

**As Reported by the Senate Health, Human Services and Aging
Committee**

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Sub. S. B. No. 191

SENATORS Spada, White, Randy Gardner, Jacobson, Fingerhut, Prentiss

A B I L L

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

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

Section 1. That sections 4723.61, 5123.19, 5123.50, 5123.611, 18
5126.354, 5126.355, and 5126.357 be amended; sections 4723.61 19
(4723.071), 5126.354 (5123.205), 5126.355 (5123.206), and 5126.357 20

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(5123.208) be amended for the purpose of adopting new section 21
numbers as indicated in parentheses; and sections 5123.201, 22
5123.202, 5123.203, 5123.204, 5123.207, and 5126.36 of the Revised 23
Code be enacted to read as follows: 24

Sec. ~~4723.61~~ 4723.071. (A) As used in this section, "~~ICF/MR~~ 25
health-related activities," "MR/DD personnel," and "~~ICF/MR worker~~ 26
prescribed medication" have the same meanings as in section 27
~~5123.193~~ 5123.201 of the Revised Code. 28

(B) The board of nursing shall adopt rules as necessary to 29
govern the nursing delegation specified in as it applies to MR/DD 30
personnel who administer prescribed medication and perform 31
health-related activities pursuant to the authority granted under 32
section ~~5123.193~~ 5123.202 of the Revised Code. The board shall 33
~~adopt initial rules not later than ninety days after the effective~~ 34
~~date of this~~ not establish any requirement in the rules that is 35
inconsistent with the authority of MR/DD personnel to perform 36
services pursuant to that section. The rules shall be adopted in 37
accordance with Chapter 119. of the Revised Code ~~and establish the~~ 38
~~following:~~ 39

~~(1) Standards that an instructional program must meet to be~~ 40
~~approved as a program that trains registered nurses to instruct~~ 41
~~ICF/MR workers to give oral and apply topical medications,~~ 42
~~including the minimum types of information that must be covered in~~ 43
~~the program and the minimum qualifications the instructional~~ 44
~~personnel must possess. To qualify for approval, a program must be~~ 45
~~at least a one-day program and have been approved as a~~ 46
~~faculty directed continuing nursing education activity pursuant to~~ 47
~~rules adopted under section 4723.07 of the Revised Code.~~ 48

~~(2) Standards that a unit of instruction must meet to be~~ 49
~~approved as an independent study module for nurses on the~~ 50
~~instruction of medication courses for ICF/MR workers and the~~ 51

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

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

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

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

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

~~(5) Standards that a course of instruction must meet to be approved as a medication course for ICF/MR workers, including the minimum types of information that must be covered in the course. The course must be conducted by a registered nurse, except that the board's standards may allow the use of other health care professionals listed in division (A) of section 5123.193 of the Revised Code to provide instruction within the scope of their~~

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professions, including licensed practical nurses acting under the	83
direction of registered nurses.	84
(6) Standards an ICF/MR worker must meet to be eligible to	85
take the medication course for ICF/MR workers and to demonstrate	86
successful completion of the course.	87
(7) Standards for the annual training an ICF/MR worker must	88
complete to remain eligible to give oral and apply topical	89
medications.	90
(8) Standards nurses must follow in delegating authority to	91
give oral or apply topical medications in an ICF/MR, including any	92
conditions or limits pertaining to the delegation.	93
(9) Standards nurses must follow in providing on-site or	94
off-site direction and supervision of ICF/MR workers who have been	95
authorized to give oral or apply topical medications.	96
(10) Standards ICF/MR workers must follow when giving oral or	97
applying topical medications to ICF/MR residents.	98
(C) The approval of programs, courses, and training modules	99
pertaining to delegation of authority to give oral or apply	100
topical medications may be made by the board of nursing or by an	101
entity the board recognizes as an approver of instructional	102
programs.	103
(D) The board of nursing may accept complaints from any	104
person or entity regarding the performance or qualifications of an	105
ICF/MR worker to give oral or apply topical medications <u>MR/DD</u>	106
<u>personnel who perform services pursuant to the authority granted</u>	107
under section 5123.193 <u>5123.202</u> of the Revised Code. The board	108
shall refer all complaints received to the department of mental	109
retardation and developmental disabilities. The board may	110
participate in an investigation of a complaint being conducted by	111
the department under section 5123.193 <u>5123.202</u> of the Revised	112
Code.	113

