

# As Passed by the Senate

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Wachtmann, Herington, Robert Gardner, Ryan

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## A B I L L

To amend sections 4723.61, 5123.19, 5123.50, 5123.611,	1
5126.354, 5126.355, and 5126.357; to amend, for the	2
purpose of adopting new section numbers as	3
indicated in parentheses, 4723.61 (4723.071),	4
sections 5126.354 (5123.205), 5126.355 (5123.206),	5
and 5126.357 (5123.208); to enact sections	6
5123.201, 5123.202, 5123.203, 5123.204, 5123.207,	7
and 5126.36; and to repeal sections 4723.62,	8
5123.193, 5126.35, 5126.351, 5126.352, 5126.353,	9
and 5126.356 of the Revised Code to revise the law	10
governing the licensure of residential facilities	11
for individuals with mental retardation and	12
developmental disabilities and to revise the law	13
pertaining to the authority of certain personnel to	14
administer medications and perform health-related	15
activities for individuals with mental retardation	16
and developmental disabilities.	17

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

<b>Section 1.</b> That sections 4723.61, 5123.19, 5123.50, 5123.611,	18
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5126.354, 5126.355, and 5126.357 be amended; sections 4723.61  
(4723.071), 5126.354 (5123.205), 5126.355 (5123.206), and 5126.357  
(5123.208) be amended for the purpose of adopting new section  
numbers as indicated in parentheses; and sections 5123.201,  
5123.202, 5123.203, 5123.204, 5123.207, and 5126.36 of the Revised  
Code be enacted to read as follows:

**Sec. ~~4723.61~~ 4723.071.** (A) As used in this section, "~~ICF/MR~~  
~~health-related activities,~~" "~~MR/DD personnel,~~" and "~~ICF/MR worker~~  
~~prescribed medication~~" have the same meanings as in section  
~~5123.193~~ 5123.201 of the Revised Code.

(B) The board of nursing shall adopt rules as necessary to  
govern the nursing delegation specified in as it applies to MR/DD  
personnel who administer prescribed medication and perform  
health-related activities pursuant to the authority granted under  
section ~~5123.193~~ 5123.202 of the Revised Code. The board shall  
~~adopt initial rules not later than ninety days after the effective~~  
~~date of this~~ not establish any requirement in the rules that is  
inconsistent with the authority of MR/DD personnel to perform  
services pursuant to that section. The rules shall be adopted in  
accordance with Chapter 119. of the Revised Code ~~and establish the~~  
~~following:~~

~~(1) Standards that an instructional program must meet to be~~  
~~approved as a program that trains registered nurses to instruct~~  
~~ICF/MR workers to give oral and apply topical medications,~~  
~~including the minimum types of information that must be covered in~~  
~~the program and the minimum qualifications the instructional~~  
~~personnel must possess. To qualify for approval, a program must be~~  
~~at least a one-day program and have been approved as a~~  
~~faculty-directed continuing nursing education activity pursuant to~~  
~~rules adopted under section 4723.07 of the Revised Code.~~

~~(2) Standards that a unit of instruction must meet to be~~

~~approved as an independent study module for nurses on the  
instruction of medication courses for ICF/MR workers and the  
statutes and rules applicable to those workers. To qualify for  
approval, an independent study module must have been approved as a  
continuing nursing education activity pursuant to rules adopted  
under section 4723.07 of the Revised Code.~~

~~(3) Standards that a registered nurse must meet to be  
eligible to teach ICF/MR workers to give oral or apply topical  
medications. With regard to training, the nurse must successfully  
complete one of the following:~~

~~(a) An approved training program that trains registered  
nurses to instruct ICF/MR workers in giving oral and applying  
topical medications;~~

~~(b) An approved training program given by the department of  
mental retardation and developmental disabilities that trains  
nurses to be instructors of the training program described in the  
"program manual for implementation of the medication  
administration by unlicensed personnel in ICF/MR group homes of 15  
beds or less," as developed by the departments of health and  
mental retardation and developmental disabilities, as well as an  
independent study module for nurses on the instruction of  
medication courses for ICF/MR workers and the statutes and rules  
applicable to those workers.~~

~~(4) Standards that a nurse must meet to remain eligible to  
instruct ICF/MR workers in giving oral and applying topical  
medications;~~

~~(5) Standards that a course of instruction must meet to be  
approved as a medication course for ICF/MR workers, including the  
minimum types of information that must be covered in the course.  
The course must be conducted by a registered nurse, except that  
the board's standards may allow the use of other health care~~

~~professionals listed in division (A) of section 5123.193 of the~~  
~~Revised Code to provide instruction within the scope of their~~  
~~professions, including licensed practical nurses acting under the~~  
~~direction of registered nurses.~~

~~(6) Standards an ICF/MR worker must meet to be eligible to~~  
~~take the medication course for ICF/MR workers and to demonstrate~~  
~~successful completion of the course;~~

