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## DEPARTMENT OF MENTAL HEALTH (DMH)

- Revises the law under which boards of alcohol, drug addiction, and mental health services (ADAMHS boards) receive subsidies from the Ohio Department of Mental Health (ODMH) by (1) requiring ODMH to establish a methodology for allocating to ADAMHS boards, on a district or multi-district basis, the funds appropriated to ODMH for the purpose of local mental health systems of care and (2) permitting ODMH to allocate to ADAMHS boards a portion of the funds appropriated to ODMH for the operation of state hospital services.
- For fiscal years 2012 and 2013, (1) requires, rather than permits, ODMH to allocate to ADAMHS boards a portion of ODMH's appropriation for state hospital services, (2) requires, with certain exceptions, a board to use the funds to pay for expenditures the board incurs in paying for inpatient hospitalization services provided by state regional psychiatric hospitals to persons involuntarily committed to the board, (3) authorizes ODMH, if the amount distributed to a board exceeds the amount that the board needs to pay for such expenditures, to permit the board to use the excess funds for the board's community mental health plan, and (4) authorizes ODMH to permit a board to have a portion of the funds deposited into the ODMH Risk Fund.
- Repeals a law that provided for ADAMHS boards' community mental health plans to constitute applications for funds from ODMH but maintains a law that conditions a board's eligibility for state and federal funding on an approved community mental health plan or relevant part of a plan.
- Eliminates requirements for (1) ADAMHS boards to receive, compile, and transmit to ODMH applications for state reimbursement and (2) ODMH to review, periodically during a year, the budgets and expenditures of the various facilities and community mental health agencies receiving funds.
- Eliminates certain requirements applicable to an ADAMHS board that elects to accept distribution of its allocation, including requirements for the board to pay into the ODMH Risk Fund and to provide ODMH with the board's projected utilization of state hospitals and other state-operated services.
- Requires an ADAMHS board, as a condition of electing not to accept distribution of its allocation, to provide ODMH written confirmation that the board has received input about the impact that the board's election will have on the mental health system in the board's district.

- Eliminates the authority of an ADAMHS board to utilize a part of its budget as approved by ODMH to purchase insurance and to pool with funds of other boards to pay for the costs of utilizing state hospital facilities that exceed the amount of the board's allocation.
- Specifies that an ADAMHS board's use of its allocated funds is subject to audit by county, state, and federal authorities.
- Requires ODMH to charge unreimbursed costs for services that ODMH provides against an ADAMHS board's allocation of funds for state hospital services.
- Permits, rather than requires, ODMH to withhold state or federal funds from an ADAMHS board that denies an available service on the basis of religion, race, color, creed, sex, national origin, disability, or developmental disability and eliminates ODMH's authority to make a withholding on the grounds that a board denies an available service on the basis of the inability to pay.
- Requires each ADAMHS board to develop its community mental health plan, and submit the plan to ODMH, annually rather than requiring each board to submit its plan not later than six months before the conclusion of the fiscal year in which the board's current plan is scheduled to expire.
- Eliminates requirements that (1) an ADAMHS board's community mental health plan include an explanation of how the board intends to make any payments that it may be required to make under the law governing the funds that ODMH allocates to boards and (2) a board submit an allocation request for state and federal funds with its plan.
- Eliminates the deadline by which ODMH must approve or disapprove an ADAMHS board's community mental health plan.
- Permits an ADAMHS board and ODMH to request that a dispute regarding a community mental health plan be submitted to a third-party mediator at any time while approval remains in dispute rather than having to wait until there are 30 days remaining in the fiscal year in which the board's current plan is scheduled to expire.
- Eliminates a requirement that ODMH, when a community mental health plan is submitted to a third-party mediator, make its final determination regarding approval before the conclusion of that fiscal year.
- Eliminates a provision under which an ADAMHS board's amendment to its community mental health plan was considered to be approved if ODMH failed to approve it within 30 days after it was submitted.

- Eliminates the responsibility of ODMH and ADAMHS boards to pay the nonfederal share for services provided under a component of the Medicaid program that ODMH administers and makes the Ohio Department of Job and Family Services (ODJFS) responsible for paying for such services.
- Requires ODMH, notwithstanding ODJFS's new responsibility, to allocate to ADAMHS boards mental health Medicaid match funds appropriated to ODMH for fiscal year 2012 and requires the boards to use the funds to pay claims for community mental health services provided during that fiscal year under the ODMH-administered Medicaid component and requires the boards also to use all federal financial participation that ODMH receives for claims for such services as the first payment source to pay such claims.
- Requires ODMH to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community mental health services provided before July 1, 2011, and submitted for payment on or after that date and requires that such claims be paid in accordance with the agreements.
- Provides for an ADAMHS board to receive the federal financial participation received for claims for community mental health services that were provided before July 1, 2011, and paid by the board.
- Repeals a law that made the county of residence of an individual with mental illness responsible for (1) the necessary expense of returning the individual to the individual's county of residence and (2) regular probate court fees and expenses incident to an order of hospitalization.
- Gives members of a board of directors, and employees, of a facility or agency in which ODMH places a person committed to ODMH qualified immunity from liability for injury or damages the person suffers.
- Provides for the Attorney General to represent in civil actions persons who, pursuant to an agreement with ODMH, render medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services to patients in an institution ODMH operates.
- Provides that a prohibition against an ADAMHS board member being an employee of an agency with which the board contracts for services or facilities does not apply if the board member's employment duties with the agency consist of providing, only outside the district the board serves, services for which the Medicaid program pays.
- Gives ODMH all the authority necessary to carry out its powers and duties under state law governing ODMH.

