

# As Reported by the House Health and Family Services Committee

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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

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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 44  
that section. The rules shall be adopted in accordance with 45  
Chapter 119. of the Revised Code. 46

(C) The board of nursing may accept complaints from any 47

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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.

**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.

(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.

(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:

(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  
respect to routine administration of a topical drug, such as the  
use of a medicated shampoo;

(2) Evaluation of whether delegation is appropriate according  
to the acuity of the patient involved;

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(3) Training and competency requirements that must be met by the person administering the drugs;	79 80
(4) Other standards and procedures the board considers relevant.	81 82
(D) The board shall not adopt rules that do any of the following:	83 84
(1) Authorize a physician to transfer the physician's responsibility for supervising a person who is performing a delegated medical task to a health professional other than another physician;	85 86 87 88
(2) Authorize an individual to whom a medical task is delegated to delegate the performance of that task to another individual;	89 90 91
(3) Except as provided in divisions (D)(4) to <del>(8)</del> <u>(7)</u> of this section, authorize a physician to delegate the administration of anesthesia, controlled substances, drugs administered intravenously, or any other drug or category of drug the board considers to be inappropriate for delegation;	92 93 94 95 96
(4) Prevent an individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under Chapter 3323. of the Revised Code;	97 98 99 100 101
<del>(5) Prevent delegation from occurring pursuant to section 5126.356 of the Revised Code within the programs and services offered by a county board of mental retardation and developmental disabilities;</del>	102 103 104 105
<del>(6)</del> Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;	106 107 108

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~~(7)~~(6) 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;

~~(8)~~(7) Prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist;

~~(9)~~(8) Authorize a physician assistant, anesthesiologist assistant, or any other professional regulated by the board to delegate tasks pursuant to this section.

**Sec. 5123.19.** (A) As used in this section and in sections 5123.191, 5123.194, and 5123.20 of the Revised Code:

(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.

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

(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 person's guardian, which is not dedicated principally to the provision of residential services for mentally retarded or developmentally disabled persons, and for which no financial support is received for rendering such service from any

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governmental agency by a provider of residential services.

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

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

(B) Every person or government agency desiring to operate a 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~~ shall be issued for a  
period that does not exceed one year, unless the director denies  
the license under division (D) of this section. A license shall be  
renewed for a period that does not exceed three years, unless the  
director refuses to renew the license under division (D) of this  
section. 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

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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 198  
providing an opportunity for an adjudication under Chapter 119. of 199  
the Revised Code. The director shall lift an order for the 200  
suspension of admissions when the director determines that the 201

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violation that formed the basis for the order has been corrected.

(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.

(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.

(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



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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 a provision of this chapter that  
applies to residential facilities or the rules adopted under such  
a provision, 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 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. The rules shall require that public notification 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 a substantially similar violation of a provision  
of this chapter that applies to residential facilities or the  
rules adopted under such a provision. The rules shall specify a  
method for removing or amending the public notification if the

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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

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order approving, modifying, or disapproving the report and  
recommendations.

(g) Notwithstanding the pendency of the hearing, the director  
shall lift the order for the suspension of admissions when the  
director determines that the violation that formed the basis for  
the order has been 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;

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

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

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

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

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

~~+6)~~(7) Certification procedures for licensees and management  
contractors that the director determines are necessary to ensure  
that they have the skills and qualifications to properly operate  
or manage residential facilities;

~~+7)~~(8) The maximum number of persons who may be served in a

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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

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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 386  
under it, or whether conditions at a residential facility present 387  
an immediate danger of physical or psychological harm to the 388  
residents, the director may rely on information obtained by a 389~~

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~~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.~~

~~(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.

~~(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.

