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Final Analysis
Legislative Service Commission

Am. Sub. S.B. 87
126th General Assembly
(As Passed by the General Assembly)

- Sens.** Wachtmann, Hagan, Gardner, Mumper, Clancy, Amstutz, Austria, Carey, Niehaus, Padgett, Schuring, Jordan, Harris, Zurz, Schuler, Armbruster, Brady, Cates, Coughlin, Dann, Fedor, Fingerhut, Goodman, Grendell, Hottinger, Jacobson, Mallory, Miller, Prentiss, Roberts, Spada, Wilson
- Reps.** Raussen, Barrett, Beatty, Brown, Martin, Smith, G., Combs, Smith, S., Schneider, Mason, Allen, Blessing, Buehrer, Cassell, Collier, DeBose, DeGeeter, Distel, Domenick, Evans, C., Fende, Flowers, Garrison, Gilb, Hagan, Harwood, Healy, Hoops, Hughes, Key, Koziura, Latta, Otterman, Patton, T., Reidelbach, Sayre, Seitz, Setzer, Stewart, D., Ujvagi, Wagoner, Webster, Willamowski, Yuko

Effective date: *

ACT SUMMARY

- Allows a residential care facility to admit and retain a hospice patient who requires skilled nursing care for more than 120 days.
- Requires that the skilled nursing care be provided by a licensed hospice care program under a written agreement with the facility.
- Requires that the request the Director of Job and Family Services submits to the federal government for the Medicaid Voucher Pilot Program seek a spending authorization to pay for the cost of "medically necessary home and community-based services" rather than just "medically necessary health care services."
- Modifies the requirements a person must meet to participate in the Medicaid Voucher Pilot Program.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Exempts from licensing requirements certain entities that operate transit buses and certain entities and vehicles that meet specific operational requirements, unless the entity or vehicle provides ambulette services that are reimbursed under the state Medicaid plan.
- Requires the Department of Transportation to administer and enforce the section of the medical transportation law that governs specific operational requirements for ambulette service providers as this law relates to entities that operate transit buses.
- Permits a person who does not have the minimum of an appropriate associate degree to be employed as a "conditional status service and support administrator" if that person (1) was employed by a county board of mental retardation and developmental disabilities and performed service and support administration duties on June 30, 2005, and (2) holds a high school diploma or a general educational development certificate of high school equivalence.
- Excludes professional employees who are service and support administrators from the persons who can supervise conditional status service and support administrators while such persons perform the duties of service and support administration.
- Adds four members of the General Assembly to the Medicaid Administrative Study Council.

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CONTENT AND OPERATION

Background: services provided by residential care facilities

(R.C. 3721.01 (not in the act); O.A.C. 3701-17-50 through 3701-17-68)

Residential care facilities¹ are licensed by the Ohio Department of Health (ODH) to provide accommodations, supervision, and personal care services to unrelated individuals who are dependent on the services of others by reason of age or physical or mental impairment. Personal care services include assisting residents with activities of daily living, assisting residents with self-administration of medication, and preparing special diets (other than complex therapeutic diets) pursuant to the instructions of a physician or a licensed dietitian.

A residential care facility is permitted to provide a limited amount of skilled nursing care to its residents.² Skilled nursing care is any procedure that requires technical skills and knowledge beyond those the untrained person possesses and that are commonly employed in providing for the physical, mental, and emotional needs of the ill or otherwise incapacitated. Specifically, a residential care facility may provide skilled nursing care as follows:

- (1) Supervision of special diets;³
- (2) Application of dressings;
- (3) Medication administration;

(4) Other skilled nursing care, but only if the care will be provided to a resident on a part-time intermittent basis for not more than 120 days in any 12-month period. The care may be provided by a home health agency, hospice care program, or qualified member of the facility's staff.

¹ Residential care facilities are often referred to as assisted living facilities.

² In contrast, a nursing home may provide unlimited skilled nursing care. Nursing homes are also licensed by ODH.

³ Supervision of special diets is identified as a type of skilled nursing care; preparation of special diets, other than complex therapeutic diets, is identified as a personal care service (R.C. 3721.01, not in the act).



Hospice care in residential care facilities

(R.C. 3712.01 (not in the act) and 3721.011)

The act permits a residential care facility to admit and retain as a resident a hospice patient who requires skilled nursing care for more than 120 days in a 12-month period if the facility has entered into a written agreement with a hospice care program licensed by the Ohio Department of Health.⁴ "Hospice patient" has the same meaning as in the hospice licensing law: "a patient who has been diagnosed as terminally ill, has an anticipated life expectancy of six months or less, and has voluntarily requested and is receiving care from a person or public agency licensed by the Department of Health to provide a hospice care program."

