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## **DEPARTMENT OF DEVELOPMENTAL DISABILITIES**

### **Supported decision-making plans**

- Establishes a presumption that all adults with developmental disabilities are capable of making their own decisions and are competent to handle their own affairs unless otherwise determined by a court.
- Provides for the establishment of supported decision-making plans between an adult with developmental disabilities (the principal) and one or more supporters.
- Clarifies that evidence of a supported decision-making plan is an alternative to guardianship.
- Imposes duties on the Department of Developmental Disabilities regarding supported decision-making plans.

### **Supported living**

#### **Guardianship and supported living**

- Prohibits the guardian of an individual with developmental disabilities, or a supported living certificate holder owned or operated by the guardian, from providing supported living to that individual unless related by blood, adoption, or marriage.

#### **Proof of residency for applicant for employment or supported living certificate**

- Regarding the requirement that an applicant for employment with the Department or a county board or an applicant for a supported living certificate provide the Department with proof of residency, eliminates the requirement that the applicant's statement regarding residency be notarized.

#### **Termination of supported living certificate**

- Requires, rather than permits, the Director of Developmental Disabilities to terminate a supported living certificate if the certificate holder does not bill the Department for supported living services for 24 consecutive months.
- Specifies that the Department's action to terminate a supported living certificate is accomplished by sending a notice to the certificate holder by regular mail explaining its action.

### **Health-related activities**

#### **Developmental disabilities personnel – medication administration and other health-related activities**

- Specifically authorizes developmental disabilities personnel to administer prescribed epinephrine intranasally to treat anaphylaxis, without nursing delegation and without a medication administration certificate.

- Authorizes developmental disabilities personnel, with nursing delegation, to administer to recipients of early intervention, preschool, and school-age services prescribed medications for the treatment of metabolic glycemc disorders through subcutaneous injections.
- Replaces statutory references to **vagal nerve stimulators** with references to **vagus nerve stimulators**.
- Requires developmental disabilities personnel to successfully complete training as a condition of administering topical over-the-counter medications as permitted under continuing law.

### **Family member authority to administer medications and perform health-related activities**

- Authorizes certain family members of an individual with a developmental disability to administer medications to, and perform health-related tasks for, the individual without holding a medication administration certificate and without nursing delegation.

### **In-home care workers and health care tasks**

- Establishes an additional condition on the authority of a family member to authorize an unlicensed in-home care worker to perform health care tasks for an individual with a developmental disability –that the family member is not acting as a paid provider for the individual.
- Eliminates the requirements that the unlicensed in-home worker provide care through employment or another arrangement with the family member and is not otherwise employed to provide services to individuals with developmental disabilities.
- Requires an unlicensed in-home worker to accept the written document in which the family member authorizes the worker to perform health-related tasks before the worker may perform them.
- Requires a county board of developmental disabilities to authorize appropriately credentialed providers to perform health care tasks for an individual with a developmental disability, rather than an in-home worker, when it determines that the individual’s family member acted inappropriately.

## **Intermediate care facilities for individuals with developmental disabilities (ICFs/IID)**

### **ICF/IID professional workforce development payment**

- For FY 2026, specifies that the professional workforce development payment component of an ICF/IID’s per Medicaid day payment rate equals 10.405% of an ICF/IID’s desk-reviewed, actual, allowable, per Medicaid day direct care costs from the applicable cost report year.

## **Nonfederal share of Medicaid expenditures for state-operated ICF/IID services**

- Requires the Director to annually establish a methodology for determining the amount to be collected from a county board that is required to pay the nonfederal share of Medicaid expenditures for an individual committed to a state-operated ICF/IID.
- Eliminates a provision of law that exempts a county board from paying the nonfederal share of Medicaid expenditures, if the county board arranges for the provision of alternative services for an individual within 180 days of the individual being committed to the ICF/IID.
- Clarifies that the Director may grant a waiver to a county board for either a portion or full amount of the estimated nonfederal share that a county board would otherwise be responsible for.

## **County share of nonfederal Medicaid expenditures**

- Requires the Director to establish a methodology to estimate in FY 2026 and FY 2027 the quarterly amount each county board of developmental disabilities is to pay of the nonfederal share of its Medicaid expenditures.

## **Withholding of funds owed to the Department**

- Permits the Director to withhold funds owed to a county board by the Department if the county board failed to pay any amount owed to the Department by a due date established by the Department.