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

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licensee or management contractor. ~~When such notification is not~~ 421  
~~given, the director may cancel the residential facility's license.~~ 422  
If the director determines that a significant change of ownership 423  
is proposed, the director shall consider the proposed change to be 424  
an application for development by a new operator pursuant to 425  
section 5123.042 of the Revised Code and shall advise the 426  
applicant within sixty days of such notification that the current 427  
license shall continue in effect or a new license will be required 428  
pursuant to this section. If the director requires a new license, 429  
the director shall permit the facility to continue to operate 430  
under the current license until the new license is issued, unless 431  
the current license is revoked, refused to be renewed, or 432  
terminated in accordance with Chapter 119. of the Revised Code. 433

~~(H)~~(K) A county board of mental retardation and developmental 434  
disabilities, the legal rights service, and any interested person 435  
may file complaints alleging violations of statute or department 436  
rule relating to residential facilities with the department. All 437  
complaints shall be in writing and shall state the facts 438  
constituting the basis of the allegation. The department shall not 439  
reveal the source of any complaint unless the complainant agrees 440  
in writing to waive the right to confidentiality or until so 441  
ordered by a court of competent jurisdiction. 442

443  
The department shall ~~acknowledge receipt of the complaint and~~ 444  
~~notify the complainant of the action that will be taken with~~ 445  
~~respect to it within five working days of receiving it~~ adopt rules 446  
in accordance with Chapter 119. of the Revised Code establishing 447  
procedures for the receipt, referral, investigation, and 448  
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

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

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

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

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

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

Any legislative authority of a municipal corporation, board 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



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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 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

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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)~~(Q) 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~~ 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.

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

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

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

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

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

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

The director may petition the court of common pleas of the 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

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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.

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:

(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;

(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;

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

(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;

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

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(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

(6) External urinary catheter care; 632

(7) Emptying and replacing colostomy bags; 633

(8) Collection of specimens by noninvasive means. 634

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(G) "Licensed health professional authorized to prescribe drugs" has the same meaning as in section 4729.01 of the Revised Code.

(H) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

(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:

(1) Through direct employment with the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities;

(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;

(3) Through direct employment or by being under contract with private entities, including private entities that operate residential facilities.

(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.

(K) "Prescribed medication" means a drug that is to be administered according to the instructions of a licensed health professional authorized to prescribe drugs.

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

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of the Revised Code.

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

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

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

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

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

(3) Recipients of family support services offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(4) Recipients of services from certified supported living providers, if the services are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

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

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

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

(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:

(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.

(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.

(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.

(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



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administration of prescribed medications by MR/DD personnel are 726  
such that the participants must receive the medications during the 727  
field trip to avoid jeopardizing their health and safety. 728

(B)(1) In the case of recipients of early intervention, 729  
preschool, and school-age services, as specified in division 730  
(A)(1) of this section, all of the following apply: 731

(a) With nursing delegation, MR/DD personnel may perform 732  
health-related activities. 733

(b) With nursing delegation, MR/DD personnel may administer 734  
oral and topical prescribed medications. 735

(c) With nursing delegation, MR/DD personnel may administer 736  
prescribed medications through gastrostomy and jejunostomy tubes, 737  
if the tubes being used are stable and labeled. 738

(d) With nursing delegation, MR/DD personnel may perform 739  
routine tube feedings, if the gastrostomy and jejunostomy tubes 740  
being used are stable and labeled. 741

(2) In the case of recipients of adult services, as specified 742  
in division (A)(2) of this section, all of the following apply: 743  
744

(a) With nursing delegation, MR/DD personnel may perform 745  
health-related activities. 746

(b) With nursing delegation, MR/DD personnel may administer 747  
oral and topical prescribed medications. 748

(c) With nursing delegation, MR/DD personnel may administer 749  
prescribed medications through gastrostomy and jejunostomy tubes, 750  
if the tubes being used are stable and labeled. 751

(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

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

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

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

(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.

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

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

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

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

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

(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.

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

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(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 811  
prescribed medications through gastrostomy and jejunostomy tubes, 812  
if the tubes being used are stable and labeled. 813

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(d) With nursing delegation, MR/DD personnel may perform 814  
routine tube feedings, if the gastrostomy and jejunostomy tubes 815  
being used are stable and labeled. 816

(7) In the case of residents of a residential facility with 817  
five or fewer beds, as specified in division (A)(7) of this 818  
section, all of the following apply: 819

(a) Without nursing delegation, MR/DD personnel may perform 820  
health-related activities. 821

(b) Without nursing delegation, MR/DD personnel may 822  
administer oral and topical prescribed medications. 823

