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A B I L L

To amend sections 4731.053, 5123.19, 5123.50, 1
5123.611, 5126.30, 5126.31, 5126.312, 5126.354, 2
5126.355, and 5126.357; to amend, for the purpose 3
of adopting new section numbers as indicated in 4
parentheses, sections 5126.312 (5126.34), 5126.354 5
(5123.422), 5126.355 (5123.651), and 5126.357 6
(5123.47); to enact sections 4723.071, 5123.195, 7
5123.41, 5123.42, 5123.421, 5123.43, 5123.44, 8
5123.441, 5123.45, 5123.451, 5123.46, 5123.65, and 9
5126.36; and to repeal sections 4723.61, 4723.62, 10
5123.193, 5126.35, 5126.351, 5126.352, 5126.353, 11
and 5126.356 of the Revised Code to revise the laws 12
governing the licensure of residential facilities 13
for individuals with mental retardation and 14
developmental disabilities, to revise the laws 15

governing the authority of MR/DD personnel to 16
perform specified health activities, to specify 17
that individuals with mental retardation and 18
developmental disabilities have the right to 19
self-administer medication, to require MR/DD boards 20
to provide training for their employees and others 21
authorized to implement adult protective services, 22
and to create the MR/DD Consumer Information 23
Advisory Council. 24

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4731.053, 5123.19, 5123.50, 25
5123.611, 5126.30, 5126.31, 5126.312, 5126.354, 5126.355, and 26
5126.357 be amended; sections 5126.312 (5126.34), 5126.354 27
(5123.422), 5126.355 (5123.651), and 5126.357 (5123.47) be amended 28
for the purpose of adopting new section numbers as indicated in 29
parentheses; and sections 4723.071, 5123.195, 5123.41, 5123.42, 30
5123.421, 5123.43, 5123.44, 5123.441, 5123.45, 5123.451, 5123.46, 31
5123.65, and 5126.36 of the Revised Code be enacted to read as 32
follows: 33

Sec. 4723.071. (A) As used in this section, "health-related 34
activities," "MR/DD personnel," "prescribed medication," and "tube 35
feeding" have the same meanings as in section 5123.41 of the 36
Revised Code. 37

(B) The board of nursing shall adopt rules as it considers 38
necessary to govern nursing delegation as it applies to MR/DD 39
personnel who administer prescribed medications, perform 40
health-related activities, and perform tube feedings pursuant to 41
the authority granted under section 5123.42 of the Revised Code. 42
The board shall not establish in the rules any requirement that is 43

inconsistent with the authority of MR/DD personnel granted under
that section. The rules shall be adopted in accordance with
Chapter 119. of the Revised Code.

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(C) The board of nursing may accept complaints from any
person or government entity regarding the performance or
qualifications of MR/DD personnel who administer prescribed
medications, perform health-related activities, and perform tube
feedings pursuant to the authority granted under section 5123.42
of the Revised Code. The board shall refer all complaints received
to the department of mental retardation and developmental
disabilities. The board may participate in an investigation of a
complaint being conducted by the department under section 5123.421
of the Revised Code.

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Sec. 4731.053. (A) As used in this section, "physician" means
an individual authorized by this chapter to practice medicine and
surgery, osteopathic medicine and surgery, or podiatric medicine
and surgery.

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(B) The state medical board shall adopt rules that establish
standards to be met and procedures to be followed by a physician
with respect to the physician's delegation of the performance of a
medical task to a person who is not licensed or otherwise
specifically authorized by the Revised Code to perform the task.
The rules shall be adopted in accordance with Chapter 119. of the
Revised Code.

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(C) To the extent that delegation applies to the
administration of drugs, the rules adopted under this section
shall provide for all of the following:

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(1) On-site supervision when the delegation occurs in an
institution or other facility that is used primarily for the
purpose of providing health care, unless the board establishes a
specific exception to the on-site supervision requirement with

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respect to routine administration of a topical drug, such as the	75
use of a medicated shampoo;	76
(2) Evaluation of whether delegation is appropriate according	77
to the acuity of the patient involved;	78
(3) Training and competency requirements that must be met by	79
the person administering the drugs;	80
(4) Other standards and procedures the board considers	81
relevant.	82
(D) The board shall not adopt rules that do any of the	83
following:	84
(1) Authorize a physician to transfer the physician's	85
responsibility for supervising a person who is performing a	86
delegated medical task to a health professional other than another	87
physician;	88
(2) Authorize an individual to whom a medical task is	89
delegated to delegate the performance of that task to another	90
individual;	91
(3) Except as provided in divisions (D)(4) to (8) (7) of this	92
section, authorize a physician to delegate the administration of	93
anesthesia, controlled substances, drugs administered	94
intravenously, or any other drug or category of drug the board	95
considers to be inappropriate for delegation;	96
(4) Prevent an individual from engaging in an activity	97
performed for a handicapped child as a service needed to meet the	98
educational needs of the child, as identified in the	99
individualized education program developed for the child under	100
Chapter 3323. of the Revised Code;	101
(5) Prevent delegation from occurring pursuant to section	102
5126.356 of the Revised Code within the programs and services	103
offered by a county board of mental retardation and developmental	104

disabilities;	105
(6) Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;	106 107 108
(7) <u>(6)</u> Conflict with any rule adopted pursuant to the Revised Code that is in effect on the effective date of this section, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;	109 110 111 112
(8) <u>(7)</u> Prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist;	113 114
(9) <u>(8)</u> Authorize a physician assistant, anesthesiologist assistant, or any other professional regulated by the board to delegate tasks pursuant to this section.	115 116 117
Sec. 5123.19. (A) As used in this section and in sections 5123.191, 5123.194, and 5123.20 of the Revised Code:	118 119
(1) "Residential facility" means a home or facility in which a mentally retarded or developmentally disabled person resides, except the home of a relative or legal guardian in which a mentally retarded or developmentally disabled person resides, a respite care home certified under section 5126.05 of the Revised Code, a county home or district home operated pursuant to Chapter 5155. of the Revised Code, or a dwelling in which the only mentally retarded or developmentally disabled residents are in an independent living arrangement or are being provided supported living.	120 121 122 123 124 125 126 127 128 129
(2) "Political subdivision" means a municipal corporation, county, or township.	130 131
(3) "Independent living arrangement" means an arrangement in which a mentally retarded or developmentally disabled person resides in an individualized setting chosen by the person or the	132 133 134

person's guardian, which is not dedicated principally to the 135
provision of residential services for mentally retarded or 136
developmentally disabled persons, and for which no financial 137
support is received for rendering such service from any 138
governmental agency by a provider of residential services. 139

(4) "Supported living" has the same meaning as in section 140
5126.01 of the Revised Code. 141

(5) "Licensee" means the person or government agency that has 142
applied for a license to operate a residential facility and to 143
which the license was issued under this section. 144

(B) Every person or government agency desiring to operate a 145
residential facility shall apply for licensure of the facility to 146
the director of mental retardation and developmental disabilities 147
unless the residential facility is subject to section 3721.02, 148
3722.04, 5103.03, or 5119.20 of the Revised Code. Notwithstanding 149
Chapter 3721. of the Revised Code, a nursing home that is 150
certified as an intermediate care facility for the mentally 151
retarded under Title XIX of the "Social Security Act," 49 79 Stat. 152
620 286 (1935 1965), 42 U.S.C.A. 301 1396, as amended, shall apply 153
for licensure of the portion of the home that is certified as an 154
intermediate care facility for the mentally retarded. 155

(C) The director of mental retardation and developmental 156
disabilities shall license ~~and inspect~~ the operation of 157
residential facilities. ~~The director may deny or revoke such~~ 158
~~licenses.~~ An 159

~~Except as provided in divisions (G) and (O) of this section,~~ 160
~~a~~ initial license is valid until it is shall be issued for a 161
period that does not exceed one year, unless the director denies 162
the license under division (D) of this section. A license shall be 163
renewed for a period that does not exceed three years, unless the 164
director refuses to renew the license under division (D) of this 165

section. The director, when issuing or renewing a license, shall 166
specify the period for which the license is being issued or 167
renewed. A license remains valid for the length of the licensing 168
period specified by the director, unless the license is 169
terminated, revoked, or voluntarily surrendered. Appeals 170

(D) If it is determined that an applicant or licensee is not 171
in compliance with a provision of this chapter that applies to 172
residential facilities or the rules adopted under such a 173
provision, the director may deny issuance of a license, refuse to 174
renew a license, terminate a license, revoke a license, issue an 175
order for the suspension of admissions to a facility, issue an 176
order for the placement of a monitor at a facility, issue an order 177
for the immediate removal of residents, or take any other action 178
the director considers necessary consistent with the director's 179
authority under this chapter regarding residential facilities. In 180
the director's selection and administration of the sanction to be 181
imposed, all of the following apply: 182

(1) The director may deny, refuse to renew, or revoke a 183
license, if the director determines that the applicant or licensee 184
has demonstrated a pattern of serious noncompliance or that a 185
violation creates a substantial risk to the health and safety of 186
residents of a residential facility. 187

(2) The director may terminate a license if more than twelve 188
consecutive months have elapsed since the residential facility was 189
last occupied by a resident or a notice required by division (J) 190
of this section is not given. 191

(3) The director may issue an order for the suspension of 192
admissions to a facility for any violation that may result in 193
sanctions under division (D)(1) of this section and for any other 194
violation specified in rules adopted under division (G)(2) of this 195
section. If the suspension of admissions is imposed for a 196
violation that may result in sanctions under division (D)(1) of 197

this section, the director may impose the suspension before
providing an opportunity for an adjudication under Chapter 119. of
the Revised Code. The director shall lift an order for the
suspension of admissions when the director determines that the
violation that formed the basis for the order has been corrected.