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Sec. 5123.19. (A) As used in this section and in sections 114
5123.191, 5123.194, and 5123.20 of the Revised Code: 115

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

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

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

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

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

(B) Every person or government agency desiring to operate a 141
residential facility shall apply for licensure of the facility to 142
the director of mental retardation and developmental disabilities 143

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

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

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

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

(1) The director may deny, refuse to renew, or revoke a

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license, if the director determines that the applicant or licensee 176
has demonstrated a pattern of serious noncompliance or that a 177
violation creates a substantial risk to the health and safety of 178
residents of a residential facility. 179

(2) The director may terminate a license if more than twelve 180
consecutive months have elapsed since the residential facility was 181
last occupied by a resident or the notice required by division (J) 182
of this section is not given. 183

(3) The director may issue an order for the suspension of 184
admissions to a facility for any violation that may result in 185
sanctions under division (D)(1) of this section and for any other 186
violation specified in rules adopted under division (G)(2) of this 187
section. If the suspension of admissions is imposed for a 188
violation that may result in sanctions under division (D)(1) of 189
this section, the director may impose the suspension before 190
providing an opportunity for an adjudication under Chapter 119. of 191
the Revised Code. The director shall rescind an order for the 192
suspension of admissions when the violation that formed the basis 193
for the order has been corrected. 194

(4) The director may order the placement of a monitor at a 195
residential facility for any violation specified in rules adopted 196
under division (G)(2) of this section. The director shall rescind 197
the order when the violation that formed the basis for the order 198
has been corrected. 199

(5) If the director determines that two or more residential 200
facilities owned or operated by the same person or government 201
entity are not being operated in compliance with this chapter or 202
the rules adopted under it, and the director's findings are based 203
on the same or a substantially similar action, practice, 204
circumstance, or incident that creates a substantial risk to the 205
health and safety of the residents, the director shall conduct a 206
survey as soon as practicable at each residential facility owned 207

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or operated by that person or government entity. The director may 208
take any action authorized by this section with respect to any 209
facility found to be operating in violation of this section or the 210
rules adopted under it. 211

(6) When the director initiates license revocation 212
proceedings, no opportunity for submitting a plan of correction 213
shall be given. The director shall notify the licensee by letter 214
of the initiation of such proceedings. The letter shall list the 215
deficiencies of the residential facility and inform the licensee 216
that no plan of correction will be accepted. The director shall 217
also notify each affected resident, the resident's guardian if the 218
resident is an adult for whom a guardian has been appointed, the 219
resident's parent or guardian if the resident is a minor, and the 220
county board of mental retardation and developmental disabilities. 221

(7) Pursuant to rules which shall be adopted in accordance 222
with Chapter 119. of the Revised Code, the director may order the 223
immediate removal of residents from a residential facility 224
whenever conditions at the facility present an immediate danger of 225
physical or psychological harm to the residents. 226

(8) In determining whether a residential facility is being 227
operated in compliance with this chapter or the rules adopted 228
under it, or whether conditions at a residential facility present 229
an immediate danger of physical or psychological harm to the 230
residents, the director may rely on information obtained by a 231
county board of mental retardation and developmental disabilities 232
or other governmental agencies. 233

(9) In proceedings initiated to deny, refuse to renew, or 234
revoke licenses, the director may deny, refuse to renew, or revoke 235
a license regardless of whether some or all of the deficiencies 236
that prompted the proceedings have been corrected at the time of 237
the hearing. 238