~~(7) Standards for the annual training an ICF/MR worker must~~  
~~complete to remain eligible to give oral and apply topical~~  
~~medications;~~

~~(8) Standards nurses must follow in delegating authority to~~  
~~give oral or apply topical medications in an ICF/MR, including any~~  
~~conditions or limits pertaining to the delegation;~~

~~(9) Standards nurses must follow in providing on-site or~~  
~~off-site direction and supervision of ICF/MR workers who have been~~  
~~authorized to give oral or apply topical medications;~~

~~(10) Standards ICF/MR workers must follow when giving oral or~~  
~~applying topical medications to ICF/MR residents.~~

~~(C) The approval of programs, courses, and training modules~~  
~~pertaining to delegation of authority to give oral or apply~~  
~~topical medications may be made by the board of nursing or by an~~  
~~entity the board recognizes as an approver of instructional~~  
~~programs.~~

~~(D) The board of nursing may accept complaints from any~~  
~~person or entity regarding the performance or qualifications of an~~  
~~ICF/MR worker to give oral or apply topical medications~~ MR/DD  
personnel who perform services pursuant to the authority granted  
under section 5123.193 5123.202 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 ~~5123.193~~ 5123.202 of the Revised Code. 112  
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**Sec. 5123.19.** (A) As used in this section and in sections 114  
5123.191, 5123.194, and 5123.20 of the Revised Code: 115

(1) "Residential facility" means a home or facility in which 116  
a mentally retarded or developmentally disabled person resides, 117  
except the home of a relative or legal guardian in which a 118  
mentally retarded or developmentally disabled person resides, a 119  
respite care home certified under section 5126.05 of the Revised 120  
Code, a county home or district home operated pursuant to Chapter 121  
5155. of the Revised Code, or a dwelling in which the only 122  
mentally retarded or developmentally disabled residents are in an 123  
independent living arrangement or are being provided supported 124  
living. 125

(2) "Political subdivision" means a municipal corporation, 126  
county, or township. 127

(3) "Independent living arrangement" means an arrangement in 128  
which a mentally retarded or developmentally disabled person 129  
resides in an individualized setting chosen by the person or the 130  
person's guardian, which is not dedicated principally to the 131  
provision of residential services for mentally retarded or 132  
developmentally disabled persons, and for which no financial 133  
support is received for rendering such service from any 134  
governmental agency by a provider of residential services. 135

(4) "Supported living" has the same meaning as in section 136  
5126.01 of the Revised Code. 137

(5) "Licensee" means the person or government agency that has 138  
applied for a license to operate a residential facility and to 139  
which the license was issued under this section. 140

(B) Every person or government agency desiring to operate a 141

residential facility shall apply for licensure of the facility to  
the director of mental retardation and developmental disabilities  
unless the residential facility is subject to section 3721.02,  
3722.04, 5103.03, or 5119.20 of the Revised Code. Notwithstanding  
Chapter 3721. of the Revised Code, a nursing home that is  
certified as an intermediate care facility for the mentally  
retarded under Title XIX of the "Social Security Act," 49 79 Stat.  
620 286 (1935 1965), 42 U.S.C.A. 301 1396, as amended, shall apply  
for licensure of the portion of the home that is certified as an  
intermediate care facility for the mentally retarded.

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

~~Except as provided in divisions (G) and (O) of this section,~~  
~~a initial license is valid until it is~~ may be issued for a period  
that does not exceed one year. A license may be renewed for a  
period that does not exceed three years. The director, when  
issuing or renewing a license, shall specify the period for which  
the license is being issued or renewed. A license remains valid  
for the length of the licensing period specified by the director,  
unless the license is terminated, revoked, or voluntarily  
surrendered. ~~Appeals~~

(D) If it is determined that an applicant or licensee is not  
in compliance with this section or the rules adopted under it, the  
director may deny issuance of a license, refuse to renew a  
license, terminate a license, revoke a license, issue an order for  
the suspension of admissions to a facility, issue an order for the  
placement of a monitor at a facility, issue an order for the  
immediate removal of residents, or take any other action the  
director considers necessary. In the director's selection and  
administration of the sanction to be imposed, all of the following

apply:

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

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

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(3) The director may issue an order for the suspension of  
admissions to a facility for any violation that may result in  
sanctions under division (D)(1) of this section and for any other  
violation specified in rules adopted under division (G)(2) of this  
section. If the suspension of admissions is imposed for a  
violation that may result in sanctions under division (D)(1) of  
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 rescind an order for the  
suspension of admissions when 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 rescind  
the order when 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 this chapter or  
the rules adopted under it, and the director's findings are based  
on the same or a substantially similar action, practice,

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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 this section or the  
rules adopted under it.

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

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

(8) In determining whether a residential facility is being  
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.

(9) In proceedings initiated to deny, refuse to renew, or  
revoke licenses, the director may deny, refuse to renew, 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.