- Authorizes the ODMH Director to contract with agencies, institutions, and other entities as necessary for ODMH to carry out its duties under state laws governing ODMH, ADAMHS boards, criminal offenses against the family, criminal trials, and mentally ill persons subject to hospitalization by court order.
- Exempts such contracts from state law governing the state's purchases of services if the contracts are for services provided to individuals with mental illness by agencies, institutions, and other entities not owned or operated by ODMH.
- Provides for ODMH contracts concerning the custody, supervision, care, or treatment of mentally ill persons receiving services elsewhere than within an ODMH hospital also to provide for the evaluation of such persons.
- Eliminates a requirement for ODMH to establish and support a program at the state level to promote a community support system for every ADAMHS district and requires, instead, that ODMH support, to the extent ODMH has available resources and in consultation with ADAMHS boards, a community support system on a district or multi-district basis.
- Eliminates a requirement that ODMH assist in coordinating the planning, evaluation, and delivery of services to facilitate mentally ill persons' access to public services at federal, state, and local levels.
- Permits ODMH to prioritize support for one or more of the elements of a community support system.
- Provides that ODMH's responsibility for promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents applies to the extent ODMH has available resources.
- Provides that the requirement for the ODMH Director to develop and operate a community mental health information system or systems applies to the extent the ODMH Director determines necessary and permits the ODMH Director to contract for the operation of the system or systems.
- Requires the ODMH Director to consult with ADAMHS boards before developing and operating the community mental health information system or systems.
- Requires the ODMH Director to accept from a community mental health agency its accreditation from specified national accrediting organizations as evidence that the agency satisfies Ohio's standards for state certification of the agency's services, if the Director determines that the agency's accreditation is current and appropriate for the

services for which the agency is seeking certification, and specifies that the agency's services are generally not subject to further evaluation.

- Requires the ODMH Director and the Director of the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), not later than December 31, 2011, and in consultation with persons interested in the issues of mental health residential facilities and community behavioral health services and programs, to identify areas of duplicative documentation requirements, align the documentation standards of ODMH and ODADAS, streamline Ohio's standards regarding facilities and services with federal standards, and promote the integration of behavioral and physical health services.
- Requires ODMH to use money in its Trust Fund to pay for expenditures that ODMH incurs in performing any of its duties under state law rather than for specific mental health purposes.
- Transfers to ODMH (from the Ohio Department of Aging (ODA)) the administration of the Residential State Supplement Program (RSS) and provides that no person receiving RSS payments is to be affected by the transfer.
- Eliminates a requirement to prepare an annual report for the General Assembly on the costs and savings achieved through a Home First process for RSS recipients.
- Eliminates a requirement that certain facilities be certified by ODA for residents to be eligible for RSS payments.
- Transfers to ODMH (from ODA) responsibility for the certification of adult foster homes and continues the requirement that employees in direct care positions undergo criminal records checks.
- Transfers to ODMH (from the Ohio Department of Health (ODH)) responsibility for licensing adult care facilities.
- Requires ODMH, rather than the Public Health Council, to adopt rules governing adult care facilities and specifies what the rules are permitted, rather than required, to include.
- Authorizes inspections of adult care facilities to be conducted as desk audits or on-site inspections.
- Provides that if an inspection is conducted to investigate an alleged violation in an adult care facility serving residents receiving publicly funded mental health services or RSS Program payments, the inspection may (rather than must) be coordinated

with the appropriate mental health agency, ADAMHS board, or RSS (rather than PASSPORT) administrative agency.

- Adds the right to be free from seclusion and mechanical restraint to the rights of an adult care facility resident and modifies the definition of "physical restraint."
- Removes the ODA Director and residents' rights advocates from the list of individuals authorized to assert on behalf of adult care facility residents their statutory residents' rights.
- Eliminates the authority of residents' rights advocates and sponsors of current or prospective residents to enter an adult care facility during reasonable hours.
- If a court grants injunctive relief for operating an adult care facility without a license, eliminates a requirement that the facility assist residents' rights advocates in relocating facility residents, and instead requires the facility to assist in relocating residents.
- Specifies that certain government and mental health agency employees and the ODMH Director may release resident-identifying information from the records of an adult care facility, without the resident's consent, if authorized by law to do so.
- Requires criminal records checks of applicants for employment with an adult care facility in a position involving direct care to adult residents, rather than only those positions involving direct care to older adults (persons 60 or older).
- Authorizes (1) hospitals licensed by ODMH to exchange with other healthcare providers a patient's psychiatric records and other pertinent information if the purpose of exchanging the confidential information is to facilitate the continuity of the patient's care and (2) ODMH hospitals, institutions, and facilities, ODMH-licensed hospitals, and community mental health agencies to exchange such records and information with payers.
- Authorizes the conveyance of state-owned real estate to the Board of County Hospital Trustees of The MetroHealth System in Cuyahoga County and requires the ODMH Director to disburse \$3.4 million from capital appropriation item C58010, Campus Consolidation, to the grantee within 30 days after the conveyance to pay for demolishing the building situated on the real estate.



## **ODMH allocations of state mental health subsidies**

(R.C. 5119.62 (primary), 340.03, 340.08 (repealed), 340.11, 5119.61, 5119.621, 5119.622, 5119.623, and 5122.15; Section 337.20.60)

The act revises the law under which boards of alcohol, drug addiction, and mental health services (ADAMHS boards) receive subsidies from the Ohio Department of Mental Health (ODMH). Under prior law, ODMH was required, after approving a board's community mental health plan, to authorize payment of subsidies to the board from funds appropriated for that purpose. The subsidies had two sources: (1) funds appropriated to ODMH for local management of mental health services and (2) funds appropriated to ODMH for hospital personal services, hospital maintenance, and hospital equipment, other than such funds that ODMH retained for forensic services. ODMH was required to establish an allocation methodology, including a formula, for the subsidies. The formula had to include as a factor the number of severely mentally disabled persons who resided in each ADAMHS district and could include other factors such as the historic utilization of public hospitals. The methodology was required to provide for a portion of the subsidies to be distributed on the basis of the ratio of each ADAMHS district's population to Ohio's total population.