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(4) The director may order the placement of a monitor at a
residential facility for any violation specified in rules adopted
under division (G)(2) of this section. The director shall lift the
order when the director determines that the violation that formed
the basis for the order has been corrected.

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(5) If the director determines that two or more residential
facilities owned or operated by the same person or government
entity are not being operated in compliance with a provision of
this chapter that applies to residential facilities or the rules
adopted under such a provision, and the director's findings are
based on the same or a substantially similar action, practice,
circumstance, or incident that creates a substantial risk to the
health and safety of the residents, the director shall conduct a
survey as soon as practicable at each residential facility owned
or operated by that person or government entity. The director may
take any action authorized by this section with respect to any
facility found to be operating in violation of a provision of this
chapter that applies to residential facilities or the rules
adopted under such a provision.

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(6) When the director initiates license revocation
proceedings, no opportunity for submitting a plan of correction
shall be given. The director shall notify the licensee by letter
of the initiation of such proceedings. The letter shall list the
deficiencies of the residential facility and inform the licensee
that no plan of correction will be accepted. The director shall
also notify each affected resident, the resident's guardian if the
resident is an adult for whom a guardian has been appointed, the

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resident's parent or guardian if the resident is a minor, and the 230
county board of mental retardation and developmental disabilities. 231

(7) Pursuant to rules which shall be adopted in accordance 232
with Chapter 119. of the Revised Code, the director may order the 233
immediate removal of residents from a residential facility 234
whenever conditions at the facility present an immediate danger of 235
physical or psychological harm to the residents. 236

(8) In determining whether a residential facility is being 237
operated in compliance with a provision of this chapter that 238
applies to residential facilities or the rules adopted under such 239
a provision, or whether conditions at a residential facility 240
present an immediate danger of physical or psychological harm to 241
the residents, the director may rely on information obtained by a 242
county board of mental retardation and developmental disabilities 243
or other governmental agencies. 244

(9) In proceedings initiated to deny, refuse to renew, or 245
revoke licenses, the director may deny, refuse to renew, or revoke 246
a license regardless of whether some or all of the deficiencies 247
that prompted the proceedings have been corrected at the time of 248
the hearing. 249

(E) The director shall establish a program under which public 250
notification may be made when the director has initiated license 251
revocation proceedings or has issued an order for the suspension 252
of admissions, placement of a monitor, or removal of residents. 253
The director shall adopt rules in accordance with Chapter 119. of 254
the Revised Code to implement this division. The rules shall 255
establish the procedures by which the public notification will be 256
made and specify the circumstances for which the notification must 257
be made. The rules shall require that public notification be made 258
if the director has taken action against the facility in the 259
eighteen-month period immediately preceding the director's latest 260
action against the facility and the latest action is being taken 261

for the same or a substantially similar violation of a provision 262
of this chapter that applies to residential facilities or the 263
rules adopted under such a provision. The rules shall specify a 264
method for removing or amending the public notification if the 265
director's action is found to have been unjustified or the 266
violation at the residential facility has been corrected. 267

(F)(1) Except as provided in division (F)(2) of this section, 269
appeals from proceedings initiated to deny applications for 270
licenses or to revoke licenses impose a sanction under division 271
(D) of this section shall be conducted in accordance with Chapter 272
119. of the Revised Code. 273

(2) Appeals from proceedings initiated to order the 274
suspension of admissions to a facility shall be conducted in 275
accordance with Chapter 119. of the Revised Code, unless the order 276
was issued before providing an opportunity for an adjudication, in 277
which case all of the following apply: 278

(a) The licensee may request a hearing not later than ten 279
days after receiving the notice specified in section 119.07 of the 280
Revised Code. 281

(b) If a timely request for a hearing is made, the hearing 282
shall commence not later than thirty days after the department 283
receives the request. 284

(c) After commencing, the hearing shall continue 285
uninterrupted, except for Saturdays, Sundays, and legal holidays, 286
unless other interruptions are agreed to by the licensee and the 287
director. 288

(d) If the hearing is conducted by a hearing examiner, the 289
hearing examiner shall file a report and recommendations not later 290
than ten days after the close of the hearing. 291

(e) Not later than five days after the hearing examiner files 292

the report and recommendations, the licensee may file objections 293
to the report and recommendations. 294

(f) Not later than fifteen days after the hearing examiner 295
files the report and recommendations, the director shall issue an 296
order approving, modifying, or disapproving the report and 297
recommendations. 298

(g) Notwithstanding the pendency of the hearing, the director 299
shall lift the order for the suspension of admissions when the 300
director determines that the violation that formed the basis for 301
the order has been corrected. 302

(G) In accordance with Chapter 119. of the Revised Code, the 303
director shall adopt and may amend and rescind rules for licensing 304
and regulating the operation of residential facilities. The rules 305
shall establish and specify the following: 306

(1) Procedures and criteria for issuing, and renewing 307
licenses, including procedures and criteria for determining the 308
length of the licensing period that the director must specify for 309
each license when it is issued or renewed; 310

(2) Procedures and criteria for denying, refusing to renew, 311
terminating, and revoking licenses and for ordering the suspension 312
of admissions to a facility, placement of a monitor at a facility, 313
and the immediate removal of residents from a facility; 314

~~(2)~~(3) Fees for issuing and renewing licenses; 315

~~(3)~~(4) Procedures for the inspection of surveying residential 316
facilities; 317

~~(4)~~(5) Requirements for the training of residential facility 318
personnel; 319

~~(5)~~(6) Classifications for the various types of residential 320
facilities; 321

~~(6)~~(7) Certification procedures for licensees and management 322

contractors that the director determines are necessary to ensure 323
that they have the skills and qualifications to properly operate 324
or manage residential facilities; 325

~~(7)~~(8) The maximum number of persons who may be served in a 326
particular type of residential facility; 327

~~(8)~~(9) Uniform procedures for admission of persons to and 328
transfers and discharges of persons from residential facilities; 329

~~(9)~~(10) Other standards for the operation of residential 330
facilities and the services provided at residential facilities; 331

~~(10)~~(11) Procedures for waiving any provision of any rule 332
adopted under this section. 333

~~(D)~~(H) Before issuing a license, the director of the 334
department or the director's designee shall conduct ~~an inspection~~ 335
a survey of the residential facility for which application is 336
made. The director or the director's designee shall conduct ~~an~~ 337
~~inspection~~ a survey of each licensed residential facility at least 338
once ~~each year~~ during the period the license is valid and may 339
conduct additional inspections as needed. ~~An inspection~~ A survey 340
includes but is not limited to an on-site examination and 341
evaluation of the residential facility, its personnel, and the 342
services provided there. 343

In conducting ~~inspections~~ surveys, the director or the 344
director's designee shall be given access to the residential 345
facility; all records, accounts, and any other documents related 346
to the operation of the facility; the licensee; the residents of 347
the facility; and all persons acting on behalf of, under the 348
control of, or in connection with the licensee. The licensee and 349
all persons on behalf of, under the control of, or in connection 350
with the licensee shall cooperate with the director or the 351
director's designee in conducting the ~~inspection~~ survey. 352

Following each ~~inspection~~ survey, unless the director 353

initiates a license revocation proceeding, the director or the 354
director's designee shall provide the licensee with a report 355
listing any deficiencies, specifying a timetable within which the 356
licensee shall submit a plan of correction describing how the 357
deficiencies will be corrected, and, when appropriate, specifying 358
a timetable within which the licensee must correct the 359
deficiencies. After a plan of correction is submitted, the 360
director or the director's designee shall approve or disapprove 361
the plan. A copy of the report and any approved plan of correction 362
shall be provided to any person who requests it. 363

~~If it is determined that a residential facility is not being 364
operated in compliance with this chapter or the rules adopted 365
under it, the director may take such steps as are necessary, 366
including, but not limited to, suspension of admissions to the 367
residential facility, placement of a monitor at the residential 368
facility, and the initiation of license revocation proceedings. 369~~

