

# AN ACT

To amend sections 3721.011, 3721.04, 4766.09, 4766.14, 5111.971, 5126.15, and 5126.20 and to enact section 5126.201 of the Revised Code and to amend Section 206.66.53 of Am. Sub. H.B. 66 of the 126th General Assembly regarding the provision of hospice care in residential care facilities and the addition of four legislators as non-voting members of the Medicaid Administrative Study Council, regarding the Medicaid voucher pilot program, to exempt certain entities from the Medical Transportation Law, to establish minimum requirements to be a conditional status service and support administrator, and to make a change regarding who can supervise conditional status service and support administrators.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 3721.011, 3721.04, 4766.09, 4766.14, 5111.971, 5126.15, and 5126.20 be amended and section 5126.201 of the Revised Code be enacted to read as follows:

Sec. 3721.011. (A) In addition to providing accommodations, supervision, and personal care services to its residents, a residential care facility may provide skilled nursing care to its residents as follows:

- (1) Supervision of special diets;
- (2) Application of dressings, in accordance with rules adopted under section 3721.04 of the Revised Code;
- (3) ~~Providing for the~~ Subject to division (B)(1) of this section, administration of medication ~~to residents, to the extent authorized under division (B)(1) of this section;~~
- (4) ~~Other~~ Subject to division (C) of this section, other skilled nursing care provided on a part-time, intermittent basis ~~pursuant to division (C) of~~

this section for not more than a total of one hundred twenty days in a twelve-month period;

(5) Subject to division (D) of this section, skilled nursing care provided for more than one hundred twenty days in a twelve-month period to a hospice patient, as defined in section 3712.01 of the Revised Code.

A residential care facility may not admit or retain an individual requiring skilled nursing care that is not authorized by this section. A residential care facility may not provide skilled nursing care beyond the limits established by this section.

(B)(1) A residential care facility may admit or retain an individual requiring medication, including biologicals, only if the individual's personal physician has determined in writing that the individual is capable of self-administering the medication or the facility provides for the medication to be administered to the individual by a home health agency certified under Title XVIII of the "Social Security Act," 49 79 Stat. 620 (~~4935~~ 1965), 42 U.S.C.A. ~~304~~ 1395, as amended; a hospice care program licensed under Chapter 3712. of the Revised Code; or a member of the staff of the residential care facility who is qualified to perform medication administration. Medication may be administered in a residential care facility only by the following persons authorized by law to administer medication:

(a) A registered nurse licensed under Chapter 4723. of the Revised Code;

(b) A licensed practical nurse licensed under Chapter 4723. of the Revised Code who holds proof of successful completion of a course in medication administration approved by the board of nursing and who administers the medication only at the direction of a registered nurse or a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(c) A medication aide certified under Chapter 4723. of the Revised Code;

(d) A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(2) In assisting a resident with self-administration of medication, any member of the staff of a residential care facility may do the following:

(a) Remind a resident when to take medication and watch to ensure that the resident follows the directions on the container;

(b) Assist a resident by taking the medication from the locked area where it is stored, in accordance with rules adopted pursuant to section 3721.04 of the Revised Code, and handing it to the resident. If the resident is physically unable to open the container, a staff member may open the

container for the resident.

(c) Assist a physically impaired but mentally alert resident, such as a resident with arthritis, cerebral palsy, or Parkinson's disease, in removing oral or topical medication from containers and in consuming or applying the medication, upon request by or with the consent of the resident. If a resident is physically unable to place a dose of medicine to the resident's mouth without spilling it, a staff member may place the dose in a container and place the container to the mouth of the resident.

(C) A residential care facility may admit or retain individuals who require skilled nursing care beyond the supervision of special diets, application of dressings, or administration of medication, only if the care will be provided on a part-time, intermittent basis for not more than a total of one hundred twenty days in any twelve-month period. In accordance with Chapter 119. of the Revised Code, the public health council shall adopt rules specifying what constitutes the need for skilled nursing care on a part-time, intermittent basis. The council shall adopt rules that are consistent with rules pertaining to home health care adopted by the director of job and family services for the medical assistance program established under Chapter 5111. of the Revised Code. Skilled nursing care provided pursuant to this division may be provided by a home health agency certified under Title XVIII of the "Social Security Act," ~~49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended,~~ a hospice care program licensed under Chapter 3712. of the Revised Code, or a member of the staff of a residential care facility who is qualified to perform skilled nursing care.