### **Allocation of funds for local mental health systems of care**

Under the act, ODMH is required to establish a methodology for allocating to ADAMHS boards the funds appropriated to ODMH for the purpose of local mental health systems of care. ODMH is to establish the methodology after notifying and consulting with relevant constituencies, including consumers of mental health services and their families. The methodology may provide for the funds to be allocated to the boards on a district or multi-district basis.

### **Allocation of funds for state hospital services**

In addition to being required to establish a methodology for allocating local mental health systems of care funds, ODMH is permitted to allocate to ADAMHS boards a portion of the funds appropriated to ODMH for the operation of state hospital services. If ODMH allocates the funds, ODMH is required to do all of the following:

- (1) In consultation with the boards, annually determine the unit costs of providing state hospital services and establish the methodology for allocating the funds to the boards;
- (2) Determine the type of unit costs of providing state hospital services to be included as a factor in the methodology and include that unit cost as a factor in the methodology;



(3) Allocate the funds in a manner consistent with the methodology and state and federal laws and regulations.

The act requires, rather than permits, ODMH to allocate to ADAMHS boards a portion of its appropriation for state hospital services for fiscal years 2012 and 2013. ODMH, in consultation with the boards, must establish a methodology to be used for the allocations. The allocation methodology is to include as factors at least the per diem cost of inpatient hospitalization services at state regional psychiatric hospitals and the estimated number of bed days (days for which a person receives inpatient hospitalization services in a state regional psychiatric hospital) that each board will incur in fiscal years 2012 and 2013 in carrying out its duties regarding mentally ill individuals subject to hospitalization by court order who are involuntarily committed for treatment. ODMH is authorized to require each board to provide ODMH with an estimate of the number of bed days the board will incur in fiscal years 2012 and 2013 for that purpose. A board is required to use the funds allocated to it to pay for expenditures the board incurs in fiscal years 2012 and 2013 in paying for inpatient hospitalization services provided by state regional psychiatric hospitals to persons involuntarily committed to the board. However, if the amount distributed to a board exceeds the amount that the board needs to pay for such expenditures, ODMH may permit the board to use the excess funds for the board's community mental health plan. Also, ODMH may permit a board to have a portion of the funds deposited into the ODMH Risk Fund. Even though the act eliminates the law creating the ODMH Risk Fund, the act provides for the fund to continue to exist in the state treasury until it is no longer needed. While it continues to exist, money in the ODMH Risk Fund is to be used in accordance with guidelines ODMH is to develop in consultation with representatives of the boards.

### **Eligibility for and distribution of funds**

The act repeals a law that provided for ADAMHS boards' community mental health plans to constitute applications for funds from ODMH. The act maintains, however, a law that conditions a board's eligibility for state and federal funding on an approved community mental health plan or relevant part of a plan.

Under the act, ADAMHS boards are no longer required to receive, compile, and transmit to ODMH applications for state reimbursement. ODMH is no longer required to review, periodically during a year, the budgets and expenditures of the various facilities and community mental health agencies receiving funds.

Continuing law requires an ADAMHS board, after ODMH informs the board of the amount of the board's estimated allocation for an upcoming fiscal year, to notify ODMH of whether the board elects to accept distribution of its allocation. The act





eliminates certain requirements applicable to a board that elects to accept distribution of its allocation, including requirements for the board to pay into the ODMH Risk Fund and to provide ODMH with the board's projected utilization of state hospitals and other state-operated services. ODMH is no longer required to retain and expend funds projected to be utilized for state hospitals and other state-operated services. The act also adds a condition that must be met for a board to be able to elect not to accept distribution of its allocation. The additional condition is that the board must provide ODMH written confirmation that the board has received input about the impact that the board's election will have on the mental health system in the board's district from (1) individuals who receive mental health services and their families, (2) boards of county commissioners, (3) juvenile and probate judges, and (4) county sheriffs, jail administrators, and other local law enforcement officials. This condition must be satisfied before the board satisfies a continuing law condition that the board conduct a public hearing on the issue of whether to accept distribution of its allocation.

The act eliminates the authority of an ADAMHS board to utilize a part of its budget as approved by ODMH to purchase insurance and to pool with funds of other boards to pay for the costs of utilizing state hospital facilities that exceed the amount of the board's allocation.

### **Audits**

The act specifies that an ADAMHS board's use of its allocated funds is subject to audit by county, state, and federal authorities.

### **Charges and withholdings of funds**

Whereas prior law permitted ODMH to charge overpayments of state funds against a county and required ODMH to charge any unreimbursed costs for services that ODMH provided against an ADAMHS board's allocation of funds for local management of mental health services, the act requires ODMH to charge such unreimbursed costs against a board's allocation of funds for state hospital services.

ODMH was required by prior law to withhold, in whole or in part, state and federal funds from an ADAMHS board for any program in the event the program failed to comply with certain state laws or ODMH rules. The act permits ODMH to withhold, in whole or in part, funds otherwise allocated to a board if the board fails to comply with the state laws or rules. Whereas prior law specified that one of the laws with which boards had to comply to avoid a withholding was the state law governing the allocations, the act specifies instead that one of the laws is a law requiring boards annually to report to ODMH regarding the use of their allocations.