~~When the director initiates license revocation proceedings, 370
no opportunity for submitting a plan of correction shall be given. 371
The director shall notify the licensee by letter of the initiation 372
of such proceedings. The letter shall list the deficiencies of the 373
residential facility and inform the licensee that no plan of 374
correction will be accepted. The director shall also notify each 375
affected resident, the resident's guardian if the resident is an 376
adult for whom a guardian has been appointed, the resident's 377
parent or guardian if the resident is a minor, and the county 378
board of mental retardation and developmental disabilities. 379~~

~~Pursuant to rules which shall be adopted in accordance with 380
Chapter 119. of the Revised Code, the director may order the 381
immediate removal of residents from a residential facility 382
whenever conditions at the facility present an immediate danger of 383
physical or psychological harm to the residents. 384~~

~~In determining whether a residential facility is being 385~~

~~operated in compliance with this chapter or the rules adopted
under it, or whether conditions at a residential facility present
an immediate danger of physical or psychological harm to the
residents, the director may rely on information obtained by a
county board of mental retardation and developmental disabilities
or other governmental agencies in the course of investigating
major unusual incidents. The director shall adopt rules in
accordance with Chapter 119. of the Revised Code that specify what
constitute "major unusual incidents."~~

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The director shall ~~suspend without pay for a period of at
least three days~~ initiate disciplinary action against any
department employee who notifies or causes the notification to any
unauthorized person of an unannounced inspection survey of a
residential facility by an authorized representative of the
department.

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~~(E) In proceedings initiated to deny or revoke licenses under
this section, the director may deny or revoke a license regardless
of whether some or all of the deficiencies that prompted the
proceedings have been corrected at the time of the hearing.~~

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~~(F)~~(I) In addition to any other information which may be
required of applicants for a license pursuant to this section, the
director shall require each applicant to provide a copy of an
approved plan for a proposed residential facility pursuant to
section 5123.042 of the Revised Code. This division does not apply
to renewal of a license.

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~~(G) Pursuant~~ (J) A licensee shall notify the owner of the
building in which the licensee's residential facility is located
of any significant change in the identity of the licensee or
management contractor before the effective date of the change if
the licensee is not the owner of the building.

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Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may require notification to the department of any significant change in the ownership of a residential facility or in the identity of the licensee or management contractor. ~~When such notification is not given, the director may cancel the residential facility's license.~~ If the director determines that a significant change of ownership is proposed, the director shall consider the proposed change to be an application for development by a new operator pursuant to section 5123.042 of the Revised Code and shall advise the applicant within sixty days of such notification that the current license shall continue in effect or a new license will be required pursuant to this section. If the director requires a new license, the director shall permit the facility to continue to operate under the current license until the new license is issued, unless the current license is revoked, refused to be renewed, or terminated in accordance with Chapter 119. of the Revised Code.

~~(H)~~(K) A county board of mental retardation and developmental disabilities, the legal rights service, and any interested person may file complaints alleging violations of statute or department rule relating to residential facilities with the department. All complaints shall be in writing and shall state the facts constituting the basis of the allegation. The department shall not reveal the source of any complaint unless the complainant agrees in writing to waive the right to confidentiality or until so ordered by a court of competent jurisdiction.

The department shall ~~acknowledge receipt of the complaint and notify the complainant of the action that will be taken with respect to it within five working days of receiving it~~ adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for the receipt, referral, investigation, and

disposition of complaints filed with the department under this 449
division. 450

~~The substance of a complaint shall not be provided to a~~ 451
~~licensee until the commencement of an inspection or investigation.~~ 452

~~(I)~~(L) The department shall establish procedures for the 453
notification of interested parties of the transfer or interim care 454
of residents from residential facilities that are closing or are 455
losing their license. 456

~~(J)~~(M) Before issuing a license under this section to a 457
residential facility that will accommodate at any time more than 458
one mentally retarded or developmentally disabled individual, the 459
director shall, by first class mail, notify the following: 460

(1) If the facility will be located in a municipal 461
corporation, the clerk of the legislative authority of the 462
municipal corporation; 463

(2) If the facility will be located in unincorporated 464
territory, the clerk of the appropriate board of county 465
commissioners and the clerk of the appropriate board of township 466
trustees. 467

The director shall not issue the license for ten days after 468
mailing the notice, excluding Saturdays, Sundays, and legal 469
holidays, in order to give the notified local officials time in 470
which to comment on the proposed issuance. 471

Any legislative authority of a municipal corporation, board 472
of county commissioners, or board of township trustees that 473
receives notice under this division of the proposed issuance of a 474
license for a residential facility may comment on it in writing to 475
the director within ten days after the director mailed the notice, 476
excluding Saturdays, Sundays, and legal holidays. If the director 477
receives written comments from any notified officials within the 478
specified time, the director shall make written findings 479

concerning the comments and the director's decision on the
issuance of the license. If the director does not receive written
comments from any notified local officials within the specified
time, the director shall continue the process for issuance of the
license.

~~(K)~~(N) Any person may operate a licensed residential facility
that provides room and board, personal care, habilitation
services, and supervision in a family setting for at least six but
not more than eight persons with mental retardation or a
developmental disability as a permitted use in any residential
district or zone, including any single-family residential district
or zone, of any political subdivision. These residential
facilities may be required to comply with area, height, yard, and
architectural compatibility requirements that are uniformly
imposed upon all single-family residences within the district or
zone.

~~(L)~~(O) Any person may operate a licensed residential facility
that provides room and board, personal care, habilitation
services, and supervision in a family setting for at least nine
but not more than sixteen persons with mental retardation or a
developmental disability as a permitted use in any multiple-family
residential district or zone of any political subdivision, except
that a political subdivision that has enacted a zoning ordinance
or resolution establishing planned unit development districts may
exclude these residential facilities from such districts, and a
political subdivision that has enacted a zoning ordinance or
resolution may regulate these residential facilities in
multiple-family residential districts or zones as a conditionally
permitted use or special exception, in either case, under
reasonable and specific standards and conditions set out in the
zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the

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residential facility and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation;

(3) Limit excessive concentration of these residential facilities.

~~(M)~~(P) This section does not prohibit a political subdivision from applying to residential facilities nondiscriminatory regulations requiring compliance with health, fire, and safety regulations and building standards and regulations.

~~(N)~~(O) Divisions ~~(K)~~(N) and ~~(L)~~(O) of this section are not applicable to municipal corporations that had in effect on June 15, 1977, an ordinance specifically permitting in residential zones licensed residential facilities by means of permitted uses, conditional uses, or special exception, so long as such ordinance remains in effect without any substantive modification.

~~(O)~~(R)(1) The director may issue an interim license to operate a residential facility to an applicant for a license under this section if ~~all~~ either of the following ~~conditions are met~~ is the case:

~~(1)~~(a) The director determines that an emergency exists ~~that requires requiring~~ immediate placement of persons in a residential facility, ~~and that~~ that insufficient licensed beds are available.

~~(2)~~ ~~The residential facility meets standards in rules for interim licenses that the director shall adopt in accordance with Chapter 119. of the Revised Code.~~

~~(3)~~ ~~The director determines,~~ and that the residential facility is likely to receive a permanent license under this

section within thirty days after issuance of the interim license. 542

(b) The director determines that the issuance of an interim 543
license is necessary to meet a temporary need for a residential 544
facility. 545

(2) To be eligible to receive an interim license, an 546
applicant must meet the same criteria that must be met to receive 547
a permanent license under this section, except for any differing 548
procedures and time frames that may apply to issuance of a 549
permanent license. 550

(3) An interim license shall be valid for thirty days and may 551
be renewed by the director ~~no more than twice~~ for a period not to 552
exceed one hundred fifty days. 553

(4) The director shall adopt rules in accordance with Chapter 554
119. of the Revised Code as the director considers necessary to 555
administer the issuance of interim licenses. 556

~~(P)~~(S) Notwithstanding rules adopted pursuant to this section 557
establishing the maximum number of persons who may be served in a 558
particular type of residential facility, a residential facility 559
shall be permitted to serve the same number of persons being 560
served by the facility on the effective date of such rules or the 561
number of persons for which the facility is authorized pursuant to 562
a current application for a certificate of need with a letter of 563
support from the department of mental retardation and 564
developmental disabilities and which is in the review process 565
prior to April 4, 1986. 566

~~(Q)~~(T) The director or the director's designee may enter at 567
any time, for purposes of investigation, any home, facility, or 568
other structure that has been reported to the director or that the 569
director has reasonable cause to believe is being operated as a 570
residential facility without a license issued under this section. 571

The director may petition the court of common pleas of the 572

county in which an unlicensed residential facility is located for
an order enjoining the person or governmental agency operating the
facility from continuing to operate without a license. The court
may grant the injunction on a showing that the person or
governmental agency named in the petition is operating a
residential facility without a license. The court may grant the
injunction, regardless of whether the residential facility meets
the requirements for receiving a license under this section.

