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## **DEPARTMENT OF DEVELOPMENTAL DISABILITIES**

### **County board membership**

- Beginning July 1, 2025, requires emphasis to be placed on appointing individuals with developmental disabilities and their family members to county boards of developmental disabilities.
- Beginning July 1, 2025, requires each county board to include at least one individual with developmental disabilities.

### **County board remote participation**

- Permits county boards of developmental disabilities to establish a policy allowing members to attend board meetings remotely through electronic communication.
- Permits a board member attending a meeting remotely to be considered present, to be counted for purposes of establishing a quorum, and to vote.

### **Developmental Disabilities Council meetings**

- Eliminates the requirements that the Developmental Disabilities Council establish geographic limits and record a roll-call vote for each vote to allow a council member's remote participation.

### **Interagency workgroup on autism**

- Designates the entity contracted to administer programs and services for individuals with autism and low incidence disabilities as the workgroup's coordinating body.
- Requires the workgroup to meet publicly at least twice per year and submit an annual report to the Department of Developmental Disabilities.

### **State protection and advocacy system**

- Requests that the Governor redesignate the entity serving as the state protection and advocacy system and client assistance program (P&A system).
- Specifies that the authority of the entity designated as the P&A system cannot exceed the authority granted to a state P&A system under federal law.
- Requires the entity designated as the P&A system to adopt a policy that acknowledges and supports the right of individuals served by the P&A system to reside in and receive services from an ICF/IID.

### **Joint committee to examine the state P&A system**

- Permanently establishes a joint committee to examine the state protection and advocacy system.

## **Innovative pilot projects**

- Permits the Director of Developmental Disabilities to authorize, in FY 2024 and FY 2025, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county boards.

## **County share of nonfederal Medicaid expenditures**

- Requires the Director to establish a methodology to estimate in FY 2024 and FY 2025 the quarterly amount each county 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.

## **County board annual fee for HCBS waiver services**

- Permits (rather than requires) the Department to charge county boards of developmental disabilities an annual fee related to the total value of all Medicaid claims paid for home and community-based services provided to individuals eligible to receive services from the county board.
- Permits the Department to use the fees collected to provide technical and financial support to county boards with respect to the responsibility of county boards to pay the nonfederal share of certain Medicaid services.

## **Medicaid rates for homemaker/personal care services**

- For 12 months, requires 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 be 52¢ higher than the rate for services to an enrollee who is not a qualifying enrollee.

## **Competitive wages for direct care workforce**

- Requires that certain funds contained in the bill for provider rate increases be used to increase wages and needed workforce supports to ensure workforce stability and greater access to care for Medicaid recipients.

## **Direct care provider payment rates**

- Increases direct care wages to \$17 an hour in FY 2024 beginning January 1, 2024, and to \$18 an hour for all of FY 2025 for certain direct care services provided under the Medicaid home and community-based services waivers administered by the Department.

## **Direct Support Professional Quarterly Retention Payments Program**

- Continues the Direct Support Professional Quarterly Retention Payments Program administered by the Department until December 31, 2023.

- Upon the conclusion of the program, requires the Department to use funds to increase the direct care base payment rate for (1) personal care services and (2) adult day services by \$1 per hour over the base payment rates for the services.

### **Intermediate care facilities for individuals with intellectual disorders (ICFs/IID)**

- Increases the ICF/IID per Medicaid day payment rate by adding to the formula a professional workforce development payment amount.
- For purposes of ICF/IID Medicaid payments, creates a new peer group for youth in need of intensive behavior support services.
- Exempts ICF/IIDs that have specified bed capacities in counties with specified populations from the limitation that no more than two residents reside in the same sleeping room.
- Repeals law requiring recoupment of payments made to ICFs/IID under a program that no longer exists.

### **Obsolete report repeal**

- Repeals law requiring the Department to submit a report to the General Assembly in 2003, 2004, and 2005.