Agreement

The agreement required by the act must include all of the following provisions:

(1) That the hospice patient will be provided skilled nursing care in the facility only if a determination has been made that the patient's needs can be met at the facility;

(2) That the hospice patient will be retained in the facility only if periodic redeterminations are made that the patient's needs are being met at the facility;

(3) That the redeterminations will be made according to a schedule specified in the agreement;

(4) That the hospice patient has been given an opportunity to choose the hospice care program that best meets the patient's needs.

Personnel rules

(R.C. 3721.04)

The Public Health Council is required by law generally retained by the act to adopt rules governing the operation of residential care facilities. In adopting

⁴ *A hospice care program may provide the following: nursing care by or under the supervision of a registered nurse; physical, occupational, or speech or language therapy; medical social services by a social worker under a physician's direction; home health aide services; medical supplies, including drugs and biologicals, and the use of medical appliances; physician services; short-term inpatient care, including both pain relieving and respite care and procedures; counseling; and bereavement services for patient's family.*

rules regarding the number and qualifications of personnel, the Council must take into consideration the effect of provision of personal care services and intermittent skilled nursing care on the number of personnel needed. The act requires that the Council also consider the effect of provision of skilled nursing care to hospice patients who require the care for more than 120 days.

Medicaid voucher pilot program

(R.C. 5111.971)

Request for federal Medicaid waiver

The main appropriations act enacted by the 126th General Assembly in June 2005 (Am. Sub. H.B. 66) requires the Ohio Department of Job and Family Services (ODJFS) to request a federal Medicaid waiver authorizing ODJFS to create a pilot program under which not more than 200 individuals receive a spending authorization to pay for the cost of "medically necessary health care services" the pilot program covers. The spending authorization is to be in an amount not exceeding 70% of the average cost under the Medicaid program for providing nursing facility services to an individual. An individual participating in the pilot program is also to receive necessary support services, including fiscal intermediary and other case management services, that the pilot program covers.

The act requires that the request the ODJFS Director submits to the federal government for the pilot program seek a spending authorization to pay for the cost of "medically necessary home and community-based services"⁵ rather than just "medically necessary health care services."

Eligibility criteria

Under former law, to be eligible for the pilot program, an individual had to meet the following three requirements:

⁵ The term, "home and community-based services," is neither defined in prior law governing the Medicaid voucher pilot program (R.C. 5111.971) nor in the act. However, Ohio Administrative Code § 5101:3-31-02, a rule applicable to the Medicaid Home and Community-Based Services Waiver Portion of the PASSPORT Program, defines this term as follows: services furnished under the provisions set forth in federal regulation (42 Code of Federal Regulations 441, Subpart G) which permit individuals to live in a home setting rather than a nursing facility or hospital. These services are approved by the Centers for Medicare & Medicaid Services for specific populations and are not otherwise available under the Medicaid state plan.

(1) Need an "intermediate level of care" as determined by an administrative rule adopted by ODJFS;⁶

(2) At the time the individual applied for the pilot program, be either of the following:

(a) A nursing facility resident who was seeking to move to a residential care facility or county or district home *and* would have remained in a nursing facility if not for the pilot program;

(b) Been a participant of a certain type of home and community-based services Medicaid waiver program who would have moved to a nursing facility if not for the pilot program;⁷

(3) Meet all other eligibility requirements specified in administrative rules adopted by ODJFS.

The act modifies the requirements described in (1) and (2)(a), above. Specifically, the first requirement is modified to require an individual to need *either* an "intermediate level of care" or a "skilled level of care" as determined by administrative rules adopted by ODJFS.⁸ Part (a) of the second requirement is modified to remove the requirement that the individual must be seeking to move to a residential care facility or county or district home.

Medical transportation law

Background--licensure and permits

(R.C. 4766.04 and 4766.07 (not in the act))

The medical transportation law, R.C. Chapter 4766., governs the licensure and regulation of emergency medical service organizations,⁹ nonemergency

⁶ *O.A.C. 5101:3-3-06 is the administrative rule that defines "intermediate level of care."*

⁷ *The home and community-based services Medicaid waiver programs are PASSPORT and CHOICES, both administered by the Ohio Department of Aging, and such waiver programs administered by ODJFS.*

⁸ *O.A.C. 5101:3-3-05 is the administrative rule that defines "skilled level of care."*