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Sec. 5123.195. (A) Not later than sixty days after the end of
calendar years 2003, 2004, and 2005, the director of mental
retardation and developmental disabilities shall submit a report
to the president and minority leader of the senate and speaker and
minority leader of the house of representatives regarding the
implementation of section 5123.19 of the Revised Code since the
effective date of this section. The director shall include in the
report all of the following information:

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(1) A summary of any rules adopted under that section to
implement the amendments to that section that go into effect on
the effective date of this section;

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(2) The number of residential facility licenses issued,
renewed, and denied under that section since the effective date of
the amendments to section 5123.19 of the Revised Code that go into
effect on the effective date of this section or, in the case of
the reports due in 2005 and 2006, since the previous report was
submitted;

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(3) The length of time for which residential facility
licenses are issued and renewed under that section;

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(4) The sanctions imposed pursuant to division (D) of section
5123.19 of the Revised Code and the kinds of violations that cause
the sanctions;

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(5) Any other information the director determines is 603
important to the implementation of the amendments to section 604
5123.19 of the Revised Code that go into effect on the effective 605
date of this section. 606

(B) On submission of the report under division (A) of this 607
section, the director shall inform each member of the general 608
assembly that the report is available. 609

Sec. 5123.41. As used in this section and sections 5123.42 to 611
5123.47 of the Revised Code: 612

(A) "Adult services" has the same meaning as in section 613
5126.01 of the Revised Code. 614

(B) "Certified home and community-based services provider" 615
means a person or government entity certified under section 616
5123.045 of the Revised Code. 617

(C) "Certified supported living provider" means a person or 618
government entity certified under section 5126.431 of the Revised 619
Code. 620

(D) "Drug" has the same meaning as in section 4729.01 of the 621
Revised Code. 622

(E) "Family support services" has the same meaning as in 623
section 5126.01 of the Revised Code. 624

(F) "Health-related activities" means the following: 625

(1) Taking vital signs; 626

(2) Application of clean dressings that do not require health 627
assessment; 628

(3) Basic measurement of bodily intake and output; 629

(4) Oral suctioning; 630

(5) Use of glucometers; 631

<u>(6) External urinary catheter care;</u>	632
<u>(7) Emptying and replacing colostomy bags;</u>	633
<u>(8) Collection of specimens by noninvasive means.</u>	634
<u>(G) "Licensed health professional authorized to prescribe drugs" has the same meaning as in section 4729.01 of the Revised Code.</u>	635 636 637
<u>(H) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.</u>	638 639
<u>(I) "MR/DD personnel" means the employees and the workers under contract who provide specialized services to individuals with mental retardation and developmental disabilities. "MR/DD personnel" includes those who provide the services as follows:</u>	640 641 642 643
<u>(1) Through direct employment with the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities;</u>	644 645 646
<u>(2) Through an entity under contract with the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities;</u>	647 648 649
<u>(3) Through direct employment or by being under contract with private entities, including private entities that operate residential facilities.</u>	650 651 652
<u>(J) "Nursing delegation" means the process established in rules adopted by the board of nursing pursuant to Chapter 4723. of the Revised Code under which 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.</u>	653 654 655 656 657 658 659
<u>(K) "Prescribed medication" means a drug that is to be administered according to the instructions of a licensed health</u>	660 661

professional authorized to prescribe drugs. 662

(L) "Residential facility" means a facility licensed under 663
section 5123.19 of the Revised Code or subject to section 5123.192 664
of the Revised Code. 665

(M) "Specialized services" has the same meaning as in section 666
5123.50 of the Revised Code. 667

(N) "Tube feeding" means the provision of nutrition to an 668
individual through a gastrostomy tube or a jejunostomy tube. 669

Sec. 5123.42. (A) Beginning nine months after the effective 670
date of this section, MR/DD personnel who are not specifically 671
authorized by other provisions of the Revised Code to administer 672
prescribed medications, perform health-related activities, or 673
perform tube feedings may do so pursuant to this section as part 674
of the specialized services the MR/DD personnel provide to 675
individuals with mental retardation and developmental disabilities 676
in the following categories: 677

(1) Recipients of early intervention, preschool, and 678
school-age services offered or provided pursuant to this chapter 679
or Chapter 5126. of the Revised Code; 680

(2) Recipients of adult services offered or provided pursuant 681
to this chapter or Chapter 5126. of the Revised Code; 682

(3) Recipients of family support services offered or provided 683
pursuant to this chapter or Chapter 5126. of the Revised Code; 684
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(4) Recipients of services from certified supported living 686
providers, if the services are offered or provided pursuant to 687
this chapter or Chapter 5126. of the Revised Code; 688

(5) Recipients of residential support services from certified 689
home and community-based services providers, if the services are 690
received in a community living arrangement that includes not more 691

than four individuals with mental retardation and developmental disabilities and the services are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

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(6) Recipients of services not included in divisions (A)(1) to (5) of this section that are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

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(7) Residents of a residential facility with five or fewer resident beds;

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(8) Residents of a residential facility with at least six but not more than sixteen resident beds;

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(9) Residents of a residential facility with seventeen or more resident beds who are on a field trip from the facility, if all of the following are the case:

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(a) The field trip is sponsored by the facility for purposes of complying with federal medicaid statutes and regulations, state medicaid statutes and rules, or other federal or state statutes, regulations, or rules that require the facility to provide habilitation, community integration, or normalization services to its residents.

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(b) Not more than five field trip participants are residents who have health needs requiring the administration of prescribed medications, excluding participants who self-administer prescribed medications or receive assistance with self-administration of prescribed medications.

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(c) The facility staffs the field trip with MR/DD personnel in such a manner that one person will administer prescribed medications, perform health-related activities, or perform tube feedings for not more than two participants if one or both of those participants have health needs requiring the person to administer prescribed medications through a gastrostomy or jejunostomy tube.

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(d) According to the instructions of a health care professional acting within the scope of the professional's practice, the health needs of the participants who require administration of prescribed medications by MR/DD personnel are such that the participants must receive the medications during the field trip to avoid jeopardizing their health and safety. 723
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(B)(1) In the case of recipients of early intervention, preschool, and school-age services, as specified in division (A)(1) of this section, all of the following apply: 729
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(a) With nursing delegation, MR/DD personnel may perform health-related activities. 732
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(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications. 734
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(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled. 736
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(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled. 739
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(2) In the case of recipients of adult services, as specified in division (A)(2) of this section, all of the following apply: 742
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(a) With nursing delegation, MR/DD personnel may perform health-related activities. 745
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(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications. 747
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(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled. 749
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(d) With nursing delegation, MR/DD personnel may perform 752

routine tube feedings, if the gastrostomy and jejunostomy tubes 753
being used are stable and labeled. 754

(3) In the case of recipients of family support services, as 755
specified in division (A)(3) of this section, all of the following 756
apply: 757

(a) Without nursing delegation, MR/DD personnel may perform 758
health-related activities. 759

(b) Without nursing delegation, MR/DD personnel may 760
administer oral and topical prescribed medications. 761

(c) With nursing delegation, MR/DD personnel may administer 762
prescribed medications through gastrostomy and jejunostomy tubes, 763
if the tubes being used are stable and labeled. 764

(d) With nursing delegation, MR/DD personnel may perform 765
routine tube feedings, if the gastrostomy and jejunostomy tubes 766
being used are stable and labeled. 767

(e) With nursing delegation, MR/DD personnel may administer 768
routine doses of insulin through subcutaneous injections and 769
insulin pumps. 770

(4) In the case of recipients of services from certified 771
supported living providers, as specified in division (A)(4) of 772
this section, all of the following apply: 773

(a) Without nursing delegation, MR/DD personnel may perform 774
health-related activities. 775

(b) Without nursing delegation, MR/DD personnel may 776
administer oral and topical prescribed medications. 777

(c) With nursing delegation, MR/DD personnel may administer 778
prescribed medications through gastrostomy and jejunostomy tubes, 779
if the tubes being used are stable and labeled. 780

(d) With nursing delegation, MR/DD personnel may perform 781

routine tube feedings, if the gastrostomy and jejunostomy tubes 782
being used are stable and labeled. 783

(e) With nursing delegation, MR/DD personnel may administer 784
routine doses of insulin through subcutaneous injections and 785
insulin pumps. 786

(5) In the case of recipients of residential support services 787
from certified home and community-based services providers, as 788
specified in division (A)(5) of this section, all of the following 789
apply: 790

(a) Without nursing delegation, MR/DD personnel may perform 791
health-related activities. 792

(b) Without nursing delegation, MR/DD personnel may 793
administer oral and topical prescribed medications. 794

(c) With nursing delegation, MR/DD personnel may administer 795
prescribed medications through gastrostomy and jejunostomy tubes, 796
if the tubes being used are stable and labeled. 797