(E) The director shall establish a program under which public  
notification may be made when the director has initiated license  
revocation proceedings or has issued an order for the suspension  
of admissions, placement of a monitor, or removal of residents.  
The director shall adopt rules in accordance with Chapter 119. of  
the Revised Code as considered necessary to implement this  
division. The rules shall establish the procedures by which the  
public notification will be made and specify the circumstances for  
which the notification must be made. At a minimum, public  
notification shall be made if the director has taken action  
against the facility in the eighteen-month period immediately  
preceding the director's latest action against the facility and  
the latest action is being taken for the same or substantially  
similar violation of this section or the rules adopted under it.  
The rules shall specify a method for removing or amending the  
public notification if the director's action is found to have been  
unjustified or the violation at the residential facility has been  
corrected.

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

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

(a) The licensee may request a hearing not later than ten  
days after receiving the notice specified in section 119.07 of the

Revised Code.

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

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

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

(e) Not later than five days after the hearing examiner files the report and recommendations, the licensee may file objections to the report and recommendations.

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

(g) Notwithstanding the pendency of the hearing, the director shall rescind the order for the suspension of admissions when the violation that formed the basis for the order is corrected.

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

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

<u>(2) Procedures and criteria for denying, refusing to renew,</u>	299
<u>terminating, and revoking licenses and for ordering the suspension</u>	300
<u>of admissions to a facility, placement of a monitor at a facility,</u>	301
<u>and the immediate removal of residents from a facility;</u>	302
<u>+2)+(3) Fees for issuing and renewing licenses;</u>	303
<u>+3)+(4) Procedures for the inspection of surveying residential</u>	304
<u>facilities;</u>	305
<u>+4)+(5) Requirements for the training of residential facility</u>	306
<u>personnel;</u>	307
<u>+5)+(6) Classifications for the various types of residential</u>	308
<u>facilities;</u>	309
<u>+6)+(7) Certification procedures for licensees and management</u>	310
<u>contractors that the director determines are necessary to ensure</u>	311
<u>that they have the skills and qualifications to properly operate</u>	312
<u>or manage residential facilities;</u>	313
<u>+7)+(8) The maximum number of persons who may be served in a</u>	314
<u>particular type of residential facility;</u>	315
<u>+8)+(9) Uniform procedures for admission of persons to and</u>	316
<u>transfers and discharges of persons from residential facilities;</u>	317
<u>+9)+(10) Other standards for the operation of residential</u>	318
<u>facilities and the services provided at residential facilities;</u>	319
<u>+10)+(11) Procedures for waiving any provision of any rule</u>	320
<u>adopted under this section.</u>	321
<u>+D)+(H) Before issuing a license, the director of the</u>	322
<u>department or the director's designee shall conduct an inspection</u>	323
<u>a survey of the residential facility for which application is</u>	324
<u>made. The director or the director's designee shall conduct an</u>	325
<u>inspection a survey of each licensed residential facility at least</u>	326
<u>once each year during the period the license is valid and may</u>	327
<u>conduct additional inspections as needed. An inspection A survey</u>	328

includes but is not limited to an on-site examination and 329  
evaluation of the residential facility, its personnel, and the 330  
services provided there. 331

In conducting ~~inspections~~ surveys, the director or the 332  
director's designee shall be given access to the residential 333  
facility; all records, accounts, and any other documents related 334  
to the operation of the facility; the licensee; the residents of 335  
the facility; and all persons acting on behalf of, under the 336  
control of, or in connection with the licensee. The licensee and 337  
all persons on behalf of, under the control of, or in connection 338  
with the licensee shall cooperate with the director or the 339  
director's designee in conducting the ~~inspection~~ survey. 340

Following each ~~inspection~~ survey, unless the director 341  
initiates a license revocation proceeding, the director or the 342  
director's designee shall provide the licensee with a report 343  
listing any deficiencies, specifying a timetable within which the 344  
licensee shall submit a plan of correction describing how the 345  
deficiencies will be corrected, and, when appropriate, specifying 346  
a timetable within which the licensee must correct the 347  
deficiencies. After a plan of correction is submitted, the 348  
director or the director's designee shall approve or disapprove 349  
the plan. A copy of the report and any approved plan of correction 350  
shall be provided to any person who requests it. 351

~~If it is determined that a residential facility is not being~~ 352  
~~operated in compliance with this chapter or the rules adopted~~ 353  
~~under it, the director may take such steps as are necessary,~~ 354  
~~including, but not limited to, suspension of admissions to the~~ 355  
~~residential facility, placement of a monitor at the residential~~ 356  
~~facility, and the initiation of license revocation proceedings.~~ 357

~~When the director initiates license revocation proceedings,~~ 358  
~~no opportunity for submitting a plan of correction shall be given.~~ 359  
~~The director shall notify the licensee by letter of the initiation~~ 360

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

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

~~In determining whether a residential facility is being  
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."~~

~~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.~~

~~(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)~~(J) 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.