⁹ *An "emergency medical service organization" is an organization that uses emergency medical technicians to provide medical care to victims of illness or injury. An emergency medical service organization includes, but is not limited to, a commercial ambulance service organization, a hospital, and a funeral home (R.C. 4766.01(H)).*

medical service organizations,¹⁰ and air medical service organizations.¹¹ Under the licensure and permit sections of this law, unchanged by the act, a person is prohibited from furnishing, operating, conducting, maintaining, advertising, engaging in, or proposing or professing to engage in the business or service in Ohio of transporting persons who are seriously ill, injured, or otherwise incapacitated or who require the use of a wheelchair or are confined to a wheelchair unless the person is licensed by the Ohio Medical Transportation Board. In addition, continuing law requires each emergency medical service organization, nonemergency medical service organization, and air medical service organization that is subject to licensure under Ohio law to possess a valid permit for each ambulance,¹² ambulette,¹³ rotorcraft air ambulance,¹⁴ fixed wing air ambulance,¹⁵ and nontransport vehicle¹⁶ it owns or leases that is or will be used by the licensee to perform the services permitted by the license.

¹⁰ A "nonemergency medical service organization" is an entity that does both of the following: (1) provides services to the public on a regular basis for the purpose of transporting individuals who require the use of a wheelchair or are confined to a wheelchair to receive health care services at health care facilities or health care practitioners' offices in nonemergency circumstances, (2) provides the services for a fee, regardless of whether the fee is paid by the person being transported, a third party payer, or any other person or government entity. A "nonemergency medical service organization" does not include a health care facility that provides ambulette services only to patients of that facility (R.C. 4766.01(O)).

¹¹ An "air medical service organization" is an entity that provides air medical transportation to the public (R.C. 4766.01(B)).

¹² An "ambulance" is any motor vehicle that is specifically designed, constructed, or modified and equipped and is intended to be used to provide basic life support, intermediate life support, advanced life support, or mobile intensive care unit services and transportation upon the streets and highways of Ohio of persons who are seriously ill, injured, wounded, or otherwise incapacitated or helpless. An "ambulance" is not air medical transportation or a vehicle designed and used solely for the transportation of nonstretcher-bound persons, whether hospitalized or handicapped or whether ambulatory or confined to a wheelchair (R.C. 4766.01(D)).

¹³ An "ambulette" is a motor vehicle that is specifically designed, constructed, or modified and equipped and is intended to be used for transportation of persons who require use of a wheelchair (R.C. 4766.01(E)).

¹⁴ A "rotorcraft air ambulance" means a helicopter or other aircraft capable of vertical takeoffs, vertical landings, and hovering (R.C. 4766.01(S)).

¹⁵ A "fixed wing air ambulance" is a fixed wing aircraft operated as a means of air medical transportation (R.C. 4766.01(J)).

Exemptions from licensure and permits

(R.C. 4766.09 and 4766.14)

Certain entities and vehicles are exempt from licensure under the medical transportation law.

Former law. Both of the following were exempt from licensure under former law:

(1) Public nonemergency medical service organizations;

(2) Ambulette service providers operating under standards adopted by the Department of Aging in administrative rules, but only during the period of time on any day that the provider was solely serving the Department or the Department's designee.¹⁷

Although exempt from licensure, former law required the ambulette service providers described in (2), above, to meet a separate set of requirements administered and enforced exclusively by the Ohio Department of Aging. Thus, these ambulette service providers had to meet all of the following requirements:

- Make available to all ambulette drivers while operating ambulette vehicles a means of two-way communication using either ambulette vehicle radios or cellular telephones;
- Equip every ambulette vehicle with one isolation and biohazard disposal kit that was permanently installed or secured in the vehicle's cabin;
- Before hiring an applicant, obtain all of the following:

¹⁶ A "nontransport vehicle" is a motor vehicle operated by a licensed emergency medical service organization not as an ambulance, but as a vehicle for providing services in conjunction with the ambulances operated by the organization or other emergency medical service organizations (R.C. 4766.01(Q)).

¹⁷ An emergency administrative rule (173-39-20) was filed in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.) on Dec. 16, 2005. Telephone interview with Lisa Rodriguez, Ohio Legislative Service Commission (Jan. 4, 2005). Roland Hornbostel, Deputy Director for Policy, Ohio Department of Aging, expects a permanent rule to be filed in January 2006 and to be codified as Ohio Administrative Code § 173-3-02. Electronic correspondence from Roland Hornbostel, Deputy Director for Policy, Ohio Department of Aging (Jan. 3, 2006) (on file with the author).

- A signed statement from a licensed physician that the applicant did not have any impairment or medical condition that could interfere with safe driving, passenger assistance, and emergency treatment activity or could jeopardize the health and welfare of a client or the general public;
- The results of a chemical test for drug and alcohol abuse;
- Certificates of completion of CPR and first aid courses;
- The results of a criminal records check.

In addition, the ambulette service provider was prohibited from employing as an ambulette driver an applicant who had six or more points on the applicant's driving record.