(d) With nursing delegation, MR/DD personnel may perform 798
routine tube feedings, if the gastrostomy and jejunostomy tubes 799
being used are stable and labeled. 800

(e) With nursing delegation, MR/DD personnel may administer 801
routine doses of insulin through subcutaneous injections and 802
insulin pumps. 803

(6) In the case of recipients of services not included in 804
divisions (A)(1) to (5) of this section, as specified in division 805
(A)(6) of this section, all of the following apply: 806

(a) With nursing delegation, MR/DD personnel may perform 807
health-related activities. 808

(b) With nursing delegation, MR/DD personnel may administer 809
oral and topical prescribed medications. 810

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled. 811
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(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled. 814
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(7) In the case of residents of a residential facility with five or fewer beds, as specified in division (A)(7) of this section, all of the following apply: 817
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(a) Without nursing delegation, MR/DD personnel may perform health-related activities. 820
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(b) Without nursing delegation, MR/DD personnel may administer oral and topical prescribed medications. 822
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(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled. 824
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(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled. 827
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(e) With nursing delegation, MR/DD personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps. 830
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(8) In the case of residents of a residential facility with at least six but not more than sixteen resident beds, as specified in division (A)(8) of this section, all of the following apply: 833
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(a) With nursing delegation, MR/DD personnel may perform health-related activities. 836
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(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications. 838
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(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled. 840
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(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled. 843
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(9) In the case of residents of a residential facility with seventeen or more resident beds who are on a field trip from the facility, all of the following apply during the field trip, subject to the limitations specified in division (A)(9) of this section: 846
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(a) With nursing delegation, MR/DD personnel may perform health-related activities. 851
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(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications. 853
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(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled. 855
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(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled. 858
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(C) The authority of MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to this section is subject to all of the following: 861
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(1) To administer prescribed medications, perform health-related activities, or perform tube feedings for individuals in the categories specified under divisions (A)(1) to (8) of this section, MR/DD personnel shall obtain the certificate or certificates required by the department of mental retardation 865
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and developmental disabilities and issued under section 5123.45 of
the Revised Code. MR/DD personnel shall administer prescribed
medication, perform health-related activities, and perform tube
feedings only as authorized by the certificate or certificates
held.

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(2) To administer prescribed medications, perform
health-related activities, or perform tube feedings for
individuals in the category specified under division (A)(9) of
this section, MR/DD personnel shall successfully complete the
training course or courses developed under section 5123.43 of the
Revised Code for the MR/DD personnel. MR/DD personnel shall
administer prescribed medication, perform health-related
activities, and perform tube feedings only as authorized by the
training completed.

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(3) If nursing delegation is required under division (B) of
this section, MR/DD personnel shall not act without nursing
delegation or in a manner that is inconsistent with the
delegation.

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(4) The employer of MR/DD personnel shall ensure that MR/DD
personnel have been trained specifically with respect to each
individual for whom they administer prescribed medications,
perform health-related activities, or perform tube feedings. MR/DD
personnel shall not administer prescribed medications, perform
health-related activities, or perform tube feedings for any
individual for whom they have not been specifically trained.

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(5) If the employer of MR/DD personnel believes that MR/DD
personnel have not or will not safely administer prescribed
medications, perform health-related activities, or perform tube
feedings, the employer shall prohibit the action from continuing
or commencing. MR/DD personnel shall not engage in the action or
actions subject to an employer's prohibition.

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(D) In accordance with section 5123.46 of the Revised Code, the department of mental retardation and developmental disabilities shall adopt rules governing its implementation of this section. The rules shall include the following: 901
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(1) Requirements for documentation of the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under this section; 905
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(2) Procedures for reporting errors that occur in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under this section; 909
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(3) Other standards and procedures the department considers necessary for implementation of this section. 914
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Sec. 5123.421. The department of mental retardation and developmental disabilities shall accept complaints from any person or government entity regarding the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under section 5123.42 of the Revised Code. The department shall conduct investigations of complaints as it considers appropriate. The department shall adopt rules in accordance with section 5123.46 of the Revised Code establishing procedures for accepting complaints and conducting investigations under this section. 916
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Sec. ~~5126.354~~ 5123.422. A county board worker authorized to give or apply MR/DD personnel who administer prescribed medication or medications, perform a delegated nursing task health-related activities, or both, is perform tube feedings pursuant to the 927
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authority granted under section 5123.42 of the Revised Code are 931
not liable for any injury caused by administering the medication 932
medications, performing the health-related activities, or task 933
performing the tube feedings, if all both of the following apply: 934

~~(A) Prior to giving or applying the medication or performing~~ 935
~~the nursing task, the county board worker received a copy of the~~ 936
~~statement or the revised statement required to be given under~~ 937
~~division (C) of section 5126.353 of the Revised Code;~~ 938

~~(B) The county board worker gave or applied the medication or~~ 939
~~performed the nursing task~~ MR/DD personnel acted in accordance 940
with the methods taught in training completed pursuant to division 941
~~(D)(2) of~~ in compliance with section ~~5126.351~~ 5123.42 of the 942
Revised Code; 943

~~(C)(B) The county board worker~~ MR/DD personnel did not act in 944
a manner that constitutes wanton or reckless misconduct. 945

Sec. 5123.43. (A) The department of mental retardation and 946
developmental disabilities shall develop courses for the training 947
of MR/DD personnel in the administration of prescribed 948
medications, performance of health-related activities, and 949
performance of tube feedings pursuant to the authority granted 950
under section 5123.42 of the Revised Code. The department may 951
develop separate or combined training courses for the 952
administration of prescribed medications, performance of 953
health-related activities, and performance of tube feedings. 954
Training in the administration of prescribed medications through 955
gastrostomy and jejunostomy tubes may be included in a course 956
providing training in tube feedings. Training in the 957
administration of insulin may be developed as a separate course or 958
included in a course providing training in the administration of 959
other prescribed medications. 960

(B)(1) The department shall adopt rules in accordance with 961

section 5123.46 of the Revised Code that specify the content and length of the training courses developed under this section. The rules may include any other standards the department considers necessary for the training courses. 962
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(2) In adopting rules that specify the content of a training course or part of a training course that trains MR/DD personnel in the administration of prescribed medications, the department shall ensure that the content includes all of the following: 966
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(a) Infection control and universal precautions; 970

(b) Correct and safe practices, procedures, and techniques for administering prescribed medication; 971
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(c) Assessment of drug reaction, including known side effects, interactions, and the proper course of action if a side effect occurs; 973
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(d) The requirements for documentation of medications administered to each individual; 976
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(e) The requirements for documentation and notification of medication errors; 978
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(f) Information regarding the proper storage and care of medications; 980
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(g) Information about proper receipt of prescriptions and transcription of prescriptions into an individual's medication administration record, except when the MR/DD personnel being trained will administer prescribed medications only to residents of a residential facility with seventeen or more resident beds who are participating in a field trip, as specified in division (A)(9) of section 5123.42 of the Revised Code; 982
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(h) Course completion standards that require successful demonstration of proficiency in administering prescribed medications; 989
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(i) Any other material or course completion standards that 992
the department considers relevant to the administration of 993
prescribed medications by MR/DD personnel. 994

Sec. 5123.44. The department of mental retardation and 995
developmental disabilities shall develop courses that train 996
registered nurses to provide the MR/DD personnel training courses 997
developed under section 5123.43 of the Revised Code. The 998
department may develop courses that train registered nurses to 999
provide all of the courses developed under section 5123.43 of the 1000
Revised Code or any one or more of the courses developed under 1001
that section. 1002

The department shall adopt rules in accordance with section 1003
5123.46 of the Revised Code that specify the content and length of 1004
the training courses. The rules may include any other standards 1005
the department considers necessary for the training courses. 1006

Sec. 5123.441. (A) Each MR/DD personnel training course 1007
developed under section 5123.43 of the Revised Code shall be 1008
provided by a registered nurse. 1009

(B)(1) Except as provided in division (B)(2) of this section, 1010
to provide a training course or courses to MR/DD personnel, a 1011
registered nurse shall obtain the certificate or certificates 1012
required by the department and issued under section 5123.45 of the 1013
Revised Code. The registered nurse shall provide only the training 1014
course or courses authorized by the certificate or certificates 1015
the registered nurse holds. 1016

(2) A registered nurse is not required to obtain a 1017
certificate to provide a training course to MR/DD personnel if the 1018
only MR/DD personnel to whom the course or courses are provided 1019
are those who administer prescribed medications, perform 1020
health-related activities, or perform tube feedings for residents 1021

of a residential facility with seventeen or more resident beds who 1022
are on a field trip from the facility, as specified in division 1023
(A)(9) of section 5123.42 of the Revised Code. To provide the 1024
training course or courses, the registered nurse shall 1025
successfully complete the training required by the department 1026
through the courses it develops under section 5123.44 of the 1027
Revised Code. The registered nurse shall provide only the training 1028
courses authorized by the training the registered nurse completes. 1029
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Sec. 5123.45. (A) The department of mental retardation and 1031
developmental disabilities shall establish a program under which 1032
the department issues certificates to the following: 1033