### **County board membership**

(R.C. 5126.021; R.C. 5126.022 (repealed effective July 1, 2025))

Beginning July 1, 2025, the bill requires appointing authorities to place emphasis on appointing individuals with developmental disabilities and their family members to county boards of developmental disabilities. To achieve this, the bill modifies the composition of each board of developmental disabilities to generally require each board to include at least one individual with developmental disabilities. Under existing law, a board is required to include at least two individuals who are eligible for services from the board or are immediate family members of such individuals. The bill instead requires each county board to include at least one individual with developmental disabilities and at least one individual who is a family member of an individual with developmental disabilities.

The bill requires a board of county commissioners to appoint as a member of a board of developmental disabilities at least individual with developmental disabilities and at least one family member of an individual with developmental disabilities. The bill also requires a senior probate judge to appoint at least one individual with developmental disabilities or a family member of such an individual. If a senior probate judge appoints an individual with developmental disabilities, the bill specifies that the appointment satisfies the requirement for a board of county commissioners to make the appointment.

The bill also specifies that an appointing authority's unfilled vacancy does not prohibit the appointing authority from filling other vacancies on the county board of developmental disabilities.

## County board remote participation

(R.C. 5126.0223)

As a permanent exception to the Open Meetings Act, the bill permits each county board of developmental disabilities to establish a policy that allows board members to use a means of electronic communication to attend and vote at a board meeting. For this purpose, “electronic communication” is live, audio-enabled communication that permits members attending the meeting remotely and those present in person where the meeting is being conducted to communicate with each other simultaneously.

A board’s policy must specify the number of regular meetings at which each board member must be present in person, which may not be less than half of the regular board meetings held annually. Additionally, the policy must specify the following minimum standards regarding a meeting conducted using electronic communication:

1. At least one-third of the board members attending a meeting must be present in person at the place where the meeting is conducted;
2. All votes taken at the meeting must be taken by roll call vote; and
3. A board member who intends to attend a meeting using electronic communication must notify the chairperson of that intent at least 48 hours before the meeting, except in the case of a declared emergency.

A board member who attends a meeting remotely is considered to be present at the meeting and counted for the purposes of establishing a quorum.

## Developmental Disabilities Council meetings

(R.C. 5123.35)

The bill removes two requirements related to remote meetings of the Ohio Developmental Disabilities Council. First, it removes the prerequisite that, for a Council member to participate in a meeting remotely by teleconference, roll call votes must be made for each vote taken. Second, it removes a requirement that the Council establish a geographic restriction for video conference or teleconference participation under the Council’s rulemaking authority.

## Interagency workgroup on autism

(R.C. 5123.0419)

The bill designates the entity contracted to administer programs and coordinate services for infants, preschool and school age children, and adults with autism and low incidence disabilities as the coordinating body of the interagency workgroup on autism that exists under continuing law.<sup>52</sup> The workgroup is tasked with addressing the needs of individuals with autism and their families.

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<sup>52</sup> R.C. 3323.32 (not in Section 101.01 of the bill).

The bill requires the workgroup to submit an annual report to the Department of Developmental Disabilities detailing the group's recommendations as well as priorities and goals for the coming year. Under the bill, the coordinating body is responsible for ensuring the report is compiled and submitted and must contract with the Department to implement the recommendations made by the workgroup as well as any additional initiatives.

Finally, the bill requires the workgroup to meet publicly at least twice each year to report its work to the public and hear feedback.

## **State protection and advocacy system**

### **Redesignation of the state protection and advocacy system**

(Section 751.10)

The bill requests that the Governor redesignate the entity serving as the state's protection and advocacy system (P&A system). Under federal law, the Governor is the official authorized to designate an entity to serve as the P&A system for the state. Each state is required to have a P&A system in place in order to receive allotments of federal funds to support and protect the legal and human rights of individuals with developmental disabilities.

Before an entity serving as a state P&A system may be redesignated, federal law requires that all of the following be satisfied:<sup>53</sup>

- There is good cause for the redesignation;
- The state gives the existing entity both notice of the intent to redesignate and an opportunity to respond to the assertion that good cause has been shown for the redesignation;
- The state gives timely notice and an opportunity for public comment in an accessible format to individuals with developmental disabilities or their representatives;
- The existing entity has an opportunity to appeal the redesignation to the U.S. Secretary of Health and Human Services, on the basis that the redesignation was not for good cause.