## **Innovative pilot projects**

- Permits the Director to authorize, in FY 2026 and FY 2027, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and 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.

## **Certified mail requirements**

- Specifies that if the Director issues an adjudication order against an individual or entity seeking or holding a supported living certificate, the Director must provide written notice of the order, rather than notice by certified mail.
- Specifies that following the completion of a written report and recommendation following proceedings related to denying or revoking a residential facility's license, the report and recommendations must be provided to the licensee, rather than being provided by certified mail.

## **Community developmental disabilities trust fund**

- Abolishes the community developmental disabilities trust fund.

## **Supported decision-making plan**

(R.C. 5123.68, 5123.681, 5123.682, 5123.683, 5123.684, 5123.685, and 5123.686)

### **Presumption of capacity and competency**

The bill specifies that, based on the principle that all adults with developmental disabilities should be afforded all of the rights established in the Revised Code for individuals with developmental disabilities, all adults with developmental disabilities are presumed capable of making decisions about their lives and activities of daily living and are competent to handle their own affairs, unless otherwise determined by a court.

The bill clarifies that the fact an adult has a developmental disability does not, by itself, void the presumption of capacity and competency.

### **Supported decision-making plans**

The bill defines a supported decision-making plan as a plan between an adult with a developmental disability (known as the principal) and one or more supporters chosen by the adult. Supported decision-making is the process of supporting and accommodating an adult with a developmental disability who is making, communicating, or implementing the adult's own life decisions without impeding the adult's self-determination. A supported decision-making plan may be created at the request and with the active participation of the principal. The plan may be formal, recorded in writing, or informal, created when the principal relies on natural supports or chosen supporters to assist with decisions in the principal's daily life.

A written supported decision-making plan must be signed and acknowledged by the principal voluntarily, without coercion or undue influence. The principal's signature must be witnessed by either a notary public or two adult witnesses who are not parties to the plan. The witnesses must attest that the plan was signed of the principal's own free will.

The bill prohibits an adult with a developmental disability from being required to enter into a supported decision-making plan. Further, the manner in which an adult with a developmental disability communicates with others is not grounds to find the adult is not capable of managing the adult's affairs or of entering into a supported decision-making plan.

### **Role of the supporter**

Subject to the principal's choice to act independently or limit a supporter's role, a supporter may assist the principal with all of the following activities:

- Understanding information, options, responsibilities, and consequences associated with decision making;
- Communicating decisions to third parties;

- Obtaining and understanding information relevant to life decisions, including medical, psychological, financial, employment, Medicaid, educational, or other records;
- Monitoring information about the principal's affairs and services, including future services;
- Understanding the principal's personal values, beliefs, and preferences, including the principal's cultural, ethnic, or religious heritage and using this information to advocate for the principal's own personal wishes and decisions;
- Accompanying the principal to and participating in discussions with third parties.

The supporter may take any actions permitted by the principal in the supported decision-making plan. The supporter must help the principal access, collect, or obtain any information relevant to a decision authorized under the supported decision-making plan; however, the principal is not precluded from seeking personal information without the supporter's assistance. If the supporter assists the principal in accessing personal information protected by federal law, the supporter must keep that information confidential. The bill clarifies that it does not prohibit a third party from requiring the principal to execute a release of information or other document to confirm the supported decision-making plan's continued validity, or the supporter's continued authorization under the plan.

### **Fiduciary duty**

The supporter owes the principal a fiduciary duty to act in accordance with the plan and must not act in contradiction to the supporter's expressed wishes.

In the event a supporter has a conflict of interest or potential conflict of interest regarding a decision made by the principal, the supporter must:

- Fully disclose the conflict of interest to the principal and any other members of the principal's support team;
- Refrain from advising or assisting the principal with the decision.

If a supporter intentionally fails to disclose a conflict of interest, or otherwise breaches the fiduciary duty to the principal, the supporter is liable for all reasonable damages incurred as a result.

### **Immunity**

A person who acts in good faith while relying on a supported decision-making plan is not liable for damages in a civil action and is not subject to criminal prosecution or professional discipline in the absence of actual knowledge that either (1) the plan has been modified or ended, or (2) the principal has not authorized the supporter to engage in the specific action taken.

### **Modifying or ending a supported decision-making plan**

A principal may modify or end a formal or informal supported decision-making plan at any time by notifying the supporter. The principal may modify or end a supported decision-making plan in writing and provide a copy of the written notice to the supporter.