ODMH was also required by prior law to withhold state or federal funds from an ADAMHS board that denied an available service on the basis of religion, race, color, creed, sex, national origin, disability, developmental disability, or the inability to pay. The act permits, rather than requires, ODMH to make such a withholding and specifies that the funds that are subject to a withholding are funds otherwise to be allocated to a board. Denial of an available service on the basis of the inability to pay is removed from the reasons for which a withholding may be made.

## **Community mental health plans**

(R.C. 340.03 and 5119.61)

The act revises the law governing ADAMHS boards' community mental health plans. Under continuing law, a board's plan is to list the community mental health needs of the board's district and the facilities and community mental health services that will be available under the plan to meet those needs.

Under the act, ADAMHS boards are to develop their plans and submit the plans to ODMH annually. Prior law required that the plans be developed and submitted not later than six months before the conclusion of the fiscal year in which the boards' current plans were scheduled to expire. The act eliminates requirements that (1) a board's plan include an explanation of how the board intends to make any payments that it may be required to make under the law governing the funds that ODMH allocates to boards and (2) a board submit an allocation request for state and federal funds with its plan.

The act eliminates the deadline by which ODMH must approve or disapprove an ADAMHS board's plan. Under prior law, ODMH was required to approve or disapprove the plan within 60 days after determining that the plan was complete. A board and ODMH may request that a dispute regarding a plan be submitted to a third-party mediator at any time while approval remains in dispute rather than, as under prior law, having to wait until there are 30 days remaining in the fiscal year in which the board's current plan was scheduled to expire. The act eliminates a requirement that ODMH, when a plan is submitted to a third-party mediator, make its final determination regarding approval before the conclusion of that fiscal year.

Continuing law establishes a process for an ADAMHS board to seek approval of an amendment to its plan. The act eliminates a provision under which the amendment or part of it was considered to be approved if ODMH failed to approve all or part of it within 30 days after it was submitted.



## **Payment for mental health services provided under Medicaid**

(R.C. 5111.912 (primary), 340.03, 5111.023, 5111.025, and 5111.911; Section 337.30.30)

Under prior law, ODMH and ADAMHS boards were responsible for paying the nonfederal share of any Medicaid payment for services provided under a component of the Medicaid program that ODMH administers on the behalf of the Ohio Department of Job and Family Services (ODJFS). The act makes ODJFS responsible for the payments. If necessary, the ODJFS Director must submit a Medicaid state plan amendment to the U.S. Secretary of Health and Human Services regarding ODJFS's responsibility.

Notwithstanding ODJFS's new responsibility, the act requires ODMH to allocate to ADAMHS boards mental health Medicaid match funds appropriated to ODMH for fiscal year 2012 and requires the boards to use the funds to pay claims for community mental health services provided during that fiscal year under the Medicaid component that ODMH administers. The boards are also required to use all federal financial participation that ODMH receives for claims for such services as the first payment source to pay such claims. The act provides that no board is required to use any other funds to pay for such claims.

ODMH is required by the act to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community mental health services provided before July 1, 2011, and submitted for payment on or after that date. Such claims are required to be paid in accordance with the agreements. A board is to receive the federal financial participation received for claims for community mental health services that were provided before July 1, 2011, and paid by the board.

## **County of residence responsibilities**

(R.C. 5122.36 (repealed))

The act repeals a law that made the county of residence of an individual with mental illness responsible for the following: (1) the necessary expense of returning the individual to the individual's county of residence, and (2) regular probate court fees and expenses incident to an order of hospitalization.

## **Qualified immunity from liability**

(R.C. 5122.341)

The act provides that no member of a board of directors, or employee, of an entity in which ODMH places a person committed to ODMH is liable for injury or damages caused by an action or inaction taken within the scope of the board member's



official duties or employee's employment relating to the commitment of, and services provided to, the person committed to ODMH, unless the action or inaction constitutes willful or wanton misconduct. A board member's or employee's action or inaction does not constitute willful or wanton misconduct if the board member or employee acted in good faith and reasonably under the circumstances and with the knowledge reasonably attributable to the board member or employee. The qualified immunity that the act provides is in addition to and not in limitation of any immunity otherwise conferred by state law or judicial precedent.

### **Attorney General representing officers and employees**

(R.C. 109.36)

The act provides for the Attorney General to represent in civil actions persons who, pursuant to an agreement with ODMH, render medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services to patients in an institution ODMH operates. This replaces a similar responsibility that the Attorney General had under prior law to represent persons who, pursuant to an agreement between an ODMH institution and an ADAMHS board, rendered medical services to patients in the ODMH institution.

### **Restrictions on serving on and working for an ADAMHS board**

(R.C. 340.02)

The act establishes an exception to a provision prohibiting an ADAMHS board member from being an employee of any agency with which the board has entered into a contract for the provision of services or facilities. Under the act, the prohibition does not apply if the board member's employment duties with the agency consist of providing, only outside the district the board serves, services for which the Medicaid program pays.

### **ODMH's general authority**

(R.C. 5119.012)

The act provides that ODMH has all the authority necessary to carry out its powers and duties under state laws governing ODMH, ADAMHS boards, offenses against the family, criminal trials, and hospitalization of individuals with mental illness.

## **ODMH's contracts with providers**

(R.C. 5119.013, 5119.06, and 5119.18)

The act authorizes the ODMH Director to contract with agencies, institutions, and other entities as necessary for ODMH to carry out its duties under state laws governing ODMH, ADAMHS boards, offenses against the family, criminal trials, and hospitalization of individuals with mental illness. Under the act, such contracts are not subject to state law governing the state's purchases of services if the contracts are for services provided to individuals with mental illness by agencies, institutions, and other entities not owned or operated by ODMH.