(1) MR/DD personnel, for purposes of meeting the requirement 1034
of division (C)(1) of section 5123.42 of the Revised Code to 1035
obtain a certificate or certificates to administer prescribed 1036
medications, perform health-related activities, and perform tube 1037
feedings; 1038

(2) Registered nurses, for purposes of meeting the 1039
requirement of division (B)(1) of section 5123.441 of the Revised 1040
Code to obtain a certificate or certificates to provide the MR/DD 1041
personnel training courses developed under section 5123.43 of the 1042
Revised Code. 1043

(B)(1) Except as provided in division (B)(2) of this section, 1044
to receive a certificate issued under this section, MR/DD 1045
personnel and registered nurses shall successfully complete the 1046
applicable training course or courses and meet all other 1047
applicable requirements established in rules adopted pursuant to 1048
this section. The department shall issue the appropriate 1049
certificate or certificates to MR/DD personnel and registered 1050
nurses who meet the requirements for the certificate or 1051
certificates. 1052

(2) The department shall include provisions in the program 1053
for issuing certificates to the following: 1054

(a) MR/DD personnel who, on the effective date of this 1055
section, are authorized to provide care to individuals with mental 1056
retardation and developmental disabilities pursuant to section 1057
5123.193 or sections 5126.351 to 5126.354 of the Revised Code. A 1058
person who receives a certificate under division (B)(2)(a) of this 1059
section shall not administer insulin until the person has been 1060
trained by a registered nurse who has received a certificate under 1061
this section that allows the registered nurse to provide training 1062
courses to MR/DD personnel in the administration of insulin. 1063

(b) Registered nurses who, on the effective date of this 1064
section, are authorized to train MR/DD personnel to provide care 1065
to individuals with mental retardation and developmental 1066
disabilities pursuant to section 5123.193 or sections 5126.351 to 1067
5126.354 of the Revised Code. A registered nurse who receives a 1068
certificate under division (B)(2)(b) of this section shall not 1069
provide training courses to MR/DD personnel in the administration 1070
of insulin unless the registered nurse completes a course 1071
developed under section 5123.44 of the Revised Code that enables 1072
the registered nurse to receive a certificate to provide training 1073
courses to MR/DD personnel in the administration of insulin. 1074

(C) Certificates issued to MR/DD personnel are valid for one 1075
year and may be renewed. Certificates issued to registered nurses 1076
are valid for two years and may be renewed. 1077

To be eligible for renewal, MR/DD personnel and registered 1078
nurses shall meet the applicable continued competency requirements 1079
and continuing education requirements specified in rules adopted 1080
under division (D) of this section. In the case of registered 1081
nurses, continuing nursing education completed in compliance with 1082
the license renewal requirements established under Chapter 4723. 1083
of the Revised Code may be counted toward meeting the continuing 1084

education requirements established in the rules adopted under 1085
division (D) of this section. 1086

(D) In accordance with section 5123.46 of the Revised Code, 1087
the department shall adopt rules that establish all of the 1088
following: 1089

(1) Requirements that MR/DD personnel and registered nurses 1090
must meet to be eligible to take a training course; 1091

(2) Standards that must be met to receive a certificate, 1092
including requirements pertaining to an applicant's criminal 1093
background; 1094

(3) Procedures to be followed in applying for a certificate 1095
and issuing a certificate; 1096

(4) Standards and procedures for renewing a certificate, 1097
including requirements for continuing education and, in the case 1098
of MR/DD personnel who administer prescribed medications, 1099
standards that require successful demonstration of proficiency in 1100
administering prescribed medications; 1101

(5) Standards and procedures for suspending or revoking a 1102
certificate; 1103

(6) Standards and procedures for suspending a certificate 1104
without a hearing pending the outcome of an investigation; 1105

(7) Any other standards or procedures the department 1106
considers necessary to administer the certification program. 1107

Sec. 5123.451. The department of mental retardation and 1108
developmental disabilities shall establish and maintain a registry 1109
that lists all MR/DD personnel and registered nurses holding valid 1110
certificates issued under section 5123.45 of the Revised Code. The 1111
registry shall specify the type of certificate held and any 1112
limitations that apply to a certificate holder. The department 1113

shall make the information in the registry available to the public 1114
in computerized form or any other manner that provides continuous 1115
access to the information in the registry. 1116

Sec. 5123.46. All rules adopted under sections 5123.41 to 1117
5123.45 of the Revised Code shall be adopted in consultation with 1118
the board of nursing and the Ohio nurses association. The rules 1119
shall be adopted in accordance with Chapter 119. of the Revised 1120
Code. 1121

~~Sec. 5126.357~~ 5123.47. (A) As used in this section: 1122

(1) "In-home care" means the supportive services provided 1123
within the home of an individual with mental retardation or a 1124
developmental disability who receives funding for the services ~~as~~ 1125
through a county board ~~client~~ of mental retardation and 1126
developmental disabilities, including any ~~client who receives~~ 1127
recipient of residential services funded ~~through~~ as home and 1128
community-based services, family support services provided under 1129
section 5126.11 of the Revised Code, or supported living provided 1130
in accordance with sections 5126.41 to 5126.47 of the Revised 1131
Code. "In-home care" includes care that is provided outside a 1132
~~client's~~ an individual's home in places incidental to the home, 1133
and while traveling to places incidental to the home, except that 1134
"in-home care" does not include care provided in the facilities of 1135
a county board of mental retardation and developmental 1136
disabilities or care provided in schools. 1137

(2) "Parent" means either parent of a child, including an 1138
adoptive parent but not a foster parent. 1139

(3) "Unlicensed in-home care worker" means an individual who 1140
provides in-home care but is not a health care professional. A 1141
~~county board worker may be an unlicensed in-home care worker.~~ 1142

(4) "Family member" means a parent, sibling, spouse, son, 1143

daughter, grandparent, aunt, uncle, cousin, or guardian of the 1144
individual with mental retardation or a developmental disability 1145
if the individual with mental retardation or developmental 1146
disabilities lives with the person and is dependent on the person 1147
to the extent that, if the supports were withdrawn, another living 1148
arrangement would have to be found. 1149

(5) "Health care professional" means any of the following: 1150

(a) A dentist who holds a valid license issued under Chapter 1151
4715. of the Revised Code; 1152

(b) A registered or licensed practical nurse who holds a 1153
valid license issued under Chapter 4723. of the Revised Code; 1154

(c) An optometrist who holds a valid license issued under 1155
Chapter 4725. of the Revised Code; 1156

(d) A pharmacist who holds a valid license issued under 1157
Chapter 4729. of the Revised Code; 1158

(e) A person who holds a valid certificate issued under 1159
Chapter 4731. of the Revised Code to practice medicine and 1160
surgery, osteopathic medicine and surgery, podiatric medicine and 1161
surgery, or a limited brand of medicine; 1162

(f) A physician assistant who holds a valid certificate 1163
issued under Chapter 4730. of the Revised Code; 1164

(g) An occupational therapist or occupational therapy 1165
assistant or a physical therapist or physical therapist assistant 1166
who holds a valid license issued under Chapter 4755. of the 1167
Revised Code; 1168

(h) A respiratory care professional who holds a valid license 1169
issued under Chapter 4761. of the Revised Code. 1170

(6) "Health care task" means a task that is prescribed, 1171
ordered, delegated, or otherwise directed by a health care 1172
professional acting within the scope of the professional's 1173

practice.

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(B) Except as provided in division ~~(D)~~(E) of this section, a family member of an individual with mental retardation or a developmental disability may authorize an unlicensed in-home care worker to ~~give or apply~~ administer oral and topical prescribed ~~medication~~ medications or perform other health care tasks as part of the in-home care ~~provided~~ the worker provides to the individual, if ~~the~~ all of the following apply:

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(1) The family member is the primary supervisor of the care and the.

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(2) The unlicensed in-home care worker has been selected by the family member or the individual receiving care and is under the direct supervision of the family member. Sections 4723.62 and 5126.351 to 5126.356 of the Revised Code do not apply to the in-home care authorized by a family member under this section. Instead, a

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(3) The unlicensed in-home care worker is providing the care through an employment or other arrangement entered into directly with the family member and is not otherwise employed by or under contract with a person or government entity to provide services to individuals with mental retardation and developmental disabilities.

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(C) A family member shall obtain a prescription, if applicable, and written instructions from a health care professional for the care to be provided to the individual. The family member shall authorize the unlicensed in-home care worker to provide the care by preparing a written document granting the authority. The family member shall provide the unlicensed in-home care worker with appropriate training and written instructions in accordance with the instructions obtained from the health care professional.