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

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

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

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

(b) If a timely request for a hearing is made, the hearing

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shall commence not later than thirty days after the department receives the request. 271
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(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. 273
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(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. 277
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(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. 280
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(f) Not later than fifteen days after the hearing examiner files the report and recommendations, the director shall issue an order approving, modifying, or disapproving the report and recommendations. 283
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(g) Notwithstanding the pendency of the hearing, the director shall rescind the order for the suspension of admissions when the violation that formed the basis for the order is corrected. 287
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(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: 291
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(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; 295
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(2) Procedures and criteria for denying, refusing to renew, terminating, and revoking licenses and for ordering the suspension 299
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<u>of admissions to a facility, placement of a monitor at a facility,</u>	301
<u>and the immediate removal of residents from a facility;</u>	302
(2) (3) Fees for issuing <u>and renewing</u> licenses;	303
(3) (4) Procedures for the inspection of <u>surveying</u> residential facilities;	304 305
(4) (5) Requirements for the training of residential facility personnel;	306 307
(5) (6) Classifications for the various types of residential facilities;	308 309
(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;	310 311 312 313
(7) (8) The maximum number of persons who may be served in a particular type of residential facility;	314 315
(8) (9) Uniform procedures for admission of persons to and transfers and discharges of persons from residential facilities;	316 317
(9) (10) Other standards for the operation of residential facilities and the services provided at residential facilities;	318 319
(10) (11) Procedures for waiving any provision of any rule adopted under this section.	320 321
(D) (H) Before issuing a license, the director of the department or the director's designee shall conduct an inspection <u>a survey</u> of the residential facility for which application is made. The director or the director's designee shall conduct an inspection <u>a survey</u> of each licensed residential facility at least once each year <u>during the period the license is valid</u> and may conduct additional inspections as needed. An inspection <u>A survey</u> includes but is not limited to an on-site examination and evaluation of the residential facility, its personnel, and the	322 323 324 325 326 327 328 329 330

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services provided there. 331

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

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

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

~~When the director initiates license revocation proceedings, 358
no opportunity for submitting a plan of correction shall be given. 359
The director shall notify the licensee by letter of the initiation 360
of such proceedings. The letter shall list the deficiencies of the 361
residential facility and inform the licensee that no plan of 362~~

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~~correction will be accepted. The director shall also notify each affected resident, the resident's guardian if the resident is an adult for whom a guardian has been appointed, the resident's parent or guardian if the resident is a minor, and the county board of mental retardation and developmental disabilities.~~

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

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

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

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

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~~(F)~~(I) In addition to any other information which may be 394
required of applicants for a license pursuant to this section, the 395
director shall require each applicant to provide a copy of an 396
approved plan for a proposed residential facility pursuant to 397
section 5123.042 of the Revised Code. This division does not apply 398
to renewal of a license. 399

~~(G)~~(J) Pursuant to rules which shall be adopted in accordance 400
with Chapter 119. of the Revised Code, the director may require 401
notification to the department of any significant change in the 402
ownership of a residential facility or in the identity of the 403
licensee or management contractor. ~~When such notification is not~~ 404
~~given, the director may cancel the residential facility's license.~~ 405
If the director determines that a significant change of ownership 406
is proposed, the director shall consider the proposed change to be 407
an application for development by a new operator pursuant to 408
section 5123.042 of the Revised Code and shall advise the 409
applicant within sixty days of such notification that the current 410
license shall continue in effect or a new license will be required 411
pursuant to this section. If the director requires a new license, 412
the director shall permit the facility to continue to operate 413
under the current license until the new license is issued, unless 414
the current license is revoked, refused to be renewed, or 415
terminated in accordance with Chapter 119. of the Revised Code. 416

~~(H)~~(K) A county board of mental retardation and developmental 417
disabilities, the legal rights service, and any interested person 418
may file complaints alleging violations of statute or department 419
rule relating to residential facilities with the department. All 420
complaints shall be in writing and shall state the facts 421
constituting the basis of the allegation. The department shall not 422
reveal the source of any complaint unless the complainant agrees 423
in writing to waive the right to confidentiality or until so 424
ordered by a court of competent jurisdiction. 425

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

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

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

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

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

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

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

455 Any legislative authority of a municipal corporation, board
456 of county commissioners, or board of township trustees that

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receives notice under this division of the proposed issuance of a
license for a residential facility may comment on it in writing to
the director within ten days after the director mailed the notice,
excluding Saturdays, Sundays, and legal holidays. If the director
receives written comments from any notified officials within the
specified time, the director shall make written findings
concerning the comments and the director's decision on the
issuance of the license. If the director does not receive written
comments from any notified local officials within the specified
time, the director shall continue the process for issuance of the
license.