### **Authority of the state P&A system**

(R.C. 5123.60 and 5123.601)

Federal law vests in a state P&A system the authority to undertake specified actions to protect and advocate for the rights of individuals with developmental disabilities. Federal law further provides that a state P&A system may exercise authority under state law if the authority granted under state law exceeds the authority granted under federal law. The bill specifies that the authority granted to the P&A system under Ohio law cannot exceed the authority granted to a state P&A system under federal law.

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<sup>53</sup> 42 U.S.C. 15043(a)(4).

Additionally, the bill requires the entity designated as the state P&A system to adopt a policy that acknowledges and supports the right of individuals who receive services from the P&A system to reside in and receive services from an ICF/IID.

## **Joint committee to examine the state P&A system**

(R.C. 5123.603)

H.B. 110 of the 134<sup>th</sup> General Assembly required the Senate President and House Speaker to establish a joint committee to examine the activities of the state P&A system. The bill, eliminates a requirement that this joint committee be established every two years and instead establishes it permanently.

In making the joint committee permanent, the bill eliminates a requirement that the Senate President and House Speaker determine the dates on which the terms of members of the joint committee begin and end. Additionally, the bill eliminates a requirement the Senate President and House Speaker specify a deadline every two years by which the joint committee must submit a report regarding the joint committee's recommendations, and eliminates a requirement that the joint committee prepare such a report.

The bill also removes the authority of the current entity serving as the state P&A system to, in its sole discretion, appear before and offer testimony to the joint committee.

## **Innovative pilot projects**

(Section 261.120)

For FY 2024 and FY 2025, the bill permits the Director 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 boards. Under the bill, a pilot project may be implemented in a manner inconsistent with the laws or rules governing the Department and county 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.

## **County share of nonfederal Medicaid expenditures**

(Section 261.100)

The bill requires the Director to establish a methodology to estimate in FY 2024 and FY 2025 the quarterly amount each county board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, existing law requires the board to pay this share for waiver services provided to an eligible individual. 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 bill requires the Director to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to county boards if (1) Medicaid covers the services, (2) the services are provided to an eligible Medicaid recipient who does not occupy a bed that was 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 board, and (4) the provider has a valid Medicaid provider agreement when services are provided.

## County board annual fee for HCBS waiver services

(R.C. 5123.0412)

Under current law, the Department is required to charge each county board of developmental disabilities an annual fee equal to 1.25% of the total value of all Medicaid claims for home and community-based services provided during the year to an individual eligible to receive services from the county board. The bill instead *permits* the Department to charge this fee and specifies that the annual fee may not exceed the amount described above.

In addition to the purposes specified in existing law for which the Department must use the fees described above, the bill permits these fees to be used to provide technical and financial support to county boards with respect to county boards' responsibility to pay the nonfederal share of (1) Medicaid expenditures for Medicaid case management services a county board provides to an individual with a developmental disability and (2) Medicaid expenditures for certain home and community-based services provided to an individual with a developmental disability.

## Medicaid rates for homemaker/personal care services

(Section 261.140)

The bill requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee of the Individual Options Medicaid waiver program be 52¢ higher than the rate for services 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, 2023, and ending July 1, 2025. An Individual Options enrollee is a qualified enrollee if all of the following apply:

- The enrollee resided in a developmental center, converted ICF/IID,<sup>54</sup> or public hospital immediately before enrolling in the Individual Options waiver.

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<sup>54</sup> 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 waiver.

- 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 has determined that the enrollee's special circumstances (including diagnosis, services needed, or length of stay) warrant paying the higher Medicaid rate.

## **Competitive wages for direct care workforce**

(Section 261.150)

The bill includes funding from the Department, in collaboration with the Departments of Medicaid and Aging, to be used for provider rate increases, in response to the adverse impact experienced by direct care providers as a result of the COVID-19 pandemic and inflationary pressures. The bill requires the provider rate increases be used to increase wages and workforce supports to ensure workforce stability and greater access to care for Medicaid recipients.