The act. The act limits the licensure exemption applicable to public nonemergency medical service organizations by specifying that only those public nonemergency medical service organizations operating transit buses that are not reimbursed under the state Medicaid plan are exempt. The act, however, expands the entities and vehicles that are exempt from licensure by providing that all of the following, in addition to the entities and vehicles specified in law unchanged by the act, are exempt from licensing, *unless* the entity or vehicle provides ambulette services that are reimbursed under the state Medicaid plan:

- An urban or rural public transit system that operates a transit bus;
- A private nonprofit organization that operates a transit bus *and* receives grants from the Ohio Public Transportation Grant Program;¹⁸
- An entity or vehicle owned by an entity that is certified by the Ohio Department of Aging or the Department's designee and meets the separate set of requirements in former law for ambulette service providers operating under Department of Aging rules.
- A vehicle that meets both of the following criteria:

¹⁸ *These grants are authorized under R.C. 5501.07.*

- The vehicle was purchased with funds from a formula grant for special needs of elderly and disabled individuals made by the U.S. Secretary of Transportation;¹⁹
- The Department of Transportation holds a lien on the vehicle.

The act requires all these ambulette service providers to comply with the separate set of requirements in former law that were only applicable to ambulette service providers operating under standards adopted by the Department of Aging in rules (described in "*Exemptions from licensure and permits*," "*Former law*").²⁰ The act also maintains the requirement that the Ohio Department of Aging administer and enforce these requirements, *except* as they apply to those of the following that are not reimbursed under the state Medicaid plan:

- Public nonemergency medical service organizations that operate transit buses;
- Urban or rural public transit systems that operate transit buses;
- Private nonprofit organizations that operate transit buses and receive grants from the Ohio Public Transportation Grant Program.

The Ohio Department of Transportation, rather than the Ohio Department of Aging, is required by the act to administer and enforce the requirements as they apply to the entities exempt from licensing.

County boards of mental retardation and developmental disabilities

Minimum requirements to be employed as a conditional status service and support administrator

(R.C. 5126.20 and 5126.201; 5126.22 (not in the act))

County boards of mental retardation and developmental disabilities employ "conditional status service and support administrators" to perform case management duties.²¹ Under former law, to be employed as a conditional status service and support administrator, a person had to hold, at a minimum, an

¹⁹ *These grants are authorized under 49 United States Code § 5310.*

²⁰ *These requirements are codified in R.C. 4766.14.*

²¹ *Matt Whitehead, Legislative Liaison, Ohio Department of Mental Retardation and Developmental Disabilities (Nov. 4, 2005).*

appropriate associate degree. The act permits a person who does not have at least an associate degree to be employed as a conditional status service and support administrator if the person (1) was employed by a county board and performed service and support administration duties on June 30, 2005, *and* (2) holds either a high school diploma or a general educational development (GED) certificate of high school equivalence.

Law unchanged by the act provides that a person employed as a conditional status service and support administrator is a "professional employee" for purposes of the law governing county boards of mental retardation and developmental disabilities.

Supervision of conditional status service and support administrators

(R.C. 5126.15)

Prior law required that an individual employed as a conditional status service and support administrator perform the duties of service and support administration²² only under the supervision of either (1) a management employee who was a service and support administration supervisor, or (2) a professional employee who was a service and support administrator.

The act excludes professional employees who are service and support administrators from the persons who can supervise conditional status service and support administrators while such persons perform the duties of service and support administration. Thus, the act provides that only management employees who are service and support administration supervisors can supervise conditional status service and support administrators while such persons perform the duties of service and support administration.

Medicaid Administrative Study Council

(Sec. 206.66.53 of Am. Sub. H.B. 66 of the 126th General Assembly)

The main appropriations act enacted by the 126th General Assembly in June 2005 (Am. Sub. H.B. 66) created the Medicaid Administrative Study Council to study the administration of the Medicaid program under the assumption that the General Assembly would enact, by July 1, 2007, a law establishing a new cabinet level department to administer the program. Under former law, the Council had 18 members, which included directors of various executive branch agencies, a representative from the Governor's office, and persons from the private sector.

²² Prior to the enactment of Am. Sub. H.B. 94 of the 124th General Assembly in June 2001, "service and support administration" was referred to as "case management."

The act adds four members of the General Assembly to the Council:

- Two members of the House of Representatives, one from each political party, both appointed by the Speaker of the House.
- Two members of the Senate, one from each political party, both appointed by the President of the Senate.

HISTORY

ACTION	DATE
Introduced	03-02-05
Reported, S. Health, Human Services & Aging	06-16-05
Passed Senate (32-0)	06-21-05
Reported, H. Health	11-03-05
Passed House (92-0)	11-16-05
Senate concurred in House amendments (33-0)	12-06-05

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