble, Claremont, or Warren County;
- The facility will contain eight beds;
- The licensee will make a good faith effort to serve multi-system youth or adults with severe behavioral challenges at the facility, or at one or more other licensed residential facilities.

The act prohibits the Director from issuing more than five of these new residential facility licenses.

Developmental centers services and cost recovery

(R.C. 5123.034)

The act permits a Department developmental center to provide services to individuals with developmental disabilities who reside in the community in which the center is located. Additionally, a developmental center may provide services to providers who provide services to these individuals in the community. The act allows the Department to establish a method for recovering the costs associated with providing these services through a developmental center. There are eight developmental centers in Ohio, each of which is Medicaid-certified and licensed as an ICF/IID.

County board waiver allocation plan

(R.C. 5126.054, 5126.055, and 5126.056; repealed R.C. 5123.046)

The act eliminates a requirement that each county board of developmental disabilities (county DD board) submit an annual plan to the Department for approval that includes, among other things, the number of individuals with developmental disabilities in the county the board serves who are on the board's waitlist, the service needs of each individual on the waitlist, and the projected annual cost for their services.

Instead, the act requires each county DD board to submit to the Department an annual projection of the number of individuals to whom the board intends to provide home and community-based services based on available funding. Available funding must be based on the

board's projected funding as indicated in its annual five-year projection report submitted to the Department.

Additionally, county DD boards are required to provide annual assurances to the Department that the board employs or contracts with a business manager, or has entered an agreement with another county board that employs or contracts with a business manager to have the business manager serve both county boards. The act also requires county DD boards to assure the Department that the board employs or contracts with a Medicaid services manager, or has entered an agreement with another county board that employs or contracts with a Medicaid services manager to have the Medicaid services manager serve both. The act prohibits the superintendent of a county DD board from serving as the board's business manager or Medicaid services manager.

County DD board business manager

(R.C. 5126.121, repealed)

The act eliminates law that allows county DD boards to receive a subsidy from the Department to employ a business manager. To be eligible for the subsidy under former law, a county board was required to employ a business manager who satisfied education and experience requirements specified in rules adopted by the Department.

County DD boards annual cost reports

(R.C. 5126.05 and 5126.131; repealed R.C. 5126.12)

The act makes it discretionary, instead of mandatory, for the Department to perform an audit of the annual cost report submitted by a county DD board or regional council. It adds that any audit that is performed must utilize methodology approved by the U.S. Centers for Medicare and Medicaid Services. Finally, it repeals a section containing a duplicative requirement that county DD boards submit annual cost reports to the Department.

Release of records and reports by county DD boards

(R.C. 5123.89 and 5126.044)

Continuing law generally requires that all certificates, applications, records, and reports that directly or indirectly identify a resident or former resident of an institution for persons with intellectual disabilities be kept confidential, except under specified circumstances. The act adds an exception to this general requirement permitting disclosure if the certificate, application, record, or report is needed for a guardianship proceeding.

Continuing law also generally prohibits disclosure of the identity of an individual or a record or report regarding an eligible individual that is maintained by a county DD board or an entity under contract with a board, except under specified circumstances. The act adds two exceptions to the general prohibition. The first permits a county DD board or an entity under contract with a board to release a record or report if requested by a probate court for a guardianship proceeding. Any record or report that is released may, in the court's discretion, be released to the parties of the proceeding. The second exception permits the release of a record or report if requested by the Department for the purpose of a proceeding for admission to an

institution for persons with intellectual disabilities or to comply with a court order regarding a person's competence in a criminal case.

County share of nonfederal Medicaid expenditures

(Section 261.100)

The act requires the Director of Developmental Disabilities to establish a methodology to estimate in FY 2022 and FY 2023 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, continuing law requires the board to pay this share for waiver services provided to an individual whom it determines is eligible for its services. Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

County subsidies used in nonfederal share

(Section 261.130)

The act requires the Director of Developmental Disabilities to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to county DD boards if (1) Medicaid covers the services, (2) the services are provided to a Medicaid recipient who is eligible for them and the recipient does not occupy a bed that use to be included in the Medicaid-certified capacity of another ICF/IID certified before June 1, 2003, (3) the services are provided by an ICF/IID whose Medicaid certification was initiated or supported by a county DD board, and (4) the provider of the services has a valid Medicaid provider agreement for the services for the time that they are provided.

Medicaid rates for homemaker/personal care services

(Section 261.140)

The act 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 Medicaid waiver program be 52¢ higher than the rate for services that are provided to an enrollee who is not a qualifying enrollee. The higher rate is to be paid only for the first 12 months, consecutive or otherwise, that the services are provided beginning July 1, 2021, and ending July 1, 2023.

An Individual Options enrollee is a qualified enrollee if all of the following apply:

- The enrollee resided in a developmental center, converted ICF/IID,²⁹ or public hospital immediately before enrolling in the Individual Options Medicaid waiver program.

²⁹ A converted ICF/IID is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing services under the Individual Options Medicaid waiver program.

- 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.
- The Director of Developmental Disabilities has determined that the enrollee's special circumstances (including diagnosis, services needed, or length of stay at the developmental center, converted ICF/IID, or public hospital) warrant paying the higher Medicaid rate.

Innovative pilot projects

(Section 261.120)

For FY 2022 and FY 2023, the act permits the Director of Developmental Disabilities to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards. Under the act, a pilot project may be implemented in a manner inconsistent with the laws or rules governing the Department and county DD boards; 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.

Ohio Developmental Disabilities Council

(R.C. 5123.35)

The act updates the federal law citations in continuing law regarding the creation and the operation of the Ohio Developmental Disabilities Council, which is tasked with serving as an advocate for all persons with developmental disabilities.