(c) With nursing delegation, MR/DD personnel may administer 824  
prescribed medications through gastrostomy and jejunostomy tubes, 825  
if the tubes being used are stable and labeled. 826

(d) With nursing delegation, MR/DD personnel may perform 827  
routine tube feedings, if the gastrostomy and jejunostomy tubes 828  
being used are stable and labeled. 829

(e) With nursing delegation, MR/DD personnel may administer 830  
routine doses of insulin through subcutaneous injections and 831  
insulin pumps. 832

(8) In the case of residents of a residential facility with 833  
at least six but not more than sixteen resident beds, as specified 834  
in division (A)(8) of this section, all of the following apply: 835

(a) With nursing delegation, MR/DD personnel may perform 836  
health-related activities. 837

(b) With nursing delegation, MR/DD personnel may administer 838  
oral and topical prescribed medications. 839

(c) With nursing delegation, MR/DD personnel may administer 840  
prescribed medications through gastrostomy and jejunostomy tubes, 841  
if the tubes being used are stable and labeled. 842

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(d) With nursing delegation, MR/DD personnel may perform 843  
routine tube feedings, if the gastrostomy and jejunostomy tubes 844  
being used are stable and labeled. 845

(9) In the case of residents of a residential facility with 846  
seventeen or more resident beds who are on a field trip from the 847  
facility, all of the following apply during the field trip, 848  
subject to the limitations specified in division (A)(9) of this 849  
section: 850

(a) With nursing delegation, MR/DD personnel may perform 851  
health-related activities. 852

(b) With nursing delegation, MR/DD personnel may administer 853  
oral and topical prescribed medications. 854

(c) With nursing delegation, MR/DD personnel may administer 855  
prescribed medications through gastrostomy and jejunostomy tubes, 856  
if the tubes being used are stable and labeled. 857

(d) With nursing delegation, MR/DD personnel may perform 858  
routine tube feedings, if the gastrostomy and jejunostomy tubes 859  
being used are stable and labeled. 860

(C) The authority of MR/DD personnel to administer prescribed 861  
medications, perform health-related activities, and perform tube 862  
feedings pursuant to this section is subject to all of the 863  
following: 864

(1) To administer prescribed medications, perform 865  
health-related activities, or perform tube feedings for 866  
individuals in the categories specified under divisions (A)(1) to 867  
(8) of this section, MR/DD personnel shall obtain the certificate 868  
or certificates required by the department of mental retardation 869  
and developmental disabilities and issued under section 5123.45 of 870  
the Revised Code. MR/DD personnel shall administer prescribed 871  
medication, perform health-related activities, and perform tube 872  
feedings only as authorized by the certificate or certificates 873

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held.

(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.

(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.

(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.

(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.

(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:

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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; 905 906 907 908

(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; 909 910 911 912 913

(3) Other standards and procedures the department considers necessary for implementation of this section. 914 915

**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. 916 917 918 919 920 921 922 923 924 925 926

**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 authority granted under section 5123.42 of the Revised Code are not liable for any injury caused by administering the medication medications, performing the health-related activities, or task performing the tube feedings, if all both of the following apply: 927 928 929 930 931 932 933 934

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~~(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 the medication or performed the nursing task~~ MR/DD personnel acted in accordance with the methods taught in training completed ~~pursuant to division (D)(2) of~~ in compliance with section ~~5126.351~~ 5123.42 of the Revised Code;

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

**Sec. 5123.43.** (A) The department of mental retardation and developmental disabilities shall develop courses for the training of MR/DD personnel in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. The department may develop separate or combined training courses for the administration of prescribed medications, performance of health-related activities, and performance of tube feedings. Training in the administration of prescribed medications through gastrostomy and jejunostomy tubes may be included in a course providing training in tube feedings. Training in the administration of insulin may be developed as a separate course or included in a course providing training in the administration of other prescribed medications.

