



**Sub. S.B. 87**

126th General Assembly  
(As Reported by H. Health)

**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, G. Smith, Combs, S. Smith, Schneider, Mason**

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**BILL 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.
- 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.

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## CONTENT AND OPERATION

### **Background: services provided by residential care facilities**

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

Residential care facilities<sup>1</sup> 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.<sup>2</sup> 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;<sup>3</sup>
- (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-

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<sup>1</sup> Residential care facilities are often referred to as assisted living facilities.

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

<sup>3</sup> 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 bill).

month period. The care may be provided by a home health agency, hospice care program, or qualified member of the facility's staff.

**Hospice care in residential care facilities**

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

The bill 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.<sup>4</sup> "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 bill 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.

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<sup>4</sup> *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.*

### **Personnel rules**

(R.C. 3721.04)

The Public Health Council is required by current law to adopt rules governing the operation of residential care facilities. In adopting 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 bill 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 bill 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 bill 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"<sup>5</sup> rather than just "medically necessary health care services."

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<sup>5</sup> The term, "home and community-based services," is neither defined in current law governing the Medicaid voucher pilot program (R.C. 5111.971) nor in the bill. 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.

### **Eligibility criteria**

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

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

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

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

(b) Be a participant of a certain type of home and community-based services Medicaid waiver program who would move to a nursing facility if not for the pilot program;<sup>7</sup>

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

The bill modifies the requirements described in (1) and (2)(a), above. Specifically, the first requirement is modified to require an individual to need *at least* an intermediate level of care as determined by the administrative rule adopted by ODJFS. 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.

### **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 bill))

County boards of mental retardation and developmental disabilities employ "conditional status service and support administrators" to perform case

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<sup>6</sup> O.A.C. 5101:3-3-06.

<sup>7</sup> *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.*

management duties.<sup>8</sup> Under current law, to be employed as a conditional status service and support administrator, a person must hold, at a minimum, an appropriate associate degree. The bill 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.

The bill maintains current law that 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)

Existing law requires an individual employed as a conditional status service and support administrator to perform the duties of service and support administration<sup>9</sup> only under the supervision of either (1) a management employee who is a service and support administration supervisor, or (2) a professional employee who is a service and support administrator.

The bill 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 bill 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 bill enacted by the 126th General Assembly in June 2005 (Am. Sub. H.B. 66) created the Medicaid Administrative Study Council

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<sup>8</sup> *Matt Whitehead, Legislative Liaison, Ohio Department of Mental Retardation and Developmental Disabilities (Nov. 4, 2005).*

<sup>9</sup> *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."*

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 current law, the Council has 18 members, which include directors of various executive branch agencies, a representative from the Governor's office, and persons from the private sector.

The bill adds four new members to the Council who represent the General Assembly:

- 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.

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## HISTORY

| ACTION   | DATE     | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced                                     | 03-02-05 | p. 259        |
| Reported, S. Health, Human<br>Services & Aging | 06-16-05 | pp. 866-867   |
| Passed Senate (32-0)                           | 06-21-05 | pp. 1269-1270 |
| Reported, H. Health                            | 11-03-05 | p. 1819       |

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