DEPARTMENT OF HEALTH (DOH)

- Authorizes the Ohio Department of Health (ODH) to establish a drug and nutritional formula discount program for its Bureau for Children with Medical Handicaps under which manufacturers of drugs or nutritional formulas may enter into discount agreements with ODH.

- In lieu of establishing a discount program, authorizes ODH and a drug or nutritional formula manufacturer to discuss donations of drugs, nutritional formulas, or money by the manufacturer to ODH.

- Requires the ODH Director to annually apply for federal funds that are made available for abstinence education.

- Specifies, in addition to the Help Me Grow Program's continuing purpose of encouraging prenatal and well-baby care, that the Program's purposes are to (1) provide parenting education to promote the comprehensive health and development of children and (2) provide early intervention services in accordance with federal law.

- Provides that home visiting services under the Help Me Grow Program are provided to eligible families with a pregnant woman or a child under age three (rather than newborn infants and their families).

- Eliminates a requirement that a request for home visiting services be made by a parent before the services may be provided.

- Requires providers of home visiting services, as a condition of receiving payment, to report data on Program performance indicators and requires the ODH Director to prepare an annual report on the data received.

- Provides that federally funded "Part C" early intervention services are included in the Help Me Grow Program for infants and toddlers under age three.

- Specifies that a family enrolled in the former At Risk Program remains eligible for at-risk services until December 31, 2013, or until the eligible child reaches three years of age, whichever occurs first.

- Permits the ODH Director to (1) enter into interagency agreements with state agencies to implement the Help Me Grow Program and (2) distribute Program funds through contracts, grants, or subsidies to entities providing Program services.

- Eliminates a requirement that the Help Me Grow Program include distribution of subsidies to counties to provide services.

- Requires, to the extent funds are available, that ODH establish a system of payment to providers of Help Me Grow Program services.

- Specifies certain rules that must be adopted to implement the Help Me Grow Program, including rules regarding eligibility for services, providers of services, complaint procedures, and criteria for payment.

- Requires ODH to convene an early intervention workgroup to develop recommendations for eligibility criteria for federally funded "Part C" early intervention services to be provided to infants and toddlers who have developmental delays.

- Permits an applicant for a certificate of need (CON) to revise a pending application by changing the site of the proposed project unless the ODH Director has mailed a written notice that the application is complete or the application is subject to a comparative review.

- Provides, in the case of a nursing home that under the terms of its CON could admit as residents only members of certain religious orders, that (1) the nursing home may also provide care to specified relatives of the members and (2) the nursing home's beds cannot be relocated to another long-term care facility.

- Requires the ODH Director to accept a CON application for a new nursing home if (1) the application is submitted not later than December 27, 2011, (2) the nursing home will be located in a county that had a population in 2000 between 30,000 and 41,000, (3) the nursing home will be located on a campus that has been in operation for at least 12 years and the campus has other specified types of facilities, and (4) the nursing home will have not more than 30 beds.

- Permits a county home to obtain Medicaid or Medicare certification for existing beds without obtaining a CON if (1) the county home is located in a county that has a bed need shortage, (2) no county that borders that county has a bed need excess or bed need shortage, (3) the number of existing beds for which Medicaid or Medicare certification is sought does not exceed the bed need shortage of the county, and (4) the county home obtains the certification not later than December 31, 2013.

- Authorizes a residential care facility to admit or retain any individual who requires skilled nursing care for more than 120 days in a 12-month period if the facility enters into a written agreement with (1) the individual or individual's sponsor, (2) the individual's personal physician, (3) unless the individual's personal physician

oversees the skilled nursing care, the provider of the skilled nursing care, and (4) if the individual is a hospice patient, a hospice care program.

- Provides for the agreement to include the same provisions that prior law required an agreement between a residential care facility and hospice care program to include, except that an agreement regarding an individual who is not a hospice patient must also include a provision that the individual's personal physician has determined that the skilled nursing care the individual needs is routine.

- Prohibits Public Health Council rules governing nursing homes and residential care facilities from requiring that each resident sleeping room, or a percentage of the sleeping rooms, have a bathtub or shower directly accessible from or exclusively for the room, but requires that the rules ensure that the privacy and dignity of residents be protected when they are transported to and from bathing facilities, prepare for bathing, and bathe.

- Requires that the Council's rules ensure that each nursing home has sufficient direct care staff on each shift to meet the needs of the residents in an appropriate and timely manner and that registered nurses, licensed practical nurses, and nurse aides provide a minimum daily average of 2.5 hours of direct care per resident.