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



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<u>(2) In adopting rules that specify the content of a training</u>	966
<u>course or part of a training course that trains MR/DD personnel in</u>	967
<u>the administration of prescribed medications, the department shall</u>	968
<u>ensure that the content includes all of the following:</u>	969
<u>(a) Infection control and universal precautions;</u>	970
<u>(b) Correct and safe practices, procedures, and techniques</u>	971
<u>for administering prescribed medication;</u>	972
<u>(c) Assessment of drug reaction, including known side</u>	973
<u>effects, interactions, and the proper course of action if a side</u>	974
<u>effect occurs;</u>	975
<u>(d) The requirements for documentation of medications</u>	976
<u>administered to each individual;</u>	977
<u>(e) The requirements for documentation and notification of</u>	978
<u>medication errors;</u>	979
<u>(f) Information regarding the proper storage and care of</u>	980
<u>medications;</u>	981
<u>(g) Information about proper receipt of prescriptions and</u>	982
<u>transcription of prescriptions into an individual's medication</u>	983
<u>administration record, except when the MR/DD personnel being</u>	984
<u>trained will administer prescribed medications only to residents</u>	985
<u>of a residential facility with seventeen or more resident beds who</u>	986
<u>are participating in a field trip, as specified in division (A)(9)</u>	987
<u>of section 5123.42 of the Revised Code;</u>	988
<u>(h) Course completion standards that require successful</u>	989
<u>demonstration of proficiency in administering prescribed</u>	990
<u>medications;</u>	991
<u>(i) Any other material or course completion standards that</u>	992
<u>the department considers relevant to the administration of</u>	993
<u>prescribed medications by MR/DD personnel.</u>	994

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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

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training course or courses, the registered nurse shall  
successfully complete the training required by the department  
through the courses it develops under section 5123.44 of the  
Revised Code. The registered nurse shall provide only the training  
courses authorized by the training the registered nurse completes.

**Sec. 5123.45.** (A) The department of mental retardation and  
developmental disabilities shall establish a program under which  
the department issues certificates to the following:

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

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

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

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

(a) MR/DD personnel who, on the effective date of this

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

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

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

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

(D) In accordance with section 5123.46 of the Revised Code,

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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

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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. 1174

(B) Except as provided in division ~~(D)~~(E) of this section, a 1175

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family member of an individual with mental retardation or a 1176  
developmental disability may authorize an unlicensed in-home care 1177  
worker to ~~give or apply~~ administer oral and topical prescribed 1178  
~~medication~~ medications or perform other health care tasks as part 1179  
of the in-home care ~~provided the worker provides~~ to the 1180  
individual, if ~~the~~ all of the following apply: 1181

(1) The family member is the primary supervisor of the care 1182  
~~and the.~~ 1183

(2) The unlicensed in-home care worker has been selected by 1184  
the family member or the individual receiving care and is under 1185  
the direct supervision of the family member. ~~Sections 4723.62 and~~ 1186  
~~5126.351 to 5126.356 of the Revised Code do not apply to the~~ 1187  
~~in-home care authorized by a family member under this section.~~ 1188  
~~Instead, a~~ 1189

(3) The unlicensed in-home care worker is providing the care 1190  
through an employment or other arrangement entered into directly 1191  
with the family member and is not otherwise employed by or under 1192  
contract with a person or government entity to provide services to 1193  
individuals with mental retardation and developmental 1194  
disabilities. 1195

(C) A family member shall obtain a prescription, if 1196  
applicable, and written instructions from a health care 1197  
professional for the care to be provided to the individual. The 1198  
family member shall authorize the unlicensed in-home care worker 1199  
to provide the care by preparing a written document granting the 1200  
authority. The family member shall provide the unlicensed in-home 1201  
care worker with appropriate training and written instructions in 1202  
accordance with the instructions obtained from the health care 1203  
professional. 1204

~~(C)~~(D) A family member who authorizes an unlicensed in-home 1205  
care worker to ~~give or apply~~ administer oral and topical 1206  
prescribed ~~medication~~ medications or perform other health care 1207