## **Evaluation of persons receiving services outside an ODMH hospital**

(R.C. 5119.01(E))

Continuing law requires the ODMH Director to contract with persons, organizations, or agencies for the custody, supervision, care, or treatment of mentally ill persons receiving services elsewhere than within an ODMH hospital. The act provides for the contracts also to provide for the evaluation of such persons.

## **ODMH forensic services**

(R.C. 5119.02(D))

Prior law required ODMH to provide and designate facilities for the care, custody, and special treatment of persons who are charged with a crime and found incompetent to stand trial or not guilty by reason of insanity. The act eliminates the requirement to provide for such facilities but maintains the requirement to designate such facilities. In addition to designating facilities for such individuals, ODMH is required by the act to designate hospitals and community mental health agencies. The act also requires ODMH to authorize payment for the custody, care, and special treatment provided to such persons.

## **Community support system**

(R.C. 5119.06(A))

The act eliminates a requirement for ODMH to establish and support a program at the state level to promote a community support system to be available for every ADAMHS district and requires, instead, that ODMH support, to the extent ODMH has available resources and in consultation with ADAMHS boards, a community support system on a district or multi-district basis. The act also eliminates a requirement that ODMH assist in coordinating the planning, evaluation, and delivery of services to



facilitate mentally ill persons' access to public services at federal, state, and local levels. ODMH is permitted by the act to prioritize support for one or more of the elements of a community support system.

### **ODMH's support of services**

(R.C. 5119.06(D))

The act provides that ODMH's responsibility for promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents applies to the extent ODMH has available resources.

### **Community mental health information system**

(R.C. 5119.61(F))

The act provides that the requirement for the ODMH Director to develop and operate a community mental health information system or systems applies to the extent the ODMH Director determines necessary. The act permits the ODMH Director to contract for the operation of the system or systems. The ODMH Director is required by the act to consult with ADAMHS boards before developing and operating the system or systems.

### **Certification of community mental health services**

(R.C. 5119.612 (primary) and 5119.611)

Each community mental health agency is required under continuing law to apply to the ODMH Director for certification of its services. To receive certification under law retained in part by the act, an agency must meet the minimum standards established by the Director.

In lieu of a determination by the ODMH Director of whether a community mental health agency satisfies the minimum standards for certification, the act requires the Director to accept appropriate accreditation of an applicant's services as evidence that the applicant satisfies the standards for certification. Acceptance of accreditation applies to an applicant's mental health services, integrated mental health and alcohol and other drug addiction services, or integrated mental health and physical health services.

### **Requirements for acceptance of accreditation**

For an applicant's accreditation to be accepted under the act, the following requirements apply:



(1) The applicant must hold accreditation from one of the following national accrediting organizations: the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation;

(2) The accreditation must be for services being provided in Ohio;

(3) The ODMH Director must determine that the accreditation is current and is appropriate for the services for which the applicant is seeking certification;

(4) The applicant must meet any other requirements established in rules to be adopted under the act.

If the Director determines that the applicant meets these requirements, the act requires the Director to certify the applicant's services. The act specifies that the certification is to be issued without further evaluation of the services, except for any visit or evaluation otherwise authorized by the act.

### **Review of accrediting organizations**

The act authorizes the ODMH Director to review the national accrediting organizations listed above to evaluate whether the accreditation standards and processes used by the organizations are consistent with service delivery models the Director considers appropriate for mental health services, physical health services, or both. The Director may communicate to an accrediting organization any identified concerns, trends, needs, and recommendations.

### **Visiting or evaluating agencies for cause**

The ODMH Director is authorized by the act to visit or otherwise evaluate a community mental health agency at any time based on cause. Reasons include complaints made by or on behalf of consumers and confirmed or alleged deficiencies brought to the attention of the Director.

### **Notifications and reports from agencies**

Under the act, the ODMH Director must require a community mental health agency to provide notice not later than ten days after any change in the agency's accreditation status. The agency is permitted to notify the Director by providing a copy of the relevant document the agency received from the accrediting organization.

Under the act, the ODMH Director must require a community mental health agency to submit reports of major unusual incidents. The act authorizes the Director to require an agency to submit cost reports pertaining to the agency.



## Rules

The act requires the ODMH Director to adopt rules to implement the act's provisions regarding the acceptance of a community mental health agency's accreditation for purposes of state certification. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). In adopting the rules, the Director must do all of the following:

- (1) Specify the documentation that must be submitted as evidence of holding appropriate accreditation;
- (2) Establish a process by which the Director may review the accreditation standards and processes used by the national accrediting organizations;
- (3) Specify the circumstances under which reports of major unusual incidents and agency cost reports must be submitted to the Director;
- (4) Specify the circumstances under which the Director may visit or otherwise evaluate a community mental health agency for cause;
- (5) Establish a process by which the Director, based on deficiencies identified as a result of visiting or evaluating an agency, may take a range of corrective actions, with the most stringent being revocation of the agency's certification.

## Behavioral health documentation, standards, and integration

(Section 337.30.90)

The act requires the ODMH Director and the Director of the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), not later than December 31, 2011, and in consultation with persons interested in the issues of mental health residential facilities and community behavioral health services and programs,<sup>224</sup> to do all of the following:

- (1) Identify areas of duplicative and unnecessary documentation requirements associated with licensing residential facilities and certifying community behavioral health services and programs;
- (2) Align the documentation standards of ODMH and ODADAS;

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<sup>224</sup> "Community behavioral health services and programs" are (1) ODMH-certified community mental health services and (2) ODADAS-certified alcohol and drug addiction programs (Section 337.30.90(A)).