## **Direct care provider payment rates**

(Section 261.75)

The bill earmarks Medicaid funds to be used to increase provider base wages to \$17 an hour in FY 2024, beginning January 1, 2024, and \$18 an hour in FY 2025, beginning July 1, 2024, for the following services provided under Medicaid components of the home and community-based services waivers administered by the Department:

1. Personal care services;
2. Adult day services;
3. ICF/IID services.

## **Direct Support Professional Quarterly Retention Payments Program**

(Section 261.160)

The bill continues the Direct Support Professional Quarterly Retention Payments Program administered by the Department until December 31, 2023.

Upon the conclusion of the Direct Support Professional Quarterly Retention Payments Program, the bill specifies that a portion of appropriated funds instead be used to increase the direct care base payment rate for personal care services and adult day services administered under Medicaid waiver components administered by the Department by an additional \$1 per hour over the base payment rates for the services specified in the bill.<sup>55</sup>

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<sup>55</sup> Section 261.75.



## **Intermediate care facilities for individuals with intellectual disorders (ICFs/IID)**

### **ICF/IID payment rate**

(R.C. 5124.15)

Under continuing law, each ICF/IID receives a per day payment amount for each Medicaid resident. The bill increases the ICF/IID Medicaid payment rate by adding to the formula a professional workforce development payment amount, equal to 13.5% in FY 2024 and 20.81% in FY 2025 of the ICF/IID's desk-reviewed, actual, allowable, per Medicaid day direct care costs from the applicable cost report year.

### **New ICF/IID Medicaid peer group for certain youth**

(R.C. 5124.01)

The bill creates "peer group 6" as a new classification for ICF/IID Medicaid day payment rate determinations. The new group consists of ICFs/IID that have:

- A Medicaid-certified capacity not exceeding six;
- Submitted and received approval for a best practices protocol for providing services to youth up to 21 years old in need of intensive behavior support services;
- A contract with the Department that includes a provision for Department approval of all admissions to the ICF/IID; and
- Agreed to a reimbursement methodology established under existing rules.

### **Number of ICF/IID residents in same sleeping room**

(R.C. 5124.70)

The bill exempts certain ICF/IIDs from the existing law requirement that generally prohibits an ICF/IID provider from permitting more than two residents to reside in the same sleeping room. An ICF/IID is exempt from these requirements if, on the bill's effective date, the ICF/IID meets one of the following requirements, as measured by the 2020 federal decennial census:

- The ICF/IID has a Medicaid-certified bed capacity between 60 and 70 beds and is located in a county with a population between 40,500 and 41,000;
- The ICF/IID has a Medicaid-certified bed capacity between 90 and 100 beds and is located in a county with a population between 242,000 and 243,000;
- The ICF/IID has a Medicaid-certified bed capacity between 55 and 60 beds and is located in a county with a population between 400,000 and 500,000;
- The ICF/IID has a Medicaid-certified bed capacity between 90 and 100 beds and is located in a county with a population between 1,300,000 and 1,400,000;

- The ICF/IID has a Medicaid-certified bed capacity between 120 and 130 beds and is located in a county with a population between 160,000 and 162,000.

### **Recoupment for ICF/IID downsizing delay**

(Repealed R.C. 5124.39; R.C. 5124.45)

The bill repeals law that requires the Department to recoup money paid to certain ICFs/IID in a downsizing incentive program that no longer exists. ICFs/IID classified as former peer group 1-B and approved to downsize by July 1, 2018, were eligible to collect efficiency incentive payments from the Department. If an ICF/IID did not successfully downsize by that date, the Department was required to recoup the payment plus interest, unless the ICF/IID qualified for an exemption. The incentive and recoupment programs no longer exist.

### **Obsolete report repeal**

(Repealed R.C. 5123.195)

The bill repeals law requiring the Department to submit a report regarding implementation of changes to the law governing residential facility licensure at the end of 2003, 2004, and 2005.