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

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

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resolution may regulate these residential facilities in 489
multiple-family residential districts or zones as a conditionally 490
permitted use or special exception, in either case, under 491
reasonable and specific standards and conditions set out in the 492
zoning ordinance or resolution to: 493

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

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

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

~~(M)~~(P) This section does not prohibit a political subdivision 502
from applying to residential facilities nondiscriminatory 503
regulations requiring compliance with health, fire, and safety 504
regulations and building standards and regulations. 505
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~~(N)~~(O) Divisions ~~(K)~~(N) and ~~(L)~~(O) of this section are not 507
applicable to municipal corporations that had in effect on June 508
15, 1977, an ordinance specifically permitting in residential 509
zones licensed residential facilities by means of permitted uses, 510
conditional uses, or special exception, so long as such ordinance 511
remains in effect without any substantive modification. 512

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

~~(1)~~(a) The director determines that an emergency exists ~~that~~ 517
~~requires~~ requiring immediate placement of persons in a residential 518
facility, ~~and that~~ insufficient licensed beds are available. 519

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~~(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.~~ 520-522

~~(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.~~ 523-525

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

(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. 529-533

(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. 534-536

(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. 537-539

~~(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. 540-549

~~(Q)(T)~~ The director or the director's designee may enter at 550

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any time, for purposes of investigation, any home, facility, or 551
other structure that has been reported to the director or that the 552
director has reasonable cause to believe is being operated as a 553
residential facility without a license issued under this section. 554

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

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

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

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

(1) Taking vital signs; 570

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

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

(4) Oral suctioning; 574

(5) Routine mouth care; 575

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

(7) Use of glucometers; 577

(8) External urinary catheter care; 578

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<u>(9) Emptying and replacing colostomy bags;</u>	579
<u>(10) Collection of specimens by noninvasive means.</u>	580
<u>(C) "MR/DD personnel" means the individuals who provide</u>	581
<u>specialized services to individuals with mental retardation and</u>	582
<u>developmental disabilities. "MR/DD personnel" includes all of the</u>	583
<u>following:</u>	584
<u>(1) Individuals who provide specialized services through</u>	585
<u>direct employment with the department of mental retardation and</u>	586
<u>developmental disabilities or a county board of mental retardation</u>	587
<u>and developmental disabilities;</u>	588
<u>(2) Individuals who provide specialized services through an</u>	589
<u>entity under contract with the department of mental retardation</u>	590
<u>and developmental disabilities or a county board of mental</u>	591
<u>retardation and developmental disabilities;</u>	592
<u>(3) Individuals who provide specialized services through</u>	593
<u>direct employment or by being under contract with private</u>	594
<u>entities, including private entities that operate residential</u>	595
<u>facilities licensed under section 5123.19 of the Revised Code and</u>	596
<u>private entities that operate facilities subject to section</u>	597
<u>5123.192 of the Revised Code.</u>	598
<u>(D) "Nursing delegation" means the process established in</u>	599
<u>rules adopted by the board of nursing pursuant to Chapter 4723. of</u>	600
<u>the Revised Code under which a registered nurse or licensed</u>	601
<u>practical nurse acting at the direction of a registered nurse</u>	602
<u>transfers the performance of a particular nursing activity or task</u>	603
<u>to another individual who is not otherwise authorized to perform</u>	604
<u>the activity or task.</u>	605
<u>(E) "Prescribed medication" means a drug that is to be</u>	606
<u>administered according to the instructions of a licensed health</u>	607
<u>professional authorized to prescribe drugs.</u>	608

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(F) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code. 609
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(G) "Specialized services" has the same meaning as in section 5123.50 of the Revised Code. 611
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(H) "Supported living" has the same meaning as in section 5126.01 of the Revised Code. 613
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Sec. 5123.202. (A) MR/DD personnel who are not specifically authorized by other provisions of the Revised Code to administer prescribed medication or perform health-related activities may, under this section, administer prescribed medication, perform health-related activities, or do both, as part of the services that the personnel provide to the following: 615
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(1) Recipients of supported living; 621

(2) Recipients of sheltered workshop services; 622

(3) Residents of a residential facility with sixteen or fewer resident beds that is licensed as a residential facility under section 5123.19 of the Revised Code or subject to section 5123.192 of the Revised Code. 623
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(B) The authority established by division (A) of this section is subject to all of the following: 627
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(1) To administer prescribed medication, perform health-related activities, or do both, MR/DD personnel must be appropriately certified in accordance with the certification program established under section 5123.205 of the Revised Code. An individual shall provide only those services for which the individual's certification was issued. 629
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(2) Before a particular individual may receive services from MR/DD personnel pursuant to this section, the MR/DD personnel's employer or other entity with primary responsibility for the 635
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services being provided shall ensure that each individual 638
providing the services has been trained specifically with respect 639
to the individual receiving the services. 640