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~~(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

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ordered by a court of competent jurisdiction. 425

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The department shall ~~acknowledge receipt of the complaint and~~ 427  
~~notify the complainant of the action that will be taken with~~ 428  
~~respect to it within five working days of receiving it~~ adopt rules 429  
in accordance with Chapter 119. of the Revised Code establishing 430  
procedures for the receipt, referral, investigation, and 431  
disposition of complaints filed with the department under this 432  
division. 433

~~The substance of a complaint shall not be provided to a~~ 434  
~~licensee until the commencement of an inspection or investigation.~~ 435

~~(I)~~(L) The department shall establish procedures for the 436  
notification of interested parties of the transfer or interim care 437  
of residents from residential facilities that are closing or are 438  
losing their license. 439

~~(J)~~(M) Before issuing a license under this section to a 440  
residential facility that will accommodate at any time more than 441  
one mentally retarded or developmentally disabled individual, the 442  
director shall, by first class mail, notify the following: 443

(1) If the facility will be located in a municipal 444  
corporation, the clerk of the legislative authority of the 445  
municipal corporation; 446

(2) If the facility will be located in unincorporated 447  
territory, the clerk of the appropriate board of county 448  
commissioners and the clerk of the appropriate board of township 449  
trustees. 450

The director shall not issue the license for ten days after 451  
mailing the notice, excluding Saturdays, Sundays, and legal 452  
holidays, in order to give the notified local officials time in 453  
which to comment on the proposed issuance. 454

Any legislative authority of a municipal corporation, board 455

of county commissioners, or board of township trustees that  
receives notice under this division of the proposed issuance of a  
license for a residential facility may comment on it in writing to  
the director within ten days after the director mailed the notice,  
excluding Saturdays, Sundays, and legal holidays. If the director  
receives written comments from any notified officials within the  
specified time, the director shall make written findings  
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 488  
resolution may regulate these residential facilities in 489  
multiple-family residential districts or zones as a conditionally 490  
permitted use or special exception, in either case, under 491  
reasonable and specific standards and conditions set out in the 492  
zoning ordinance or resolution to: 493

(1) Require the architectural design and site layout of the 494  
residential facility and the location, nature, and height of any 495  
walls, screens, and fences to be compatible with adjoining land 496  
uses and the residential character of the neighborhood; 497

(2) Require compliance with yard, parking, and sign 498  
regulation; 499

(3) Limit excessive concentration of these residential 500  
facilities. 501

~~(M)~~(P) This section does not prohibit a political subdivision 502  
from applying to residential facilities nondiscriminatory 503  
regulations requiring compliance with health, fire, and safety 504  
regulations and building standards and regulations. 505

~~(N)~~(Q) Divisions ~~(K)~~(N) and ~~(L)~~(O) of this section are not 507  
applicable to municipal corporations that had in effect on June 508  
15, 1977, an ordinance specifically permitting in residential 509  
zones licensed residential facilities by means of permitted uses, 510  
conditional uses, or special exception, so long as such ordinance 511  
remains in effect without any substantive modification. 512

~~(O)~~(R)(1) The director may issue an interim license to 513  
operate a residential facility to an applicant for a license under 514  
this section if ~~all~~ either of the following ~~conditions are met~~ 515  
applies: 516

~~(1)~~(a) The director determines that an emergency exists ~~that~~ 517  
~~requires~~ requiring immediate placement of persons in a residential 518

facility, ~~and that~~ insufficient licensed beds are available- 519

~~(2) The residential facility meets standards in rules for 520  
interim licenses that the director shall adopt in accordance with 521  
Chapter 119. of the Revised Code. 522~~

~~(3) The director determines, and~~ that the residential 523  
facility is likely to receive a permanent license under this 524  
section within thirty days after issuance of the interim license. 525

(b) The director determines that the issuance of an interim 526  
license is necessary to meet a temporary need for a residential 527  
facility. 528

(2) To be eligible to receive an interim license, an 529  
applicant must meet the same criteria that must be met to receive 530  
a permanent license under this section, except for any differing 531  
procedures and time frames that may apply to issuance of a 532  
permanent license. 533

(3) An interim license shall be valid for thirty days and may 534  
be renewed by the director ~~no more than twice~~ for a period not to 535  
exceed one hundred fifty days. 536

(4) The director shall adopt rules in accordance with Chapter 537  
119. of the Revised Code as the director considers necessary to 538  
administer the issuance of interim licenses. 539

~~(P)~~(S) Notwithstanding rules adopted pursuant to this section 540  
establishing the maximum number of persons who may be served in a 541  
particular type of residential facility, a residential facility 542  
shall be permitted to serve the same number of persons being 543  
served by the facility on the effective date of such rules or the 544  
number of persons for which the facility is authorized pursuant to 545  
a current application for a certificate of need with a letter of 546  
support from the department of mental retardation and 547  
developmental disabilities and which is in the review process 548  
prior to April 4, 1986. 549

