
DEPARTMENT OF DEVELOPMENTAL DISABILITIES

County board membership

- Requires each county board of developmental disabilities to include at least one individual eligible to receive services provided by the board, in addition to two other such individuals or immediate family members of such individuals.
- Establishes procedures for appointing an individual to serve on a county board of developmental disabilities if an individual who is eligible to receive services from the board is unable to be appointed.

Developmental Disabilities Council meetings

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

Interagency workgroup on autism

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

Innovative pilot projects

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

County share of nonfederal Medicaid expenditures

- Requires the Director to establish a methodology to estimate in FY 2024 and FY 2025 the quarterly amount each county board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

County subsidies used in nonfederal share

- Requires, under certain circumstances, that the Director pay the nonfederal share of a claim for ICF/IID services using subsidies otherwise allocated to county boards.

Medicaid rates for homemaker/personal care services

- For 12 months, requires the Medicaid rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee in the Individual Options Medicaid waiver program be 52¢ higher than the rate for services to an enrollee who is not a qualifying enrollee.

Competitive wages for direct care workforce

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

Direct care provider payment rates

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

Direct Support Professional Quarterly Retention Payments Program

- Establishes the Direct Support Professional Quarterly Retention Payments Program to be administered by the Department during FY 2024 and FY 2025.

Supported decision-making agreements

- Requires probate courts to consider supported decision making as a less restrictive alternative to guardianship for adults with developmental disabilities when evidence of a supported decision-making agreement is presented.
- Creates a presumption of competence and capacity for adults with developmental disabilities, unless deemed incompetent by a court.
- Establishes formal and informal supported decision-making options for adults with developmental disabilities and their supporters.
- Requires the Department to create a model supported decision-making agreement form.

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

ICF/IID payment rate

- Increases the ICF/IID per Medicaid day payment rate by adding to the formula a professional workforce development payment amount.

New ICF/IID Medicaid peer group for certain youth

- For purposes of ICF/IID Medicaid payments, creates a new peer group for youth in need of intensive behavior support services.

Number of ICF/IID residents in same sleeping room

- Exempts ICF/IIDs that have specified bed capacities in counties with specified populations from the limitation that no more than two residents reside in the same sleeping room.

Recoupment for ICF/IID downsizing delay

- Repeals law requiring recoupment of payments made to ICFs/IID under a program that no longer exists.

Obsolete report repeal

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

County board membership

(R.C. 5126.022)

The bill modifies the composition of each board of developmental disabilities to generally require each board to include at least one individual who is eligible to receive services provided by the board. Continuing law also requires the board to include two individuals who are eligible for services or are immediate family members of such individuals.

The bill authorizes a board of county commissioners to appoint as a member of a board of developmental disabilities an individual eligible to receive services from the board, but also permits a senior probate judge to appoint this individual. If the appointment is made by a senior probate judge, the bill specifies that the appointment satisfies the requirement for a board of county commissioners to make the appointment.

If a board of county commissioners is unable to appoint as a member of the board of developmental disabilities an individual who is eligible to receive services from the board, the bill requires the board of county commissioners to provide an explanation to the president of the county board of developmental disabilities explaining why the appointment could not be made. After providing this explanation, the bill permits a board of county commissioners to appoint another individual who meets the continuing law requirements to be a member of a board of developmental disabilities to serve as a member of the board.

Developmental Disabilities Council meetings

(R.C. 5123.35)

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

Interagency workgroup on autism

(R.C. 5123.0419)

The bill designates the entity contracted to administer programs and coordinate services for infants, preschool and school age children, and adults with autism and low incidence disabilities as the coordinating body of the interagency workgroup on autism that exists under

continuing law.⁵⁷ The workgroup is tasked with addressing the needs of individuals with autism and their families.

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

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

Innovative pilot projects

(Section 261.120)

For FY 2024 and FY 2025, the bill permits the Director to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county boards. Under the bill, a pilot project may be implemented in a manner inconsistent with the laws or rules governing the Department and county boards; however, the Director cannot authorize a pilot project to be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds. Before authorizing a pilot project, the Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, Ohio Health Care Association/Ohio Centers for Intellectual Disabilities, the Values and Faith Alliance, and ARC of Ohio.

County share of nonfederal Medicaid expenditures

(Section 261.100)

The bill requires the Director to establish a methodology to estimate in FY 2024 and FY 2025 the quarterly amount each county board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, existing law requires the board to pay this share for waiver services provided to an eligible individual. Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

County subsidies used in nonfederal share

(Section 261.130)

The bill requires the Director to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to county boards if (1) Medicaid covers the services, (2) the services are provided to an eligible Medicaid recipient who does not occupy a

⁵⁷ R.C. 3323.32 (not in Section 101.01 of the bill).

bed that was included in the Medicaid-certified capacity of another ICF/IID certified before June 1, 2003, (3) the services are provided by an ICF/IID whose Medicaid certification was initiated or supported by a county board, and (4) the provider has a valid Medicaid provider agreement when services are provided.