(3) In the case of services provided to recipients of 641
supported living, all of the following apply: 642

(a) Without nursing delegation, MR/DD personnel may perform 643
health-related activities and administer topical and oral 644
prescribed medications. 645

(b) With nursing delegation, MR/DD personnel may administer 646
prescribed medication and perform routine feedings through stable, 647
labeled gastrostomy and jejunostomy tubes. 648

(c) With nursing delegation, MR/DD personnel may administer 649
routine doses of insulin through subcutaneous injections and 650
insulin pumps. 651

(4) In the case of services provided to residents of a 652
residential facility with five or fewer resident beds, all of the 653
following apply: 654

(a) Without nursing delegation, MR/DD personnel, may perform 655
health-related activities and administer topical and oral 656
prescribed medications. 657

(b) With nursing delegation, MR/DD personnel may administer 658
prescribed medication and perform routine feedings through stable, 659
labeled gastrostomy and jejunostomy tubes. 660

(c) With nursing delegation, MR/DD personnel may administer 661
routine doses of insulin through subcutaneous injections and 662
insulin pumps. 663

(5) In the case of services provided to residents of a 664
residential facility with six but not more than sixteen resident 665
beds, both of the following apply: 666

(a) With nursing delegation, MR/DD personnel may perform 667

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health-related activities and administer topical and oral
prescribed medications. 668
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(b) With nursing delegation, MR/DD personnel may administer
prescribed medications and perform routine feedings through
stable, labeled gastrostomy and jejunostomy tubes. 670
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(6) In the case of services provided to recipients of
sheltered workshop services, both of the following apply: 673
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(a) With nursing delegation, MR/DD personnel may perform
health-related activities and administer topical and oral
prescribed medications. 675
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(b) With nursing delegation, MR/DD personnel may administer
prescribed medications and perform routine feedings through
stable, labeled gastrostomy and jejunostomy tubes. 678
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(C) In accordance with section 5123.207 of the Revised Code,
the department of mental retardation and developmental
disabilities shall adopt rules as it considers necessary to
implement this section. The rules shall include the following: 681
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(1) Requirements for documentation of each service provided
pursuant to the authority granted under this section; 685
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(2) Procedures for reporting errors that occur in the
administration of medication or performance of health-related
activities by MR/DD personnel; 687
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(3) Procedures for the department to follow in accepting
complaints regarding the performance of services by MR/DD
personnel pursuant to the authority granted under this section and
procedures for conducting investigations of those complaints. 690
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Sec. 5123.203. (A) For the purpose of providing training with
respect to the authority of MR/DD personnel to perform services
pursuant to section 5123.202 of the Revised Code, the department 694
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of mental retardation and developmental disabilities shall develop 697
courses for training MR/DD personnel and courses for training 698
registered nurses to conduct the MR/DD personnel training courses. 699

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In accordance with section 5123.207 of the Revised Code, the 701
department shall adopt rules that specify the content and length 702
of the courses and establish any other standards for training 703
considered necessary by the department. 704

(B) The medication administration training courses developed 705
under division (A) of this section shall address at least all of 706
the following: 707

(1) Infection control and universal precautions; 708

(2) Correct and safe practices, procedures, and techniques 709
for administering prescribed medication; 710

(3) Assessment of drug reaction, including known side 711
effects, interactions, and the proper course of action if a side 712
effect occurs; 713

(4) Requirements for documentation of medication administered 714
to each individual; 715

(5) Requirements for documentation and notification of 716
medication errors; 717

(6) Information regarding the proper storage and care of 718
medications; 719

(7) Requirements for successful demonstration of proficiency 720
in medication administration; 721

(8) Information about proper receipt of prescriptions and 722
transcription of prescriptions into an individual's medication 723
administration record. 724

Sec. 5123.204. (A)(1) The department of mental retardation 725

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and developmental disabilities shall establish a program under 726
which the department issues certificates to MR/DD personnel to 727
perform service pursuant to section 5123.202 of the Revised Code 728
and certificates to registered nurses to conduct training courses 729
for MR/DD personnel. Except as provided in division (A)(2) of this 730
section, to be eligible for a certificate, an individual must 731
successfully complete the applicable training course developed 732
under section 5123.203 of the Revised Code and meet all other 733
applicable requirements established in rules adopted pursuant to 734
this section. 735