(3) Streamline the standards of ODMH and ODADAS regarding residential facilities and community behavioral health services and programs with federal standards;

(4) Promote the integration of behavioral and physical health in residential facilities and community behavioral health services and programs.

## **ODMH Trust Fund**

(R.C. 5119.18)

The act expands ODMH's authority to use its Trust Fund money to pay for any expenditure incurred in performing its duties under state law, rather than for the following specific mental health purposes:

(1) Establishing and supporting a program at the state level to promote a community support system to be available for every ADAMHS district;

(2) Providing training, consultation, and technical assistance regarding mental health programs and services and appropriate prevention and mental health promotion activities to ODMH employees, community mental health agencies and boards, and other agencies providing mental health services;

(3) Promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents, especially for severely mentally disabled individuals;

(4) Designing and setting criteria for the determination of severe mental disability;

(5) Establishing standards for evaluation of mental health programs;

(6) Promoting, directing, conducting, and coordinating scientific research concerning the causes and prevention of mental illness, methods of providing effective services and treatment, and means of enhancing the mental health of all Ohio residents;

(7) Fostering the establishment and availability of vocational rehabilitation services and the creation of employment opportunities for consumers of mental health services;

(8) Establishing a program to protect and promote the rights of persons receiving mental health services;



(9) Establishing guidelines for the development of community mental health plans and the review and approval or disapproval of such plans;

(10) Promoting the involvement of persons who are receiving or have received mental health services in the planning, evaluation, delivery, and operation of mental health services;

(11) Notifying and consulting with the relevant constituencies that may be affected by rules, standards, and guidelines issued by ODMH;

(12) Providing training regarding the provision of community-based mental health services to ODMH employees who are utilized in state-operated, community-based mental health services;

(13) Providing consultation to the Department of Rehabilitation and Correction concerning the delivery of mental health services in state correctional institutions.

### **Transfer of Residential State Supplement program**

(R.C. 5119.69, 5119.691, and 5119.692; Section 337.30.50; conforming changes in R.C. 173.14, 173.35, 173.351, 340.091, 2903.33, 3721.56, 3722.04, 5101.35, and 5119.61)

The act transfers to ODMH, from the Ohio Department of Aging (ODA), the implementation of the Residential State Supplement (RSS) program. The RSS program provides cash supplemental payments to eligible aged, blind, or disabled adults who receive benefits under the federal Supplemental Security Income (SSI) program. The cash supplements provided under RSS must be used for the provision of accommodations, supervision, and personal care services.

The transferred RSS program is to be implemented in the same manner as ODA administered the program, except as follows:

(1) Permits, rather than requires, the ODMH Director to adopt rules that specify procedures and requirements for placing an individual on the RSS waiting list and priorities for the order that individuals on the waiting list are to be provided with RSS payments;

(2) Permits, rather than requires, the ODMH Director to adopt rules that establish the method to be used to determine the payment amount an eligible person will receive under the RSS program;

(3) In establishing the method to be used to determine RSS payments, permits, rather than requires, the ODMH Director to consider amounts appropriated by the General Assembly for the program;



(4) Permits, rather than requires, the ODJFS Director to adopt rules establishing standards of eligibility for the program;

(5) Eliminates a requirement that, each year, a report be provided to the General Assembly detailing the number of individuals participating in RSS rather than receiving care in a nursing facility, and the savings achieved as a result of the RSS enrollments (see "**RSS Home First**," below);

(6) Authorizes ODMH to designate an entity as responsible for providing administrative services to the program. For purposes of this requirement, ODMH is authorized to either enter into a contract with, or delegate the responsibility to, an entity to provide the services.

To qualify for RSS, a person must meet a number of conditions. One condition is that the person reside in an approved living facility. As part of transferring the program to ODMH, the act eliminates the requirement that facilities be certified by ODA in order for residents to be eligible for RSS payments. Under the transfer, ODA certification requirements are removed for all of the following facilities:

(1) A home or facility, other than a nursing home, licensed by the Ohio Department of Health (ODH);

(2) A residential facility licensed by ODMH and adult care facilities, which the act requires ODMH to license rather than ODH;

(3) An apartment or room used to provide community mental health housing services;

(4) An adult foster home, which the act requires ODMH to certify rather than ODA.

### **Transition**

The act provides that no person receiving RSS payments when the program is transferred is to be affected by the transfer. The act specifies that the transferred program is the previous program's successor, assumes the program's obligations, and otherwise constitutes a continuation of the program. For purposes of the transition from ODA to ODMH, the act specifies the following:

(1) Any business regarding the RSS program commenced by ODA but not completed before the transfer is to be completed by ODMH;

(2) No validation, cure, right, privilege, obligation, or liability is lost or impaired by reason of the transfer;



(3) Rules, orders, and determinations pertaining to the RSS program are to continue to be in effect after the transfer occurs, until modified or rescinded by ODMH;

(4) Any action or proceeding related to the RSS program that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.

### **RSS Home First**

Under Home First provisions of law largely unchanged by the act, each month, RSS administrators are required to notify the ODA long-term care consultation program administrator that a person on the RSS waiting list has been admitted to a nursing facility. The long-term care administrator is to determine if the person admitted to the nursing facility would rather participate in RSS. If so, the person is to be approved to participate in the RSS program instead of receiving services in a nursing facility. The act specifies that the notifications are to be made by the RSS administrators on a periodic schedule determined by ODMH, rather than each month.