- Revises the requirements regarding the notice of a proposed transfer or discharge that a long-term care facility is to provide a resident and resident's sponsor by (1) providing that the notice is to include *a* proposed location, rather than *the* location, to which the resident may relocate and a notice that the resident and resident's sponsor may choose another location, (2) requiring that the proposed relocation site be capable of meeting the resident's healthcare and safety needs, and (3) providing that the proposed relocation site need not have accepted the resident at the time the notice is issued.

- Permits a nursing facility and skilled nursing facility to obtain up to two informal reviews (with a fee charged for a second review) of any deficiencies that are cited under federal regulations governing surveys and cause the facility to be out of compliance with federal Medicare or Medicaid requirements.

- Requires that the first informal review be conducted by an ODH employee who was not involved with the survey under which the deficiencies were discovered and that the second review be conducted by either a hearing officer employed by ODH or a hearing officer included on a list ODH is to provide the facility.

- Permits the ODH Director to define a "health home" for purposes of any entity authorized to provide care coordination services.

- Adds a representative of the Ohio Council for Home Care and Hospice to the Patient Centered Medical Home Education Advisory Group.

- Requires $1 of each $4 of the minimum base fee ($12) for a certified copy of a vital record or a certification of birth that is transferred by a local board of health to the State Office of Vital Statistics to be distributed to the boards of health in accordance with the same formula used to distribute state subsidy funds to boards of health and local health departments.

- Requires a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to transfer all $4 of each minimum base fee ($12) for a certified copy of a vital record or a certification of birth to the State Office of Vital Statistics and requires it to be used to support public health systems.

- Requires a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to charge the same additional $5 fee charged by the State Office of Vital Statistics and local boards of health for certified copies of vital records and certifications of birth and requires the money to be similarly used for operating, modernizing, and automating the state's vital records program.

BCMH discount agreements for drugs and nutritional formulas

(R.C. 3701.021 and 3701.023)

The act authorizes the Ohio Department of Health (ODH) to establish a drug and nutritional formula discount program for its Bureau for Children with Medical Handicaps (BCMH). Under the program, a manufacturer of a drug or nutritional formula is permitted to enter into an agreement with ODH to provide a discount on the price of the drug or nutritional formula distributed to medically handicapped children participating in a BCMH-administered program. If a manufacturer enters into a discount agreement with ODH, the manufacturer and ODH may negotiate the amount and terms of the discount.

If established, the program must be administered in accordance with rules the act requires ODH to adopt. The rules must address procedures for administering the program, including criteria and other requirements for participation.

In lieu of establishing a discount program, the act authorizes ODH and a manufacturer to discuss a donation of drugs, nutritional formulas, or money by the manufacturer to ODH.

Abstinence education

(R.C. 3701.0211)

The act requires the ODH Director to annually apply to the U.S. Secretary of Health and Human Services for federal funds each year that funds are made available for abstinence education. The funds available through the Maternal and Child Health Services Block Grant (also known as "Title V").[113] The act requires the ODH Director to use the funds in accordance with any conditions under which the application was approved.

Help Me Grow Program

(R.C. 3701.61)

The Help Me Grow Program provides early childhood services to children under age three. The Program is directed by ODH and coordinated at the county level by family and children first councils.

Purposes

In addition to the Program's purpose under continuing law to encourage prenatal and well-baby care, the act specifies that the Program's purposes are to provide parenting education to promote the comprehensive health and development of children and provide early intervention services in accordance with federal law.

Home visiting services

The Help Me Grow Program includes home visiting services. Under prior law, home visiting services were provided to eligible newborn infants and their families. The act provides instead that home visiting services are provided to eligible families with a pregnant woman or a child under age three who meet the eligibility requirements established in rules to be adopted by the ODH Director. The act eliminates a requirement that a request for home visiting services be made by a parent before the services may be provided.

The act requires providers of home visiting services, as a condition of receiving payment, to report data on performance indicators used to assess progress toward achieving the goals of the Program. The report, which is to be made to the ODH Director, is to include data on birth outcomes, including risk indicators of low birth weight and pre-term births, and data on all other performance indicators specified in

[113] 42 U.S.C. 710.

rules adopted by the Director. The providers must report the data in the format and within the time frames specified in the rules. The Director must prepare an annual report on the data received.

Part C early intervention services

The act provides for the Help Me Grow Program to include "Part C" early intervention services for infants and toddlers under age three. Part C refers to a portion of the federal "Individuals with Disabilities Education Act."[114] Under this federal law, the U.S. Department of Education makes grants available to assist each state in maintaining and implementing a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.[115]

The inclusion of Part C services replaces prior law under which the Program included services for infants and toddlers under age three who were at risk for, or who had, a developmental delay or disability and their families. The act specifies that to receive Part C services, infants and toddlers must meet the eligibility requirements established in rules to be adopted by the ODH Director.