(2) The program shall include provisions for issuing 736
certificates to the following: 737

(a) MR/DD personnel who, prior to the effective date of this 738
section, administered medication or performed tasks, or both, 739
pursuant to former section 5123.193 or former sections 5126.351 to 740
5126.354 of the Revised Code; 741

(b) Registered nurses who, prior to the effective date of 742
this section, trained individuals pursuant to former sections 743
4723.61, 4723.62, 5123.193, and 5126.351 to 5126.354 of the 744
Revised Code. A registered nurse who receives a certificate under 745
division (A)(2) of this section shall not train MR/DD personnel to 746
administer insulin unless the registered nurse completes a 747
refresher course developed under section 5123.203 of the Revised 748
Code that enables the registered nurse to receive a certificate to 749
train MR/DD personnel to administer insulin. 750

(B) Certificates issued to MR/DD personnel and registered 751
nurses are valid for one year and may be renewed. To be eligible 752
for renewal, MR/DD personnel and registered nurses must meet the 753
applicable continued competency requirements and continuing 754
education requirements specified in rules adopted under division 755
(C) of this section. 756

(C) In accordance with section 5123.207 of the Revised Code, 757

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the department shall adopt rules that establish all of the 758
following: 759

(1) Requirements that MR/DD personnel and registered nurses 760
must meet to be eligible to take a training course; 761

(2) Standards that must be met to receive a certificate, 762
including requirements pertaining to an applicant's criminal 763
background; 764

(3) Procedures to be followed in applying for a certificate 765
and issuing a certificate; 766

(4) Standards and procedures for renewing a certificate, 767
including requirements for continuing education and, in the case 768
of MR/DD personnel who administer medication, requirements for 769
successful demonstration of medication administration; 770

(5) Standards and procedures for suspending or revoking a 771
certificate; 772

(6) Standards and procedures for suspending a certificate 773
without a hearing pending the outcome of an investigation; 774

(7) Any other standards or procedures the department 775
considers necessary to administer the certification program. 776

(D) The department shall establish and maintain a registry 777
that lists each individual who holds a valid certificate issued 778
pursuant to this section. The registry shall specify the type of 779
certificate held and any limitations that apply to the individual 780
holding the certificate. 781

Sec. 5126.354 5123.205. ~~A county board worker~~ An individual 782
authorized pursuant to section 5123.202 of the Revised Code to 783
~~give or apply~~ administer prescribed medication or perform a 784
~~delegated nursing task~~ health-related activity, or both, is not 785
liable for any injury caused by the medication or ~~task~~ activity if 786
~~all~~ both of the following apply: 787

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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;~~ 788
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~~(B) The county board worker gave or applied individual administered the medication or performed the nursing task activities in accordance with the methods taught in training completed to receive certification pursuant to division (D)(2) of section 5126.351 5123.205 of the Revised Code;~~ 792
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~~(C)(B) The county board worker individual did not act in a manner that constitutes wanton or reckless misconduct.~~ 797
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Sec. 5126.355 5123.206. ~~A county board of mental retardation and developmental disabilities may permit a county board worker to assist a county board client (A) MR/DD personnel who are not specifically authorized by other provisions of the Revised Code to provide assistance in the self-administration of prescribed medication. When may, under this section, provide that assistance as part of the services they provide to individuals with mental retardation and developmental disabilities. To provide assistance with self-administration of medication, MR/DD personnel are not required to be trained or certified in accordance with sections 5123.203 and 5123.204 of the Revised Code.~~ 799
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~~(B) When assisting a county board client in self-administration of prescribed medication, a county board worker MR/DD personnel shall take only those the following actions authorized by the board of nursing pursuant to rules adopted under section 4723.62 of the Revised Code:~~ 810
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~~(1) Remind an individual when to take medication and observe the individual to ensure that the individual follows the directions on the container;~~ 815
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(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; 818
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(3) Assist, on request by or with the consent of, a physically impaired but mentally alert individual, with removal of oral or topical medication from the container and with the individual's taking or applying of the medication. If an individual is physically unable to place a dose of medication to the individual's mouth without spilling or dropping it, MR/DD personnel may place the dose in another container and place that container to the individual's mouth. 823
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Sec. 5123.207. All rules adopted under sections 5123.202 to 5123.206 of the Revised Code shall be adopted in consultation with the board of nursing and the Ohio nurses association. The rules shall be adopted in accordance with Chapter 119. of the Revised Code. 831
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Sec. 5126.357 5123.208. (A) As used in this section: 836