~~(Q)~~(T) The director or the director's designee may enter at 550  
any time, for purposes of investigation, any home, facility, or 551  
other structure that has been reported to the director or that the 552  
director has reasonable cause to believe is being operated as a 553  
residential facility without a license issued under this section. 554

The director may petition the court of common pleas of the 555  
county in which an unlicensed residential facility is located for 556  
an order enjoining the person or governmental agency operating the 557  
facility from continuing to operate without a license. The court 558  
may grant the injunction on a showing that the person or 559  
governmental agency named in the petition is operating a 560  
residential facility without a license. The court may grant the 561  
injunction, regardless of whether the residential facility meets 562  
the requirements for receiving a license under this section. 563

Sec. 5123.201. As used in this section and sections 5123.202 564  
to 5123.208 of the Revised Code: 565

(A) "Drug" and "licensed health professional authorized to 566  
prescribe drugs" have the same meanings as in section 4729.01 of 567  
the Revised Code. 568

(B) "Health-related activities" means the following: 569

(1) Taking vital signs; 570

(2) Application of clean dressings that do not require health 571  
assessment; 572

(3) Basic measurement of bodily intake and output; 573

(4) Oral suctioning; 574

(5) Routine mouth care; 575

(6) Routine care of hair, nails, and skin; 576

(7) Use of glucometers; 577

(8) External urinary catheter care; 578

(9) Emptying and replacing colostomy bags; 579

(10) Collection of specimens by noninvasive means. 580

(C) "MR/DD personnel" means the individuals who provide 581  
specialized services to individuals with mental retardation and 582  
developmental disabilities. "MR/DD personnel" includes all of the 583  
following: 584

(1) Individuals who provide specialized services through 585  
direct employment with the department of mental retardation and 586  
developmental disabilities or a county board of mental retardation 587  
and developmental disabilities; 588

(2) Individuals who provide specialized services through an 589  
entity under contract with the department of mental retardation 590  
and developmental disabilities or a county board of mental 591  
retardation and developmental disabilities; 592

(3) Individuals who provide specialized services through 593  
direct employment or by being under contract with private 594  
entities, including private entities that operate residential 595  
facilities licensed under section 5123.19 of the Revised Code and 596  
private entities that operate facilities subject to section 597  
5123.192 of the Revised Code. 598

(D) "Nursing delegation" means the process established in 599  
rules adopted by the board of nursing pursuant to Chapter 4723. of 600  
the Revised Code under which a registered nurse or licensed 601  
practical nurse acting at the direction of a registered nurse 602  
transfers the performance of a particular nursing activity or task 603  
to another individual who is not otherwise authorized to perform 604  
the activity or task. 605

(E) "Prescribed medication" means a drug that is to be 606  
administered according to the instructions of a licensed health 607

professional authorized to prescribe drugs. 608

(F) "Residential facility" has the same meaning as in section 609  
5123.19 of the Revised Code. 610

(G) "Specialized services" has the same meaning as in section 611  
5123.50 of the Revised Code. 612

(H) "Supported living" has the same meaning as in section 613  
5126.01 of the Revised Code. 614

**Sec. 5123.202.** (A) MR/DD personnel who are not specifically 615  
authorized by other provisions of the Revised Code to administer 616  
prescribed medication or perform health-related activities may, 617  
under this section, administer prescribed medication, perform 618  
health-related activities, or do both, as part of the services 619  
that the personnel provide to the following: 620

(1) Recipients of supported living; 621

(2) Recipients of sheltered workshop services; 622

(3) Residents of a residential facility with sixteen or fewer 623  
resident beds that is licensed as a residential facility under 624  
section 5123.19 of the Revised Code or subject to section 5123.192 625  
of the Revised Code. 626

(B) The authority established by division (A) of this section 627  
is subject to all of the following: 628

(1) To administer prescribed medication, perform 629  
health-related activities, or do both, MR/DD personnel must be 630  
appropriately certified in accordance with the certification 631  
program established under section 5123.205 of the Revised Code. An 632  
individual shall provide only those services for which the 633  
individual's certification was issued. 634

(2) Before a particular individual may receive services from 635  
MR/DD personnel pursuant to this section, the MR/DD personnel's 636

employer or other entity with primary responsibility for the  
services being provided shall ensure that each individual  
providing the services has been trained specifically with respect  
to the individual receiving the services.

(3) In the case of services provided to recipients of  
supported living, all of the following apply:

(a) Without nursing delegation, MR/DD personnel may perform  
health-related activities and administer topical and oral  
prescribed medications.

(b) With nursing delegation, MR/DD personnel may administer  
prescribed medication and perform routine feedings through stable,  
labeled gastrostomy and jejunostomy tubes.

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

(4) In the case of services provided to residents of a  
residential facility with five or fewer resident beds, all of the  
following apply:

(a) Without nursing delegation, MR/DD personnel, may perform  
health-related activities and administer topical and oral  
prescribed medications.