At Risk Program

The At Risk Program, which ODH previously administered as a component of the Help Me Grow Program, provided services to children under age three who were at risk for a developmental delay or disability. The act specifies that a family enrolled in the At Risk Program on September 29, 2011 (the act's 90-day effective date) is to remain eligible for at-risk services until December 31, 2013, or until the eligible child reaches three years of age, whichever occurs first.

Interagency agreements and distribution of funds

The act authorizes the ODH Director to enter into interagency agreements with state agencies to implement the Help Me Grow Program and distribute funds through contracts, grants, or subsidies to entities providing Program services. To the extent funds are available, ODH must establish a system of payment to providers of services. The act eliminates a requirement that the Program include distribution of subsidies to counties to provide services.

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[114] 20 U.S.C. 1431 *et seq*.

[115] U.S. Department of Education, Ed.Gov, *Part C—Infants and Toddlers with Disabilities* (last visited August 21, 2011), available at <http://idea.ed.gov/explore/view/p/,root,statute,I,C,>.

Rules

The act requires the ODH Director (rather than ODH) to adopt rules to implement the Program. The rules must specify all of the following:

(1) Eligibility requirements for home visiting services and Part C early intervention services;

(2) Eligibility requirements for providers of services;

(3) Standards and procedures for the provision of services, including data collection, monitoring, and evaluation;

(4) Procedures for appealing the denial of an application for or termination of services;

(5) Procedures for appealing the denial of an application to become a provider or the termination of ODH's approval of a provider;

(6) Procedures for addressing complaints;

(7) Criteria for payment of approved providers;

(8) The performance indicators on which data must be reported by providers of home visiting services, which, to the extent possible, must be consistent with federal reporting requirements for federally funded home visiting services;

(9) The format and time frames for submitting performance indicator data;

(10) Any other rules necessary to implement the Program.

Early intervention workgroup

(Section 291.30)

The act requires ODH to convene a workgroup to develop recommendations for eligibility criteria for early intervention services to be provided pursuant to Part C of the federal "Individuals with Disabilities Education Act." The workgroup must base the recommendations on available funds and national data related to the identification of infants and toddlers who have developmental delays or are most at risk for developmental delays and, in either case, would benefit from early intervention services.

Recommendation schedule

The act requires the workgroup to convene by July 15, 2011, and present recommendations for eligibility criteria to the ODH Director by October 1, 2011. The act permits the ODH Director to accept the recommendations in whole or in part and implement eligibility criteria accordingly.

Membership

The workgroup is to be facilitated by ODH and composed of the following:

--A representative from each of the following departments: Developmental Disabilities, Education, Mental Health, and Job and Family Services;

--A representative from the Help Me Grow Advisory Council and a parent member of the Council;

--A representative from the Ohio Family and Children First Cabinet Council;

--A representative from the Ohio Family and Children First Association;

--A county Help Me Grow project director;

--A representative from the Ohio Council of Behavioral Health and Family Services Providers;

--A representative from the Ohio Association for Infant Mental Health;

--A representative from the Ohio Association of County Boards of Developmental Disabilities;

--A representative from the Ohio Superintendents of County Boards of Developmental Disabilities;

--A representative from the Ohio chapter of the American Academy of Pediatrics;

--A public health nurse from a local board of health;

--A representative of the Ohio Developmental Disabilities Council;

--A representative of the County Commissioner's Association of Ohio.

Certificate of Need Program

Location of a certificate of need's proposed project

(R.C. 3702.523 (primary), 3702.52, and 3702.57)

The act permits a person who has an application for a certificate of need (CON) pending with the ODH Director to revise the application to change the site of the proposed project unless the Director has mailed the applicant a written notice that the application is complete or the application is subject to a comparative review. No other revisions may be made. The revised site of the proposed project must be in the same county specified in the original application.

A revised application must be accompanied by an additional, non-refundable fee equal to 25% of the fee charged for the original application. The additional fee must be deposited into the CON Fund.

On acceptance of a revised CON application, the ODH Director is required to continue to review the application as revised to determine whether it is complete. Ordinarily, the ODH Director may not make more than two requests for additional information while reviewing a CON application. The act provides, however, that the ODH Director, when reviewing a revised application, may make a final written request to the applicant for additional information even if the Director previously made two such requests. If such a request is made, it must be made not later than 30 days after the date the ODH Director accepts the revised application.