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~~(C)~~(D) A family member who authorizes an unlicensed in-home care worker to ~~give or apply~~ administer oral and topical prescribed ~~medication~~ medications or perform other health care tasks retains full responsibility for the health and safety of the individual receiving the care and for ensuring that the worker provides the care appropriately and safely. No entity that funds or monitors the provision of in-home care may be held liable for the results of the care provided under this section by an unlicensed in-home care worker, including such entities as the county board of mental retardation and developmental disabilities, ~~any other entity that employs an unlicensed in-home care worker,~~ and the department of mental retardation and developmental disabilities.

An unlicensed in-home care worker who is authorized under this section by a family member to provide care to an individual may not be held liable for any injury caused in providing the care, unless the worker provides the care in a manner that is not in accordance with the training and instructions received or the worker acts in a manner that constitutes wanton or reckless misconduct.

~~(D)~~(E) A county board of mental retardation and developmental disabilities may evaluate the authority granted by a family member under this section to an unlicensed in-home care worker at any time it considers necessary and shall evaluate the authority on receipt of a complaint. If the board determines that a family member has acted in a manner that is inappropriate for the health and safety of the individual receiving the ~~services~~ care, the authorization granted by the family member to an unlicensed in-home care worker is void, and the family member may not authorize other unlicensed in-home care workers to provide the care. In making such a determination, the board shall use appropriately licensed health care professionals and shall provide

the family member an opportunity to file a complaint under section 1237
5126.06 of the Revised Code. 1238

Sec. 5123.50. As used in this section and sections 5123.51 1239
and 5123.52 of the Revised Code: 1240

(A) "Abuse" means all of the following: 1241

(1) The use of physical force that can reasonably be expected 1242
to result in physical harm or serious physical harm; 1243

(2) Sexual abuse; 1244

(3) Verbal abuse. 1245

(B) "Misappropriation" means depriving, defrauding, or 1246
otherwise obtaining the real or personal property of an individual 1247
by any means prohibited by the Revised Code, including violations 1248
of Chapter 2911. or 2913. of the Revised Code. 1249

(C) "MR/DD employee" means all of the following: 1250

(1) An employee of the department of mental retardation and 1251
developmental disabilities; 1252

(2) An employee of a county board of mental retardation and 1253
developmental disabilities; 1254

(3) ~~An "ICF/MR worker," as defined in section 5123.193 of the~~ 1255
~~Revised Code;~~ 1256

~~(4) An individual who is employed~~ employee in a position that 1257
includes providing specialized services to an individual with 1258
mental retardation or a developmental disability. 1259

(D) "Neglect" means, when there is a duty to do so, failing 1260
to provide an individual with any treatment, care, goods, or 1261
services that are necessary to maintain the health and safety of 1262
the individual. 1263

(E) "Physical harm" and "serious physical harm" have the same 1264

meanings as in section 2901.01 of the Revised Code. 1265

(F) "Sexual abuse" means unlawful sexual conduct or sexual 1266
contact, as those terms are defined in section 2907.01 of the 1267
Revised Code. 1268

(G) "Specialized services" means any program or service 1269
designed and operated to serve primarily individuals with mental 1270
retardation or a developmental disability, including a program or 1271
service provided by an entity licensed or certified by the 1272
department of mental retardation and developmental disabilities. A 1273
program or service available to the general public is not a 1274
specialized service. 1275

(H) "Verbal abuse" means purposely using words to threaten, 1276
coerce, intimidate, harass, or humiliate an individual. 1277

Sec. 5123.611. (A) As used in this section, "MR/DD employee" 1278
means all of the following: 1279

(1) An employee of the department of mental retardation and 1280
developmental disabilities; 1281

(2) An employee of a county board of mental retardation and 1282
developmental disabilities; 1283

(3) ~~An "ICF/MR worker," as defined in section 5123.193 of the~~ 1284
~~Revised Code;~~ 1285

~~(4) An individual who is employed employee in a position that~~ 1286
~~includes providing specialized services, as defined in section~~ 1287
~~5123.50 of the Revised Code, to an individual with mental~~ 1288
~~retardation or a developmental disability.~~ 1289

(B) At the conclusion of a review of a report of abuse, 1290
neglect, or a major unusual incident that is conducted by a review 1291
committee established pursuant to section 5123.61 of the Revised 1292
Code, the committee shall issue recommendations to the department. 1293

The department shall review the committee's recommendations and
issue a report of its findings. The department shall make the
report available to all of the following:

(1) The ~~person~~ individual with mental retardation or a
developmental disability who is the subject of the report;

(2) That ~~person's~~ individual's guardian or legal counsel;

(3) The licensee, as defined in section 5123.19 of the
Revised Code, of a residential facility in which the ~~person~~
individual resides;

(4) The employer of any MR/DD employee who allegedly
committed or was responsible for the abuse, neglect, or major
unusual incident.

(C) Except as provided in this section, the department shall
not disclose its report to any person or government entity that is
not authorized to investigate reports of abuse, neglect, or other
major unusual incidents, unless the ~~person~~ individual with mental
retardation or a developmental disability who is the subject of
the report or the ~~person's~~ individual's guardian gives the
department written consent.

Sec. 5123.65. In addition to the rights specified in section
5123.62 of the Revised Code, individuals with mental retardation
and developmental disabilities who can safely self-administer
medication or receive assistance with self-administration of
medication have the right to self-administer medication or receive
assistance with the self-administration of medication. The
department of mental retardation and developmental disabilities
shall adopt rules as it considers necessary to implement and
enforce this section. The rules shall be adopted in accordance
with Chapter 119. of the Revised Code.

~~Sec. 5126.355 5123.651.~~ A county board of mental retardation and developmental disabilities may permit a county board worker to assist a county board client (A) As used in this section, "MR/DD personnel" and "prescribed medication" have the same meanings as in section 5123.41 of the Revised Code.

(B) MR/DD personnel who are not specifically authorized by other provisions of the Revised Code to provide assistance in the self-administration of prescribed medication. When may, under this section, provide that assistance as part of the services they provide to individuals with mental retardation and developmental disabilities. To provide assistance with self-administration of prescribed medication, MR/DD personnel are not required to be trained or certified in accordance with section 5123.42 of the Revised Code.

(C) When assisting a county board client in the self-administration of prescribed medication, a county board worker MR/DD personnel shall take only those the following actions authorized by the board of nursing pursuant to rules adopted under section 4723.62 of the Revised Code:

(1) Remind an individual when to take the medication and observe the individual to ensure that the individual follows the directions on the container;

(2) Assist an individual by taking the medication in its container from the area where it is stored, handing the container with the medication in it to the individual, and opening the container, if the individual is physically unable to open the container;

(3) Assist, on request by or with the consent of, a physically impaired but mentally alert individual, with removal of oral or topical medication from the container and with the individual's taking or applying of the medication. If an

individual is physically unable to place a dose of oral medication 1354
to the individual's mouth without spilling or dropping it, MR/DD 1355
personnel may place the dose in another container and place that 1356
container to the individual's mouth. 1357

Sec. 5126.30. As used in sections 5126.30 to ~~5126.33~~ 5126.34 1358
of the Revised Code: 1359

(A) "Adult" means a person eighteen years of age or older 1360
with mental retardation or a developmental disability. 1361

(B) "Caretaker" means a person who is responsible for the 1362
care of an adult by order of a court, including an order of 1363
guardianship, or who assumes the responsibility for the care of an 1364
adult as a volunteer, as a family member, by contract, or by the 1365
acceptance of payment for care. 1366

(C) "Abuse" has the same meaning as in section 5123.50 of the 1367
Revised Code, except that it includes a misappropriation, as 1368
defined in that section. 1369

(D) "Neglect" has the same meaning as in section 5123.50 of 1370
the Revised Code. 1371

(E) "Working day" means Monday, Tuesday, Wednesday, Thursday, 1372
or Friday, except when that day is a holiday as defined in section 1373
1.14 of the Revised Code. 1374

(F) "Incapacitated" means lacking understanding or capacity, 1375
with or without the assistance of a caretaker, to make and carry 1376
out decisions regarding food, clothing, shelter, health care, or 1377
other necessities, but does not include mere refusal to consent to 1378
the provision of services. 1379

Sec. 5126.31. (A) A county board of mental retardation and 1380
developmental disabilities shall review reports of abuse and 1381
neglect made under section 5123.61 of the Revised Code and reports 1382

referred to it under section 5101.611 of the Revised Code to 1383
determine whether the person who is the subject of the report is 1384
an adult with mental retardation or a developmental disability in 1385
need of services to deal with the abuse or neglect. The board 1386
shall give notice of each report to the registry office of the 1387
department of mental retardation and developmental disabilities 1388
established pursuant to section 5123.61 of the Revised Code on the 1389
first working day after receipt of the report. If the report 1390
alleges that there is a substantial risk to the adult of immediate 1391
physical harm or death, the board shall initiate review within 1392
twenty-four hours of its receipt of the report. If the board 1393
determines that the person is sixty years of age or older but does 1394
not have mental retardation or a developmental disability, it 1395
shall refer the case to the county department of job and family 1396
services. If the board determines that the person is an adult with 1397
mental retardation or a developmental disability, it shall 1398
continue its review of the case. 1399