(b) With nursing delegation, MR/DD personnel may administer  
prescribed medication and perform routine feedings through stable,  
labeled gastrostomy and jejunostomy tubes.

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

(5) In the case of services provided to residents of a  
residential facility with six but not more than sixteen resident  
beds, both of the following apply:

(a) With nursing delegation, MR/DD personnel may perform 667  
health-related activities and administer topical and oral 668  
prescribed medications. 669

(b) With nursing delegation, MR/DD personnel may administer 670  
prescribed medications and perform routine feedings through 671  
stable, labeled gastrostomy and jejunostomy tubes. 672

(6) In the case of services provided to recipients of 673  
sheltered workshop services, both of the following apply: 674

(a) With nursing delegation, MR/DD personnel may perform 675  
health-related activities and administer topical and oral 676  
prescribed medications. 677

(b) With nursing delegation, MR/DD personnel may administer 678  
prescribed medications and perform routine feedings through 679  
stable, labeled gastrostomy and jejunostomy tubes. 680

(C) In accordance with section 5123.207 of the Revised Code, 681  
the department of mental retardation and developmental 682  
disabilities shall adopt rules as it considers necessary to 683  
implement this section. The rules shall include the following: 684

(1) Requirements for documentation of each service provided 685  
pursuant to the authority granted under this section; 686

(2) Procedures for reporting errors that occur in the 687  
administration of medication or performance of health-related 688  
activities by MR/DD personnel; 689

(3) Procedures for the department to follow in accepting 690  
complaints regarding the performance of services by MR/DD 691  
personnel pursuant to the authority granted under this section and 692  
procedures for conducting investigations of those complaints. 693

**Sec. 5123.203.** (A) For the purpose of providing training with 694  
respect to the authority of MR/DD personnel to perform services 695

pursuant to section 5123.202 of the Revised Code, the department  
of mental retardation and developmental disabilities shall develop  
courses for training MR/DD personnel and courses for training  
registered nurses to conduct the MR/DD personnel training courses.

In accordance with section 5123.207 of the Revised Code, the  
department shall adopt rules that specify the content and length  
of the courses and establish any other standards for training  
considered necessary by the department.

(B) The medication administration training courses developed  
under division (A) of this section shall address at least all of  
the following:

(1) Infection control and universal precautions;

(2) Correct and safe practices, procedures, and techniques  
for administering prescribed medication;

(3) Assessment of drug reaction, including known side  
effects, interactions, and the proper course of action if a side  
effect occurs;

(4) Requirements for documentation of medication administered  
to each individual;

(5) Requirements for documentation and notification of  
medication errors;

(6) Information regarding the proper storage and care of  
medications;

(7) Requirements for successful demonstration of proficiency  
in medication administration;

(8) Information about proper receipt of prescriptions and  
transcription of prescriptions into an individual's medication  
administration record.



Sec. 5123.204. (A)(1) The department of mental retardation and developmental disabilities shall establish a program under which the department issues certificates to MR/DD personnel to perform service pursuant to section 5123.202 of the Revised Code and certificates to registered nurses to conduct training courses for MR/DD personnel. Except as provided in division (A)(2) of this section, to be eligible for a certificate, an individual must successfully complete the applicable training course developed under section 5123.203 of the Revised Code and meet all other applicable requirements established in rules adopted pursuant to this section.

(2) The program shall include provisions for issuing certificates to the following:

(a) MR/DD personnel who, prior to the effective date of this section, administered medication or performed tasks, or both, pursuant to former section 5123.193 or former sections 5126.351 to 5126.354 of the Revised Code;

(b) Registered nurses who, prior to the effective date of this section, trained individuals pursuant to former sections 4723.61, 4723.62, 5123.193, and 5126.351 to 5126.354 of the Revised Code. A registered nurse who receives a certificate under division (A)(2) of this section shall not train MR/DD personnel to administer insulin unless the registered nurse completes a refresher course developed under section 5123.203 of the Revised Code that enables the registered nurse to receive a certificate to train MR/DD personnel to administer insulin.

(B) Certificates issued to MR/DD personnel and registered nurses are valid for one year and may be renewed. To be eligible for renewal, MR/DD personnel and registered nurses must meet the applicable continued competency requirements and continuing education requirements specified in rules adopted under division

(C) of this section.

(C) In accordance with section 5123.207 of the Revised Code,  
the department shall adopt rules that establish all of the  
following:

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

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

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

(4) Standards and procedures for renewing a certificate,  
including requirements for continuing education and, in the case  
of MR/DD personnel who administer medication, requirements for  
successful demonstration of medication administration;

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

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

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

(D) The department shall establish and maintain a registry  
that lists each individual who holds a valid certificate issued  
pursuant to this section. The registry shall specify the type of  
certificate held and any limitations that apply to the individual  
holding the certificate.