## **Alternative to guardianship**

Supported decision-making plans, whether formal or informal, may be presented to a probate court as a less restrictive alternative to guardianship under existing law that requires a probate court to consider less restrictive alternatives when guardianship has been requested.

Execution of a supported decision-making plan is not evidence of incapacity and cannot be considered as such. The principal retains the ability to act independently of the plan and supporters, including when seeking personal information without assistance. The principal's choice to do so is not evidence of incapacity and cannot be used as such.

## **Department of Developmental Disabilities duties**

The bill requires the Department to create a model written supported decision-making plan that can be used by a principal and one or more supporters.

Additionally, the Department must create informational materials about formal and informal supported decision-making plans intended for use by (1) adults with developmental disabilities, (2) their family members, (3) professionals likely to encounter supported decision-making plans, including social, medical, and financial service professionals, and (4) the general public.

## **Supported living**

### **Guardianship and supported living**

(R.C. 5123.16 and 5123.1613)

The bill prohibits a guardian of an individual with a developmental disability from providing supported living to that individual either as an independent contractor or as an employee or contractor of a supported living certificate holder unless the guardian and the individual have a relationship by blood, adoption, or marriage. Supported living includes services provided to a person with a developmental disability that increase the person's quality of life such as providing support to live in the person's chosen residence, encouraging community participation, and promoting the person's rights and autonomy.

The bill also applies that prohibition to a supported living certificate holder owned or operated by the guardian, unless the guardian is related by blood, adoption, or marriage.

### **Proof of residency for applicant for employment or supported living certificate**

(R.C. 5123.081 and 5123.169)

The bill eliminates a requirement that an applicant for employment with the Department or a county board of developmental disabilities provide the Department or county board with a notarized statement asserting that the applicant has been a resident of Ohio for the five-year period immediately preceding the date on which a criminal records check is requested, and instead requires only that an applicant provide such a statement to the Department or county board. The bill eliminates an identical requirement for applicants seeking a supported living certificate issued by the Department.

## Termination of supported living certificate

- Requires, rather than permits, the Director of Developmental Disabilities to terminate a supported living certificate if the certificate holder does not bill the Department for supported living services for 24 consecutive months.
- Specifies that the Department's action to terminate a supported living certificate is accomplished by sending a notice to the certificate holder by regular mail explaining its action.

## Health-related activities

### Developmental disabilities personnel – medication administration and other health-related activities

(R.C. 5123.42)

The bill makes several changes to the law governing the administration of medications and the performance of health-related activities by developmental disabilities personnel, defined by current law as employees and contract workers who provide specialized services to individuals with disabilities.

The bill specifically authorizes developmental disabilities personnel to administer prescribed epinephrine intranasally for the treatment of anaphylaxis. Personnel may do so without both of the following: (1) nursing delegation and (2) a medication administration certificate issued by the Department. Note that the bill maintains existing law provisions authorizing personnel to administer epinephrine by autoinjector, also without nursing delegation and a certificate. Nursing delegation is when a registered nurse or licensed practical nurse acting at the direction of a registered nurse transfers the performance of a particular nursing activity or task to another person who is not otherwise authorized to perform the activity or task.

The bill further permits developmental disabilities personnel, with nursing delegation, to administer to recipients of early intervention, preschool, and school-age services prescribed medications for the treatment of metabolic glyceic disorders through subcutaneous injections.

The bill replaces statutory references to **vagal nerve stimulators** with references to **vagus nerve stimulators**. It also requires developmental disabilities personnel to successfully complete training courses as well as training specific to the individuals to whom the medication will be administered as a condition of administering topical over-the-counter medications as permitted under continuing law.

### Family member authority to administer medications and perform health-related activities

(R.C. 5123.41 and 5121.423 (primary))

The bill specifically authorizes a family member of an individual with a developmental disability to administer medications to, and perform health-related tasks for, the individual. In exercising this authority, the family member is not required to hold a medication administration certificate issued by the Department and may administer the medications without nursing delegation. Note that current law defines family law member to mean a parent, sibling, spouse,

son, daughter, grandparent, aunt, uncle, cousin, or guardian of an individual with a developmental disability, if the individual lives with the family member and depends on the family member's supports.