(B) For each review over which the board retains 1400
responsibility under division (A) of this section, it shall do all 1401
of the following: 1402

(1) Give both written and oral notice of the purpose of the 1403
review to the adult and, if any, to the adult's legal counsel or 1404
caretaker, in simple and clear language; 1405

(2) Visit the adult, in the adult's residence if possible, 1406
and explain the notice given under division (B)(1) of this 1407
section; 1408

(3) Request from the registry office any prior reports 1409
concerning the adult or other principals in the case; 1410

(4) Consult, if feasible, with the person who made the report 1411
under section 5101.61 or 5123.61 of the Revised Code and with any 1412
agencies or persons who have information about the alleged abuse 1413
or neglect; 1414

(5) Cooperate fully with the law enforcement agency 1415
responsible for investigating the report and for filing any 1416
resulting criminal charges and, on request, turn over evidence to 1417
the agency; 1418

(6) Determine whether the adult needs services, and prepare a 1419
written report stating reasons for the determination. No adult 1420
shall be determined to be abused, neglected, or in need of 1421
services for the sole reason that, in lieu of medical treatment, 1422
the adult relies on or is being furnished spiritual treatment 1423
through prayer alone in accordance with the tenets and practices 1424
of a church or religious denomination of which the adult is a 1425
member or adherent. 1426

(C) The board shall arrange for the provision of services for 1427
the prevention, correction or discontinuance of abuse or neglect 1428
or of a condition resulting from abuse or neglect for any adult 1429
who has been determined to need the services and consents to 1430
receive them. These services may include, but are not limited to, 1431
service and support administration, fiscal management, medical, 1432
mental health, home health care, homemaker, legal, and residential 1433
services and the provision of temporary accommodations and 1434
necessities such as food and clothing. The services do not include 1435
acting as a guardian, trustee, or protector as defined in section 1436
5123.55 of the Revised Code. If the provision of residential 1437
services would require expenditures by the department of mental 1438
retardation and developmental disabilities, the board shall obtain 1439
the approval of the department prior to arranging the residential 1440
services. 1441

To arrange services, the board shall: 1442

(1) Develop an individualized service plan identifying the 1443
types of services required for the adult, the goals for the 1444
services, and the persons or agencies that will provide them; 1445

(2) In accordance with rules established by the director of 1446
mental retardation and developmental disabilities, obtain the 1447
consent of the adult or the adult's guardian to the provision of 1448
any of these services and obtain the signature of the adult or 1449
guardian on the individual service plan. An adult who has been 1450
found incompetent under Chapter 2111. of the Revised Code may 1451
consent to services. If the board is unable to obtain consent, it 1452
may seek, if the adult is incapacitated, a court order pursuant to 1453
section 5126.33 of the Revised Code authorizing the board to 1454
arrange these services. 1455

(D) The board shall ensure that the adult receives the 1456
services arranged by the board from the provider and shall have 1457
the services terminated if the adult withdraws consent. 1458

(E) On completion of a review, the board shall submit a 1459
written report to the registry office established under section 1460
5123.61 of the Revised Code. If the report includes a finding that 1461
a person with mental retardation or a developmental disability is 1462
a victim of action or inaction that may constitute a crime under 1463
federal law or the law of this state, the board shall submit the 1464
report to the law enforcement agency responsible for investigating 1465
the report. Reports prepared under this section are not public 1466
records as defined in section 149.43 of the Revised Code. 1467

~~(F) The board shall provide comprehensive formal training for 1469
employees and other persons authorized to implement the 1470
requirements of this section. 1471~~

Sec. ~~5126.312~~ 5126.34. The Each county board of mental 1472
retardation and developmental disabilities shall provide 1473
comprehensive, formal training for county board employees and 1474
other persons authorized to implement sections 5126.30 to 5126.34 1475
of the Revised Code. 1476

The department of mental retardation and developmental 1477
disabilities shall adopt rules establishing minimum standards for 1478
the training provided by county boards of mental retardation and 1479
developmental disabilities pursuant to division (F) of this 1480
section 5126.31 of the Revised Code. The training provided by the 1481
county boards shall meet the minimum standards prescribed by the 1482
rules. 1483

Sec. 5126.36. (A) As used in this section, "health-related 1484
activities," "prescribed medication," and "tube feeding" have the 1485
same meanings as in section 5123.41 of the Revised Code. 1486

(B) In accordance with sections 5123.42 and 5123.651 of the 1487
Revised Code, an employee of a county board of mental retardation 1488
or developmental disabilities or an entity under contract with the 1489
board who is not specifically authorized by other provisions of 1490
the Revised Code to administer prescribed medications, perform 1491
health-related activities, perform tube feedings, or provide 1492
assistance in the self-administration of prescribed medications 1493
may do so pursuant to the authority granted under those sections. 1494

Section 2. That existing sections 4731.053, 5123.19, 5123.50, 1495
5123.611, 5126.30, 5126.31, 5126.312, 5126.354, 5126.355, and 1496
5126.357 of the Revised Code are hereby repealed. 1497

Section 3. Except as otherwise provided in this section, 1498
Sections 1 and 2 of this act take effect at the earliest time 1499
permitted by law. Sections 4731.053, 5123.50, 5123.611, 5126.354 1500
(5123.422), and 5126.357 (5123.47) of the Revised Code, as amended 1501
by this act, take effect nine months after the effective date of 1502
this section. 1503

Section 4. Sections 4723.61, 4723.62, 5123.193, 5126.35, 1504
5126.351, 5126.352, 5126.353, and 5126.356 of the Revised Code are 1505

hereby repealed, effective nine months after the effective date of 1506
this section. 1507

Section 5. The Director of Mental Retardation and 1508
Developmental Disabilities shall adopt rules in accordance with 1509
Chapter 119. of the Revised Code establishing a schedule for 1510
residential facilities licensed under section 5123.19 of the 1511
Revised Code on the effective date of this section to seek renewal 1512
of the license in accordance with the amendments made by this act 1513
to that section. Notwithstanding division (C) of section 5123.19 1514
of the Revised Code, as amended by this act, a residential 1515
facility license in effect on the effective date of this section 1516
shall remain in effect until the Director renews or refuses to 1517
renew the license, unless the license is terminated, revoked, or 1518
voluntarily surrendered. 1519

Section 6. (A) There is hereby created the MR/DD Consumer 1520
Information Advisory Council consisting of the following members: 1521

(1) One representative of the Department of Mental 1522
Retardation and Developmental Disabilities, appointed by the 1523
Director of Mental Retardation and Developmental Disabilities; 1524

(2) One representative of People First of Ohio, appointed by 1525
the organization's president; 1526

(3) One representative of the Ohio Association of County 1527
Boards of Mental Retardation and Developmental Disabilities, 1528
appointed by the association's president; 1529

(4) Two representatives of the Ohio Health Care Association, 1530
appointed by the association's chairperson; 1531

(5) Two representatives of the Ohio Provider Resource 1532
Association, appointed by the association's president; 1533

(6) One representative of the ARC of Ohio, appointed by the 1534

association's president; 1535

(7) One representative of the Ohio Legal Rights Service, 1536
appointed by its administrator; 1537

(8) One representative of the Ohio Superintendents of County 1538
Boards of Mental Retardation and Developmental Disabilities, 1539
appointed by, the organization's president; 1540

(9) One representative of Advocacy and Protective Services, 1541
Inc., appointed by the organization's executive director; 1542

(10) One representative of the Ohio Developmental 1543
Disabilities Council, appointed by the organization's executive 1544
director. 1545

(B) Each member of the Council shall serve at the discretion 1546
of the member's appointing authority. Except to the extent that 1547
serving as a member is part of a member's regular employment 1548
duties, members shall serve without compensation or reimbursement 1549
for expenses. 1550

(C) The representative of the Department of Mental 1551
Retardation and Developmental Disabilities shall serve as the 1552
Council's chairperson and shall convene the Council's meetings. 1553

(D) The Department of Mental Retardation and Developmental 1554
Disabilities shall supply meeting space and staff support for the 1555
Council. 1556

(E) The Council shall develop recommendations on methods of 1557
providing consumer information about services available under 1558
Chapters 5123. and 5126. of the Revised Code in a manner that 1559
promotes awareness of the range of available services and is easy 1560
to use and understand. The Council shall issue a report on its 1561
recommendations to the Director of Mental Retardation and 1562
Developmental Disabilities not later than September 1, 2003. On 1563
issuance of the report, the Council shall cease to exist. 1564