Medicaid rates for homemaker/personal care services

(Section 261.140)

The bill requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee of the Individual Options Medicaid waiver program be 52¢ higher than the rate for services provided to an enrollee who is not a qualifying enrollee. The higher rate is to be paid only for the first 12 months, consecutive or otherwise, that the services are provided beginning July 1, 2023, and ending July 1, 2025. An Individual Options enrollee is a qualified enrollee if all of the following apply:

- The enrollee resided in a developmental center, converted ICF/IID,⁵⁸ or public hospital immediately before enrolling in the Individual Options waiver.
- The enrollee did not receive before July 1, 2011, routine homemaker/personal care services from the Medicaid provider that is to receive the higher Medicaid rate.
- The Director has determined that the enrollee's special circumstances (including diagnosis, services needed, or length of stay) warrant paying the higher Medicaid rate.

Competitive wages for direct care workforce

(Section 261.150)

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

Direct care provider payment rates

(Section 261.75)

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

1. Personal care services;

⁵⁸ A converted ICF/IID is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing services under the Individual Options waiver.

2. Adult day services;
3. ICF/IID services.

Direct Support Professional Quarterly Retention Payments Program

(Section 261.160)

The bill establishes the Direct Support Professional Quarterly Retention Payments Program to be administered by the Department during FY 2024 and FY 2025. The program will begin July 1, 2023, and operate until June 30, 2025. The Director of Developmental Disabilities must do all of the following in administering the program:

- Establish criteria for home and community-based providers to participate in the program;
- Implement an opt-in system where providers can elect to participate in the program;
- Develop provider requirements as prerequisites for program payments;
- Establish quarterly provider payments based on the percentage of the provider's reimbursed claims during the preceding quarter; and
- Collect program data.

The Director must consult with county boards of developmental disabilities, the Ohio Association of County Boards of Developmental Disabilities, and provider organizations to review the effectiveness of the program and make recommendations on its continuation.

Supported decision-making agreements

(R.C. 5123.68 through 5123.685)

Regarding current guardianship law, the bill establishes formal and informal supported decision-making agreements as a less-restrictive alternative to guardianship.⁵⁹ The bill creates a presumption that an adult with a developmental disability has the capacity to make life decisions and is competent to handle their own affairs, including entering into a supported decision-making agreement. Supported decision-making agreements, whether formal or informal, may be presented to a probate court as a less restrictive alternative to guardianship and must be considered by the court.

The bill provides options for both formal and informal supported decision-making agreements between an adult with a developmental disability – known as the principal – and one or more supporters of the adult's choice. Informal agreements exist when the principal relies on natural supports in their daily life, while a formal agreement must be written and signed voluntarily by the principal and witnessed by either a notary or two adult witnesses. The

⁵⁹ R.C. 2111.02(C)(5).

principal may revoke the agreement at any time by informing the supporter of the revocation, which must be presented in writing in the case of a formal agreement. Depending on the scope of the agreement, a supporter may assist the principal with matters, including:

- Making informed decisions;
- Understanding information and the consequences of decisions;
- Monitoring information about the principal’s affairs;
- Understanding the principal’s personal values, beliefs, and preferences and using that information to advocate for and implement the principal’s decisions;
- Accompanying the principal to meetings with third parties, and participating in discussions and communicating the principal’s decisions to those parties.

The bill imposes a fiduciary duty on the supporter and prohibits supporters from acting in contradiction to the expressed wishes of the principal. It also requires supporters to disclose any conflict of interest the supporter may have in a decision made by the principal and refrain from assisting the principal in that decision. Further, the bill provides that breach of fiduciary duty or intentional failure to disclose a conflict results in liability for all reasonable damages.

The Department must develop a model supported decision-making agreement that may be used by an adult with developmental disabilities and one or more supporters.

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

ICF/IID payment rate

(R.C. 5124.15)

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

New ICF/IID Medicaid peer group for certain youth

(R.C. 5124.01)

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

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

- Agreed to a reimbursement methodology established under existing rules.

Number of ICF/IID residents in same sleeping room

(R.C. 5124.70)

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

- The ICF/IID has a Medicaid-certified bed capacity between 60 and 70 beds and is located in a county with a population between 40,500 and 41,000;
- The ICF/IID has a Medicaid-certified bed capacity between 90 and 100 beds and is located in a county with a population between 242,000 and 243,000;
- The ICF/IID has a Medicaid-certified bed capacity between 55 and 60 beds and is located in a county with a population between 400,000 and 500,000;
- The ICF/IID has a Medicaid-certified bed capacity between 90 and 100 beds and is located in a county with a population between 1,300,000 and 1,400,000;
- The ICF/IID has a Medicaid-certified bed capacity between 120 and 130 beds and is located in a county with a population between 160,000 and 162,000.

Recoupment for ICF/IID downsizing delay

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

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

Obsolete report repeal

(Repealed R.C. 5123.195)

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