(1) "In-home care" means the supportive services provided within the home of an individual who receives funding for the services ~~as~~ through a county board client of mental retardation and developmental disabilities, including any client who receives recipient of residential services funded through home and community-based services, family support services provided under section 5126.11 of the Revised Code, or supported living provided in accordance with sections 5126.41 to 5126.47 of the Revised Code. "In-home care" includes care that is provided outside a client's an individual's home in places incidental to the home, and while traveling to places incidental to the home, except that 837
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"in-home care" does not include care provided in the facilities of a county board of mental retardation and developmental disabilities or care provided in schools.

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

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

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

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

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the unlicensed in-home care worker with appropriate training and 880
written instructions in accordance with the instructions obtained 881
from the health care professional. 882

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

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

(D) A county board of mental retardation and developmental 902
disabilities may evaluate the authority granted by a family member 903
under this section to an unlicensed in-home care worker at any 904
time it considers necessary and shall evaluate the authority on 905
receipt of a complaint. If the board determines that a family 906
member has acted in a manner that is inappropriate for the health 907
and safety of the individual receiving the services, the 908
authorization granted by the family member to an unlicensed 909
in-home care worker is void, and the family member may not 910
authorize other unlicensed in-home care workers to provide the 911

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care. In making such a determination, the board shall use 912
 appropriately licensed health care professionals and shall provide 913
 the family member an opportunity to file a complaint under section 914
 5126.06 of the Revised Code. 915

Sec. 5123.50. As used in this section and sections 5123.51 916
 and 5123.52 of the Revised Code: 917

(A) "Abuse" means all of the following: 918

(1) The use of physical force that can reasonably be expected 919
 to result in physical harm or serious physical harm; 920

(2) Sexual abuse; 921

(3) Verbal abuse. 922

(B) "Misappropriation" means depriving, defrauding, or 923
 otherwise obtaining the real or personal property of an individual 924
 by any means prohibited by the Revised Code, including violations 925
 of Chapter 2911. or 2913. of the Revised Code. 926

(C) "MR/DD employee" means all of the following: 927

(1) An employee of the department of mental retardation and 928
 developmental disabilities; 929

(2) An employee of a county board of mental retardation and 930
 developmental disabilities; 931

(3) ~~An "ICF/MR worker," as defined in section 5123.193 of the~~ 932
~~Revised Code;~~ 933

~~(4) An individual who is employed in a position that includes~~ 934
~~providing specialized services to an individual with mental~~ 935
~~retardation or a developmental disability.~~ 936

(D) "Neglect" means, when there is a duty to do so, failing 937
 to provide an individual with any treatment, care, goods, or 938
 services that are necessary to maintain the health and safety of 939

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the individual.	940
(E) "Physical harm" and "serious physical harm" have the same meanings as in section 2901.01 of the Revised Code.	941 942
(F) "Sexual abuse" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code.	943 944 945
(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 <u>and facilities subject to section 5123.192 of the Revised Code.</u> A program or service available to the general public is not a specialized service.	946 947 948 949 950 951 952 953
(H) "Verbal abuse" means purposely using words to threaten, coerce, intimidate, harass, or humiliate an individual.	954 955
Sec. 5123.611. (A) As used in this section, MR/DD employee means all of the following:	956 957
(1) An employee of the department of mental retardation and developmental disabilities;	958 959
(2) An employee of a county board of mental retardation and developmental disabilities;	960 961
(3) An "ICF/MR worker," as defined in section 5123.193 of the Revised Code;	962 963
(4) An individual who is employed in a position that includes providing specialized services, <u>as defined in section 5123.50 of the Revised Code,</u> to an individual with mental retardation or a developmental disability.	964 965 966 967
(B) At the conclusion of a review of a report of abuse,	968

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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 who is the subject of the report;

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

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

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

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

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

Section 2. That existing sections 4723.61, 5123.19, 5123.50,

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5123.611, 5126.354, 5126.355, and 5126.357 and sections 4723.62, 999
5123.193, 5126.35, 5126.351, 5126.352, 5126.353, and 5126.356 of 1000
the Revised Code are hereby repealed. 1001

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

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