### **Certification of adult foster homes**

(R.C. 5119.692; Section 337.30.75)

As discussed above, one of the living arrangements in which an RSS recipient may reside is an adult foster home, which must be certified. The act transfers responsibility for the certification of adult foster homes to ODMH (from ODA). In doing so, the act specifies the following:

(1) Certification of an adult foster home that is valid on July 1, 2011, is deemed to have been issued by ODMH;

(2) Any business regarding the certification of adult foster homes commenced by ODA but not completed before the transfer is to be completed by ODMH;

(3) No validation, cure, right, privilege, obligation, or liability is lost or impaired by reason of the transfer;

(4) Rules, orders, and determinations pertaining to the certification of adult foster homes are to continue to be in effect after the transfer occurs, until modified or rescinded by ODMH;

(5) Any action or proceeding related to the certification process that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.



## **Pre-employment criminal records checks**

(R.C. 5119.693)

In transferring the certification of adult foster homes from ODA to ODMH, the act continues the ODA-required criminal records check of applicants seeking employment in direct care positions at adult foster homes.<sup>225</sup> The act permits, rather than requires, ODMH to adopt rules regarding criminal records checks. The act also permits, rather than requires, that the rules specify circumstances under which an adult foster home may employ persons who plead guilty to or are convicted of specified offenses but meet personal character standards set by ODMH.

## **Adult care facilities**

(R.C. 5119.70 to 5119.88 and 5119.99; Section 337.30.80; conforming changes in R.C. 109.57, 109.572, 173.14, 173.21, 173.26, 173.35, 173.36, 173.42, 340.03, 340.05, 2317.02, 2317.422, 2903.33, 3313.65, 3701.07, 3701.74, 3721.01, 3721.02, 3722.99 (repealed), 3737.83, 3737.841, 3781.183, 3791.043, 5101.60, 5101.61, 5111.113, 5119.22, 5119.61, 5119.613, 5119.99, 5123.19, 5701.13, and 5731.39)

Adult care facilities are residential facilities that provide accommodations and supervision to three to 16 unrelated adults, at least three of whom require personal care services.

The act transfers to ODMH, from the Ohio Department of Health (ODH), responsibility for licensing adult care facilities. The transfer is effective July 1, 2011. For purposes of the transition from ODH to ODMH, the act specifies the following:

- (1) Adult care facility licenses issued by ODH are deemed to have been issued by ODMH;
- (2) Any business regarding the licensure of adult care facilities commenced by ODH but not completed before the transfer is to be completed by ODMH;
- (3) No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer;

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<sup>225</sup> The ODA-required criminal records check was part of the ODA law under which applicants for employment in positions involving providing direct care to individuals under community-based long-term care programs administered by ODA must undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation (R.C. 173.39 and 173.394, not in the act).



(4) Rules, orders, and determinations pertaining to the licensure of adult care facilities continue to be in effect after the transfer, until modified or rescinded by ODMH;

(5) Any action or proceeding related to the licensing process that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.

Under the act, ODMH (rather than the Public Health Council) is required to adopt rules governing adult care facilities. The act specifies what the rules are permitted, rather than required, to include.

### **Inspections**

(R.C. 5119.73)

During each licensing period, the ODMH Director must make at least one unannounced inspection of an adult care facility and may make additional unannounced inspections as necessary.<sup>226</sup> This is a continuation of the ODH inspection provisions.

The act specifies that inspections of adult care facilities may be conducted as desk audits or on-site inspections. If an inspection is conducted to investigate an alleged violation in an adult care facility serving residents receiving publicly funded mental health services or Residential State Supplement (RSS)<sup>227</sup> payments, the act permits, rather than requires, that the inspection be coordinated with the appropriate mental health agency, ADAMHS board, or RSS (rather than PASSPORT) administrative agency.

### **Residents' rights**

(R.C. 5119.81)

Under continuing law, residents of adult care facilities have certain statutory rights, including the right to be free from physical restraint. The act adds the right to be free from seclusion and mechanical restraint. Under the act, "seclusion" means the involuntary confinement of a resident alone in a room in which the resident is physically prevented from leaving. "Mechanical restraint" means any method of

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<sup>226</sup> The required unannounced inspection during each licensing period is in addition to the inspection to determine whether a license should be issued or renewed (R.C. 5119.73(C)).

<sup>227</sup> The RSS program provides cash supplements to payments made to eligible aged, blind, or disabled adults under the Supplemental Security Income (SSI) program.



restricting a resident's freedom of movement, physical activity, or normal use of the resident's body, using an appliance or device manufactured for this purpose.

The definition of "physical restraint" is modified by the act to mean any method of physically restricting a resident's freedom of movement, physical activity, or normal use of the resident's body without the use of a mechanical restraint. Prior law defined it as any article, device, or garment that interfered with the free movement of the resident and that the resident was unable to remove easily. The act specifies that "physical restraint" is also known as "manual restraint."

The act removes the Director of Aging and residents' rights advocates from the list of individuals authorized to assert on behalf of adult care facility residents their residents' rights. Under law retained in part by the act, the individuals authorized to do so are the ODMH Director<sup>228</sup> and residents' sponsors, which are adult relatives, friends, and guardians.

### **Relocating residents following injunctions**

(R.C. 5119.78)

The act requires an adult care facility to assist in relocating residents if a court grants injunctive relief for operating a facility without a license. This is in place of a requirement that the facility assist residents' rights advocates in relocating the residents.

### **Authorization to enter facility**

(R.C. 5119.84)

The act eliminates the authority of residents' rights advocates and sponsors of current or prospective residents to enter an adult care facility during reasonable hours. Under continuing law, the following individuals may enter the facility: (1) residents' attorneys, (2) ministers, priests, rabbis, or other persons ministering to residents' religious needs, (3) physicians or other persons providing health care services to residents, (4) employees authorized by CDJFSs and local boards of health or health departments, and (5) prospective residents.