Authorized residents of nursing homes operated by religious orders

(R.C. 3702.59)

With regard to a nursing home that under prior law could admit individuals as residents only if they were members of certain religious orders because of the conditions on which the ODH Director granted the nursing home's CON, the act authorizes the nursing home to provide care not only to the religious order members, but also to specified family members. The following relatives are specified: mothers, fathers, brothers, sisters, brothers-in-law, sisters-in-law, and children.

The act specifies that the long-term care beds in such a nursing home may not be relocated to a new or existing long-term care facility.

Application for a new nursing home

(Section 291.40)

The act requires the ODH Director to accept a CON application for the establishment, development, and construction of a new nursing home if all of the following conditions are met:

(1) The application is submitted not later than December 27, 2011;

(2) The nursing home is to be located in a county that had, according to the 2000 regular federal census, a population of at least 30,000 and not more than 41,000 persons;

(3) The nursing home is to be located on a campus that has been in operation for at least 12 years and at least one existing residential care facility with at least 25 residents and at least one existing independent living dwelling for seniors with at least 75 residents are located on the same campus on June 30, 2011;

(4) The nursing home is to have not more than 30 beds, all of which are to be transferred from an existing nursing home in Ohio and are proposed to be licensed as nursing home beds.

The Director is prohibited from denying an application on the grounds that the new nursing home is to have fewer than 50 beds, which is the minimum number of beds otherwise required by an ODH rule.[116] The Director is also prohibited from requiring an applicant to obtain a waiver of the minimum 50-bed requirement.

County home exemption from requirement to obtain a CON

(Section 291.50)

The act permits a county home to obtain Medicare or Medicaid certification for one or more of its existing beds (beds that on June 30, 2011, are used, or available for use, for skilled nursing care) without having to obtain a CON. This authority ends January 1, 2014.

For a county home to be exempt under the act from the requirement to obtain a CON, all of the following must apply: (1) the county home must be located in a county that has a bed need shortage, (2) no county that borders the county in which the county home is located may have a bed need excess or shortage, (3) the number of the county home's existing beds for which Medicare or Medicaid certification is sought cannot

[116] O.A.C. 3701-12-23.

exceed the number of long-term care beds that could be relocated into the county according to a determination the ODH Director made in calendar year 2010 under CON law, and (4) the county home must obtain the Medicare or Medicaid certification not later than December 31, 2013. A county is considered to have a bed need shortage or excess if, according to a determination the ODH Director made under CON law in calendar year 2010, one or more long-term care beds could be relocated into (in the case of a shortage) or from (in the case of an excess) the county.

Skilled nursing care in residential care facilities

(R.C. 3721.011 and 3721.04)

The act revises the law governing the limited skilled nursing care that may be provided by a residential care facility, which is popularly known as an assisted living facility. Prior to the act, a residential care facility was authorized to admit or retain an individual who needs skilled nursing care for more than 120 days in a 12-month period only if the individual was a hospice patient and the facility had entered into a written agreement with a hospice care program. The agreement had to provide for (1) a determination to have been made that the hospice patient's needs could be met at the facility, (2) periodic redeterminations being made according to a schedule specified in the agreement, and (3) the hospice patient being given the opportunity to choose the hospice care program that best met the patient's needs.

The act authorizes a residential care facility to admit or retain any individual, rather than only a hospice patient, who needs skilled nursing care for more than 120 days in a 12-month period if the facility enters into a written agreement with (1) the individual or individual's sponsor, (2) the individual's personal physician, (3) unless the individual's personal physician oversees the skilled nursing care, the provider of the skilled nursing care, and (4) if the individual is a hospice patient, a hospice care program. The agreement must include the same provisions that prior law required an agreement between a residential care facility and hospice care program to include, except that an agreement regarding an individual who is not a hospice patient must also include a provision that the individual's personal physician has determined that the skilled nursing care the individual needs is routine.

Restrictions on long-term care facility licensing rules

(R.C. 3721.04)

Continuing law requires the Public Health Council to adopt rules governing the operation of nursing homes and residential care facilities, including rules that prescribe standards for equipping the buildings and the number and qualifications of personnel.

The act prohibits the rules governing how the buildings are equipped from requiring that each resident sleeping room, or a percentage of the sleeping rooms, have a bathtub or shower that is directly accessible from or exclusively for the room. However, the rules must require that privacy and dignity of residents be protected when they are transported to and from bathing facilities, prepare for bathing, and bathe.

Regarding rules governing the number and qualifications of nursing home personnel, the Council is required by the act to require each nursing home to have sufficient direct care staff on each shift to meet the needs of the residents in an appropriate and timely manner and to have the following individuals provide a minimum daily average of 2.5 hours of direct care per resident:

(1) Registered nurses, including registered nurses who perform administrative and supervisory duties;

(2) Licensed practical nurses, including licensed practical nurses who perform administrative and supervisory duties;

(3) Nurse aides.