### **In-home care workers and health care tasks**

(R.C. 5123.41 and 5123.47 (primary))

The bill revises the law governing the authority of a family member of an individual with a developmental disability to permit an unlicensed in-home worker to perform health care tasks for the individual. First, it establishes an additional condition on a family member's authority: that the family member is not acting as a paid provider for the individual. It also eliminates the existing law condition that the worker provide care through employment or another arrangement with the family member and is not otherwise employed to provide services to individuals with developmental disabilities.

The bill requires an unlicensed in-home worker to accept the written document in which the family member authorizes the worker to perform health-related tasks before the worker may perform those tasks.

The bill further requires a county board of developmental disabilities to authorize appropriately licensed or certified providers to perform health care tasks for an individual with developmental disabilities, rather than an in-home worker, when the county board determines that the individual's family member, when authorizing the in-home worker's care, acted in a manner inappropriate for the individual's health and safety.

The bill also makes changes to current law definitions. First, it specifies that an **unlicensed in-home care worker** is self-employed and does not employ, either directly or through contract, another person to provide in-home care. In the **health care task** definition, it removes its reference to a task delegated by a health care professional and eliminates references to the specific tasks, other than medication administration, that are included in the definition.

### **Intermediate care facilities for individuals with developmental disabilities (ICFs/IID)**

#### **ICF/IID professional workforce development payment**

(R.C. 5124.15; Section 261.140)

In 2023, H.B. 33 of the 135<sup>th</sup> General Assembly established a professional workforce development payment to be included in the Medicaid day payment rate that is provided to each ICF/IID. For FY 2026, the bill specifies that the professional workforce development payment component of the ICF/IID per Medicaid day payment rate is 10.405% (decreased from 13.55% 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.



## **Nonfederal share of Medicaid expenditures for state-operated ICF/IID services**

(R.C. 5123.38)

The bill requires the Director to annually establish a methodology for determining the amount to be collected from a county board of developmental disabilities that is required under continuing law to pay the estimated nonfederal share of Medicaid expenditures for an individual committed to a state-operated ICF/IID. The bill eliminates a provision of law that exempts a county board from responsibility for the estimated nonfederal share of Medicaid expenditures if the county board arranges for the provision of alternative services for the individual within 180 days of the individual being committed to the state-operated ICF/IID. Under continuing law, a county board is not responsible for the nonfederal share of Medicaid expenditures if the Director grants the county board a waiver in an individual's case. The bill clarifies that the waiver may apply to either the full amount or a portion of the estimated nonfederal share of Medicaid expenditures for an individual.

## **County share of nonfederal Medicaid expenditures**

(Section 261.100)

The bill requires the director to establish a methodology to estimate in FY 2026 and FY 2027 the quarterly amount each county board of developmental disabilities is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, continuing 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.

## **Withholding of funds owed to the Department**

(Section 261.110)

If a county board fails to fully pay any amount owed to the Department by a due date established by the Department, the bill permits the Director to withhold the amount that the county board failed to pay from any amounts due to the county board from the Department.

## **Innovative pilot projects**

(Section 261.120)

For FY 2026 and FY 2027, 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.

## Medicaid rates for homemaker/personal care services

(Section 261.130)

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, 2025, and ending July 1, 2027. An Individual Options enrollee is a qualified enrollee if all of the following apply:

- The enrollee resided in a developmental center, converted ICF/IID,<sup>37</sup> 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.

## Certified mail requirements

(R.C. 5123.166 and 5123.19)

The bill specifies that if the Director issues an adjudication order against an individual or entity seeking or holding a supported living certificate as permitted under continuing law, the Director must provide written notice of the order not later than 24 hours after issuing the order. Under current law, the Director must provide notice of the order by certified mail, return receipt requested, within the specified timeframe.

The bill further specifies that following the completion of a written report and recommendation issued by a hearing examiner following proceedings related to denying or revoking a residential facility's license, the report and recommendations must be provided to the license and the licensee's attorney not later than five days after the report is filed. In doing so, it removes the requirement that a hearing examiner's report and recommendations must be sent to a licensee and the licensee's attorney by certified mail within the specified timeframe.

## Community developmental disabilities trust fund

(R.C. 5123.352, repealed)

The bill abolishes the community developmental disabilities trust fund. Under current law, moneys in the fund are used to assist persons with developmental disabilities to remain in the community and avoid institutionalization.<sup>38</sup>

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<sup>37</sup> 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.

<sup>38</sup> See R.C. 5123.0418, not in the bill.