**Sec. ~~5126.354~~ 5123.205.** ~~A county board worker~~ An individual  
authorized pursuant to section 5123.202 of the Revised Code to  
~~give or apply~~ administer prescribed medication or perform a

~~delegated nursing task~~ health-related activity, or both, is not  
liable for any injury caused by the medication or ~~task~~ activity if  
all both of the following apply:

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

~~(B) The county board worker gave or applied individual  
administered the medication or performed the nursing task  
activities in accordance with the methods taught in training  
completed to receive certification pursuant to division (D)(2) of  
section 5126.351~~ 5123.205 of the Revised Code;

~~(C)~~(B) The ~~county board worker~~ individual did not act in a  
manner that constitutes wanton or reckless misconduct.

**Sec. 5126.355** 5123.206. ~~A county board of mental retardation  
and developmental disabilities may permit a county board worker to  
assist a county board client~~ (A) 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 medication, MR/DD personnel are not  
required to be trained or certified in accordance with sections  
5123.203 and 5123.204 of the Revised Code.

(B) When assisting a county board client in  
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 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 medication to  
the individual's mouth without spilling or dropping it, MR/DD  
personnel may place the dose in another container and place that  
container to the individual's mouth.

**Sec. 5123.207.** All rules adopted under sections 5123.202 to  
5123.206 of the Revised Code shall be adopted in consultation with  
the board of nursing and the Ohio nurses association. The rules  
shall be adopted in accordance with Chapter 119. of the Revised  
Code.

**Sec. 5126.357 5123.208.** (A) As used in this section:

(1) "In-home care" means the supportive services provided  
within the home of an individual who receives funding for the  
services ~~as~~ through a county board client of mental retardation  
and developmental disabilities, including any ~~client who receives~~  
recipient of residential services funded through home and  
community-based services, family support services provided under  
section 5126.11 of the Revised Code, or supported living provided  
in accordance with sections 5126.41 to 5126.47 of the Revised  
Code. "In-home care" includes care that is provided outside a

~~client's~~ an individual's home in places incidental to the home, 846  
and while traveling to places incidental to the home, except that 847  
"in-home care" does not include care provided in the facilities of 848  
a county board of mental retardation and developmental 849  
disabilities or care provided in schools. 850

(2) "Parent" means either parent of a child, including an 851  
adoptive parent but not a foster parent. 852

(3) "Unlicensed in-home care worker" means an individual who 853  
provides in-home care but is not a health care professional. A 854  
~~county board worker~~ MR/DD personnel may be ~~an~~ unlicensed in-home 855  
care ~~worker~~ workers. 856

(4) "Family member" means a parent, sibling, spouse, son, 857  
daughter, grandparent, aunt, uncle, cousin, or guardian of the 858  
individual with mental retardation or a developmental disability 859  
if the individual with mental retardation or developmental 860  
disabilities lives with the person and is dependent on the person 861  
to the extent that, if the supports were withdrawn, another living 862  
arrangement would have to be found. 863

(B) Except as provided in division (D) of this section, a 864  
family member of an individual with mental retardation or a 865  
developmental disability may authorize an unlicensed in-home care 866  
worker to give or apply prescribed medication or perform other 867  
health care tasks as part of the in-home care provided to the 868  
individual, if the family member is the primary supervisor of the 869  
care and the unlicensed in-home care worker has been selected by 870  
the family member and is under the direct supervision of the 871  
family member. ~~Sections 4723.62 and 5126.351 to 5126.356 of the~~ 872  
~~Revised Code do not apply to the in-home care authorized by a~~ 873  
~~family member under this section. Instead, a~~ A family member shall 874  
obtain a prescription, if applicable, and written instructions 875  
from a health care professional for the care to be provided to the 876  
individual. The family member shall authorize the unlicensed 877

in-home care worker to provide the care by preparing a written 878  
document granting the authority. The family member shall provide 879  
the unlicensed in-home care worker with appropriate training and 880  
written instructions in accordance with the instructions obtained 881  
from the health care professional. 882

(C) A family member who authorizes an unlicensed in-home care 883  
worker to give or apply prescribed medication or perform other 884  
health care tasks retains full responsibility for the health and 885  
safety of the individual receiving the care and for ensuring that 886  
the worker provides the care appropriately and safely. No entity 887  
that funds or monitors the provision of in-home care may be held 888  
liable for the results of the care provided under this section by 889  
an unlicensed in-home care worker, including such entities as the 890  
county board of mental retardation and developmental disabilities, 891  
any other entity that employs an unlicensed in-home care worker, 892  
and the department of mental retardation and developmental 893  
disabilities. 894

An unlicensed in-home care worker who is authorized under 895  
this section by a family member to provide care to an individual 896  
may not be held liable for any injury caused in providing the 897  
care, unless the worker provides the care in a manner that is not 898  
in accordance with the training and instructions received or the 899  
worker acts in a manner that constitutes wanton or reckless 900  
misconduct. 901

(D) A county board of mental retardation and developmental 902  
disabilities may evaluate the authority granted by a family member 903  
under this section to an unlicensed in-home care worker at any 904  
time it considers necessary and shall evaluate the authority on 905  
receipt of a complaint. If the board determines that a family 906  
member has acted in a manner that is inappropriate for the health 907  
and safety of the individual receiving the services, the 908  
authorization granted by the family member to an unlicensed 909

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  
5126.06 of the Revised Code.