Transfers and discharges of long-term care facility residents

(R.C. 3721.16)

The act revises the law governing the notice regarding a proposed transfer or discharge that a long-term care facility is to provide a resident and resident's sponsor. The notice requirement applies to nursing homes, residential care facilities, skilled nursing facilities, nursing facilities, county homes, and district homes.

Under prior law, a notice regarding a proposed transfer or discharge had to include *the* proposed location to which the resident was to be transferred or discharged. The act requires that the notice include *a* proposed location to which the resident may relocate and a notice that the resident and resident's sponsor may choose another location to which the resident will relocate. The proposed relocation site specified in the notice must be capable of meeting the resident's healthcare and safety needs; it need not have accepted the resident at the time the notice is issued. The act maintains a requirement that the relocation site to which the resident is actually transferred or discharged actually have accepted the resident.

Reviews of nursing facilities' Medicare and Medicaid deficiencies

(R.C. 3721.022 (primary) and 3701.83)

The act permits a nursing facility and skilled nursing facility to obtain up to two informal reviews of any deficiencies that (1) are cited under federal regulations governing surveys and (2) cause the facility to be out of compliance with federal requirements for participating in Medicare or Medicaid. This differs from prior law which permitted a facility to obtain an informal review of deficiencies discovered under state law governing surveys. Facilities undergo surveys to obtain and maintain the certification needed to participate in Medicare and Medicaid.

The act requires that a first review be conducted by an ODH employee who did not participate in and was not otherwise involved in any way with the survey under which the deficiencies were discovered. This is the same person who conducted the one review available under prior law.

The act requires that a second review be conducted by either of the following as selected by the nursing facility or skilled nursing facility: a hearing officer employed by ODH or a hearing officer included on a list ODH is to provide the facility. To receive a second review, a nursing facility or skilled nursing facility must pay a fee to ODH. The amount of the fee is to be set in rules adopted by the ODH Director and the fee is to be deposited into ODH's General Operations Fund.

Health homes and medical homes

Health home definition

(R.C. 3701.032)

The act permits the ODH Director to adopt rules that define what constitutes a health home for the purpose of any entity authorized to provide care coordination services. The rules must be adopted in accordance with the Administrative Procedure Act.[117]

[117] See also "**Health homes for Medicaid recipients**" under "**DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)**."

Patient Centered Medical Home Education Advisory Group

(R.C. 185.03)

The act adds a representative of the Ohio Council for Home Care and Hospice to the Patient Centered Medical Home Education Advisory Group.[118] The individual is to be appointed by the Council's governing board.

Vital statistics fees – portion transferred to State Office of Vital Statistics

(R.C. 3705.24)

Subsidies to boards of health

The act requires $1 of each $4 portion of the minimum base fee ($12)[119] for a certified copy of a vital record or a certification of birth that is collected by a board of health of a city or general health district, and transferred to the State Office of Vital Statistics, to be used by the ODH Director to pay subsidies to the boards of health. The subsidies must be distributed in accordance with the same formula the Director uses under continuing law to distribute other state subsidy funds to the boards of health and local health departments. The formula takes into account health district population and performance.

Local registrars of vital statistics not affiliated with health districts

The act requires the entire portion ($4) of the minimum base fee ($12) for a certified copy of a vital record or a certification of birth that is collected by a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to be transferred to the State Office of Vital Statistics. The portions must be transferred not later than 30 days after the end of each calendar quarter and must be used to support public health systems.

The act also requires such a local registrar of vital statistics to charge an additional $5 fee to be used by ODH to support the operations, modernization, and

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[118] Sub. H.B. 198 of the 128th General Assembly established the Advisory Group to implement and administer the Patient Centered Medical Home Education Pilot Project. The Project's purpose is to advance medical education in the patient centered medical home model of care.

[119] In addition to the base fee (required by R.C. 3705.24(A)(2) and 3709.09(A)), continuing law permits the following additional fees to be charged for copies of vital records and certifications of birth: fees charged by a local registrar of vital statistics or a clerk of court (under R.C. 3705.24(D) and (G)), some of which vary based on the population of the primary registration district; fees to modernize and automate the vital records system (under R.C. 3705.24(B)); fees charged to benefit the Children's Trust Fund (under R.C. 3109.14); and fees charged to benefit the Family Violence Prevention Fund (under R.C. 3705.242).

automation of the vital records program. This same additional fee is charged by the Office of Vital Statistics and local boards of health under continuing law.