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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 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:	1240
(A) "Abuse" means all of the following:	1241
(1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;	1242 1243
(2) Sexual abuse;	1244
(3) Verbal abuse.	1245
(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.	1246 1247 1248 1249
(C) "MR/DD employee" means all of the following:	1250
(1) An employee of the department of mental retardation and developmental disabilities;	1251 1252
(2) An employee of a county board of mental retardation and developmental disabilities;	1253 1254
(3) <del>An "ICF/MR worker," as defined in section 5123.193 of the Revised Code;</del>	1255 1256
<del>(4) An individual who is employed</del> <u>employee</u> in a position that includes providing specialized services to an individual with mental retardation or a developmental disability.	1257 1258 1259
(D) "Neglect" means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services that are necessary to maintain the health and safety of the individual.	1260 1261 1262 1263
(E) "Physical harm" and "serious physical harm" have the same meanings as in section 2901.01 of the Revised Code.	1264 1265
(F) "Sexual abuse" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code.	1266 1267 1268

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

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

**Sec. 5123.611.** (A) As used in this section, "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~~ employee in a position that includes providing specialized services, as defined in section 5123.50 of the Revised Code, to an individual with mental retardation or a developmental disability.

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

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(2) That ~~person's~~ individual's guardian or legal counsel; 1299

(3) The licensee, as defined in section 5123.19 of the 1300  
Revised Code, of a residential facility in which the ~~person~~ 1301  
individual resides; 1302

(4) The employer of any MR/DD employee who allegedly 1303  
committed or was responsible for the abuse, neglect, or major 1304  
unusual incident. 1305

(C) Except as provided in this section, the department shall 1306  
not disclose its report to any person or government entity that is 1307  
not authorized to investigate reports of abuse, neglect, or other 1308  
major unusual incidents, unless the ~~person~~ individual with mental 1309  
retardation or a developmental disability who is the subject of 1310  
the report or the ~~person's~~ individual's guardian gives the 1311  
department written consent. 1312

**Sec. 5123.65.** In addition to the rights specified in section 1313  
5123.62 of the Revised Code, individuals with mental retardation 1314  
and developmental disabilities who can safely self-administer 1315  
medication or receive assistance with self-administration of 1316  
medication have the right to self-administer medication or receive 1317  
assistance with the self-administration of medication. The 1318  
department of mental retardation and developmental disabilities 1319  
shall adopt rules as it considers necessary to implement and 1320  
enforce this section. The rules shall be adopted in accordance 1321  
with Chapter 119. of the Revised Code. 1322

**Sec. 5126.355 5123.651.** ~~A county board of mental retardation~~ 1323  
~~and developmental disabilities may permit a county board worker to~~ 1324  
~~assist a county board client~~ (A) As used in this section, "MR/DD 1325  
personnel" and "prescribed medication" have the same meanings as 1326  
in section 5123.41 of the Revised Code. 1327

(B) MR/DD personnel who are not specifically authorized by 1328

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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~~  
~~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. 5126.30.** As used in sections 5126.30 to ~~5126.33~~ 5126.34  
of the Revised Code:

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

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

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

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

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

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

**Sec. 5126.31.** (A) A county board of mental retardation and developmental disabilities shall review reports of abuse and neglect made under section 5123.61 of the Revised Code and reports referred to it under section 5101.611 of the Revised Code to determine whether the person who is the subject of the report is an adult with mental retardation or a developmental disability in need of services to deal with the abuse or neglect. The board shall give notice of each report to the registry office of the department of mental retardation and developmental disabilities established pursuant to section 5123.61 of the Revised Code on the

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first working day after receipt of the report. If the report  
alleges that there is a substantial risk to the adult of immediate  
physical harm or death, the board shall initiate review within  
twenty-four hours of its receipt of the report. If the board  
determines that the person is sixty years of age or older but does  
not have mental retardation or a developmental disability, it  
shall refer the case to the county department of job and family  
services. If the board determines that the person is an adult with  
mental retardation or a developmental disability, it shall  
continue its review of the case.

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

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

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

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

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

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

(6) Determine whether the adult needs services, and prepare a  
written report stating reasons for the determination. No adult

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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



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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

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

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

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

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

**Section 4.** Sections 4723.61, 4723.62, 5123.193, 5126.35, 5126.351, 5126.352, 5126.353, and 5126.356 of the Revised Code are hereby repealed, effective nine months after the effective date of this section.

**Section 5.** The Director of Mental Retardation and Developmental Disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing a schedule for residential facilities licensed under section 5123.19 of the

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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

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(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