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

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

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

(2) Sexual abuse;

(3) Verbal abuse.

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

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

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

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

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

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

(D) "Neglect" means, when there is a duty to do so, failing

to provide an individual with any treatment, care, goods, or 938  
services that are necessary to maintain the health and safety of 939  
the individual. 940

(E) "Physical harm" and "serious physical harm" have the same 941  
meanings as in section 2901.01 of the Revised Code. 942

(F) "Sexual abuse" means unlawful sexual conduct or sexual 943  
contact, as those terms are defined in section 2907.01 of the 944  
Revised Code. 945

(G) "Specialized services" means any program or service 946  
designed and operated to serve primarily individuals with mental 947  
retardation or a developmental disability, including a program or 948  
service provided by an entity licensed or certified by the 949  
department of mental retardation and developmental disabilities 950  
and facilities subject to section 5123.192 of the Revised Code. A 951  
program or service available to the general public is not a 952  
specialized service. 953

(H) "Verbal abuse" means purposely using words to threaten, 954  
coerce, intimidate, harass, or humiliate an individual. 955

**Sec. 5123.611.** (A) As used in this section, MR/DD employee 956  
means all of the following: 957

(1) An employee of the department of mental retardation and 958  
developmental disabilities; 959

(2) An employee of a county board of mental retardation and 960  
developmental disabilities; 961

(3) ~~An "ICF/MR worker," as defined in section 5123.193 of the~~ 962  
~~Revised Code;~~ 963

~~(4)~~ An individual who is employed in a position that includes 964  
providing specialized services, as defined in section 5123.50 of 965  
the Revised Code, to an individual with mental retardation or a 966



developmental disability. 967

(B) At the conclusion of a review of a report of abuse, 968  
neglect, or a major unusual incident that is conducted by a review 969  
committee established pursuant to section 5123.61 of the Revised 970  
Code, the committee shall issue recommendations to the department. 971  
The department shall review the committee's recommendations and 972  
issue a report of its findings. The department shall make the 973  
report available to all of the following: 974

(1) The person who is the subject of the report; 975

(2) That person's guardian or legal counsel; 976

(3) The licensee, as defined in section 5123.19 of the 977  
Revised Code, of a residential facility in which the person 978  
resides; 979

(4) The employer of any MR/DD employee who allegedly 980  
committed or was responsible for the abuse, neglect, or major 981  
unusual incident. 982

(C) Except as provided in this section, the department shall 983  
not disclose its report to any person or government entity that is 984  
not authorized to investigate reports of abuse, neglect, or other 985  
major unusual incidents, unless the person who is the subject of 986  
the report or the person's guardian gives the department written 987  
consent. 988

Sec. 5126.36. Any individual employed by a county board of 989  
mental retardation or developmental disabilities or an entity 990  
under contract with the board who meets the requirements of 991  
sections 5123.201 through 5123.208 of the Revised Code may engage 992  
in any of the activities authorized under those sections, 993  
including the administration of oral and topical prescribed 994  
medication, performance of health-related activities, and 995  
provision of assistance with self-administration of medication. 996

**Section 2.** That existing sections 4723.61, 5123.19, 5123.50, 998  
5123.611, 5126.354, 5126.355, and 5126.357 and sections 4723.62, 999  
5123.193, 5126.35, 5126.351, 5126.352, 5126.353, and 5126.356 of 1000  
the Revised Code are hereby repealed. 1001

**Section 3.** The Director of Mental Retardation and 1002  
Developmental Disabilities shall adopt rules in accordance with 1003  
Chapter 119. of the Revised Code establishing a schedule for 1004  
residential facilities licensed under section 5123.19 of the 1005  
Revised Code on the effective date of this section to seek renewal 1006  
of the license in accordance with the amendments made by this act 1007  
to that section. Notwithstanding division (C) of section 5123.19 1008  
of the Revised Code, as amended by this act, a residential 1009  
facility license in effect on this section's effective date shall 1010  
remain in effect until the Director renews or refuses to renew the 1011  
license, unless the license is terminated, revoked, or voluntarily 1012  
surrendered. 1013

**Section 4.** Notwithstanding the provisions of section 5123.202 1014  
of the Revised Code that permit MR/DD personnel to administer 1015  
insulin with nursing delegation, MR/DD personnel shall not 1016  
administer insulin until being trained by a registered nurse who 1017  
has received a certificate under section 5123.204 of the Revised 1018  
Code that allows the registered nurse to train MR/DD personnel to 1019  
administer insulin. 1020