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<sup>228</sup> Since the act transfers the licensing of adult care facilities to ODMH from ODH, the ODMH Director (rather than the ODH Director) is authorized to assert residents' rights on behalf of a facility resident.



## **Records**

(R.C. 5119.84)

Under continuing law, certain state and local government and mental health agency officers and employees are authorized to enter an adult care facility at any time and have access to facility records, including records pertaining to residents. The act expands the circumstances when these officers and employees may release resident-identifying information from the records, without the resident's consent. In addition to being authorized to release the information by court order, the act permits the officers and employees, including the ODMH Director, to release the information if authorized by law to do so.

## **Pre-employment criminal records checks**

(R.C. 5119.85)

Prior law required an applicant for employment with an adult care facility in a position involving direct care to an older adult to undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation. "Older adult" was defined as a person age 60 or older. The act instead requires a criminal records check for positions involving direct care to an "adult resident," which is defined by the act as individual residing in an adult care facility licensed by ODMH.

Under continuing law, an adult care facility is generally prohibited from employing a person who pleads guilty to or is convicted of specified offenses. Prior law required the Public Health Council to adopt rules regarding adult care facilities conducting criminal records checks on applicants for employment. The rules were required to specify circumstances under which facilities could employ persons who pleaded guilty to or were convicted of specified offenses but met personal character standards.<sup>229</sup>

In transferring the licensing of adult care facilities to ODMH, the act permits, rather than requires, ODMH to adopt rules regarding criminal records checks. The act also permits, rather than requires, that the rules specify circumstances under which facilities may employ persons who plead guilty to or are convicted of specified offenses but meet personal character standards set by ODMH.

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<sup>229</sup> R.C. 3721.151.





## **Exchange of confidential health information by ODMH-licensed hospitals and with payers**

(R.C. 5122.31)

The act expands one of 15 exceptions to the continuing law provision generally requiring that documents pertaining to the hospitalization of the mentally ill and criminal trials of persons alleged to be insane be kept confidential and not be disclosed unless the patient consents to disclosure. The particular exception continues to permit ODMH hospitals, institutions, and facilities and community mental health agencies to exchange psychiatric records and other pertinent information with other providers of treatment and health services if the purpose is to facilitate continuity of care of a patient. In addition to these authorized entities, the act authorizes hospitals that are not ODMH hospitals, but are licensed by ODMH, to exchange the records and information with other providers of treatment and health services.

The act permits the exchange of the confidential records and information described above with payers. This authority applies to ODMH hospitals, institutions, and facilities, ODMH-licensed hospitals, and community mental health agencies.

## **Land conveyance to MetroHealth**

(Section 753.25)

The act authorizes the Governor to convey real estate that ODMH plans to vacate as part of the consolidation of its two Northcoast Behavioral Healthcare facilities.

Specifically, the act authorizes the Governor to execute a deed in the name of the state conveying to the Board of County Hospital Trustees of The MetroHealth System ("MetroHealth"), in the name of the County of Cuyahoga, State of Ohio, its successors and assigns, all of the state's right, title, and interest in the following listed parcels of real estate located in Cuyahoga County: 00821-008, 00821-009, 00821-010, 00821-011, 00821-012, 00821-013, 00821-014, 00821-015, 00821-016, and 00821-017. In preparing the deed, the Auditor of State, with the assistance of the Attorney General, is to develop a legal description of the real estate in conformity with the actual bounds of the real estate. The real estate together with the building situated upon it is to be conveyed. And the real estate is to be sold as an entire tract and not in parcels.

Consideration for conveyance of the real estate is \$10. In addition, the amount of \$3.4 million is to be disbursed to MetroHealth to pay for demolishing the building situated on the real estate. Notwithstanding any provision of law to the contrary, the ODMH Director is required to disburse \$3.4 million from capital appropriation item C58010, Campus Consolidation, as set forth in Sub. H.B. 462 of the 128th General



Assembly, to the grantee within 30 days after the conveyance of the real estate. After the disbursement, the state must, within four months, complete a physical inventory of assets, relocate assets that are to be removed from the building, and itemize assets that are to remain with the transferred real estate and building.

MetroHealth is prohibited, during any period that any bonds issued by the state to finance or refinance all or a portion of the real estate are outstanding, from using any portion of the real estate for a private business use without the prior written consent of the state. "Private business use" means use, directly or indirectly, in a trade or business carried on by any private person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a private person who is not a natural person is to be presumed to be a trade or business. "Private person" means any natural person or any artificial person (such as a corporation or other business organization or entity), including the United States or any agency or instrumentality of the United States, but excluding any state, territory, or possession of the United States, the District of Columbia, or any political subdivision thereof that is referred to as a "state or local governmental unit" in Treasury Regulation 1.103-1(a) and any person that is acting solely and directly as an officer or employee on behalf of such a governmental unit.

The act prohibits MetroHealth from selling, conveying, or transferring ownership of the real estate before December 1, 2019, or before receiving written confirmation from the state that all of the state's bonded capital indebtedness associated with any of the buildings located on the real estate has been fully satisfied.

The act requires MetroHealth to pay all costs associated with the purchase and conveyance of the real estate, including the costs of any surveys and recordation costs of the deed.

The act requires the Auditor of State, with the assistance of the Attorney General, to prepare a deed to the real estate. The deed must state the consideration and the conditions and restrictions, and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to MetroHealth. MetroHealth must present the deed for recording in the Office of the Cuyahoga County Recorder.

Authority to make the conveyance expires one year after its effective date.