A residential care facility that provides skilled nursing care pursuant to this division shall do both of the following:

(1) Evaluate each resident receiving the skilled nursing care at least once every seven days to determine whether the resident should be transferred to a nursing home;

(2) Meet the skilled nursing care needs of each resident receiving the care.

(D) A residential care facility may admit or retain a hospice patient who requires skilled nursing care for more than one hundred twenty days in any twelve-month period only if the facility has entered into a written agreement with a hospice care program licensed under Chapter 3712. of the Revised Code. The agreement between the residential care facility and hospice program shall include all of the following provisions:

(1) That the hospice patient will be provided skilled nursing care in the facility only if a determination has been made that the patient's needs can be met at the facility;

(2) That the hospice patient will be retained in the facility only if periodic redeterminations are made that the patient's needs are being met at the facility;

(3) That the redeterminations will be made according to a schedule specified in the agreement;

(4) That the hospice patient has been given an opportunity to choose the hospice care program that best meets the patient's needs.

(E) Notwithstanding any other provision of this chapter, a residential care facility in which residents receive skilled nursing care pursuant to this section is not a nursing home.

Sec. 3721.04. (A) The public health council shall adopt and publish rules governing the operation of homes, which shall have uniform application throughout the state, and shall prescribe standards for homes with respect to, but not limited to, the following matters:

(1) The minimum space requirements for occupants and equipping of the buildings in which homes are housed so as to ensure healthful, safe, sanitary, and comfortable conditions for all residents, so long as they are not inconsistent with Chapters 3781. and 3791. of the Revised Code or with any rules adopted by the board of building standards and by the state fire marshal;

(2) The number and qualifications of personnel, including management and nursing staff, for each class of home, and the qualifications of nurse aides, as defined in section 3721.21 of the Revised Code, used by long-term care facilities, as defined in that section;

(3) The medical, rehabilitative, and recreational services to be provided by each class of home;

(4) Dietetic services, including but not limited to sanitation, nutritional adequacy, and palatability of food;

(5) The personal and social services to be provided by each class of home;

(6) The business and accounting practices to be followed and the type of patient and business records to be kept by such homes;

(7) The operation of adult day-care programs provided by and on the same site as homes licensed under this chapter;

(8) The standards and procedures to be followed by residential care facilities in admitting and retaining a resident who requires the application of dressings, including requirements for charting and evaluating on a weekly basis;

(9) The requirements for conducting weekly evaluations of residents receiving skilled nursing care in residential care facilities.

(B) The public health council may adopt whatever additional rules are necessary to carry out or enforce the provisions of sections 3721.01 to 3721.09 and 3721.99 of the Revised Code.

(C) The following apply to the public health council when adopting rules under division (A)(2) of this section regarding the number and qualifications of personnel in homes:

(1) When adopting rules applicable to residential care facilities, the public health council shall take into consideration the effect that the provision following may have on the number of personnel needed:

(a) Provision of personal care services and;

(b) Provision of part-time, intermittent skilled nursing care pursuant to division (C) of section 3721.011 of the Revised Code may have on the number of personnel needed;

(c) Provision of skilled nursing care to hospice patients pursuant to division (D) of section 3721.011 of the Revised Code.

(2) The rules prescribing qualifications of nurse aides used by long-term care facilities, as those terms are defined in section 3721.21 of the Revised Code, shall be no less stringent than the requirements, guidelines, and procedures established by the United States secretary of health and human services under sections 1819 and 1919 of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

Sec. 4766.09. ~~(A)~~ This chapter does not apply to any of the following:

~~(1)(A)~~ A person rendering services with an ambulance in the event of a disaster situation when licensees' vehicles based in the locality of the disaster situation are incapacitated or insufficient in number to render the services needed;

~~(2)(B)~~ Any person operating an ambulance, ambulette, rotorcraft air ambulance, or fixed wing air ambulance outside this state unless receiving a person within this state for transport to a location within this state;

~~(3)(C)~~ A publicly owned or operated emergency medical service organization and the vehicles it owns or leases and operates, except as provided in section 307.051, division (G) of section 307.055, division (F) of section 505.37, division (B) of section 505.375, and division (B)(3) of section 505.72 of the Revised Code;

~~(4)(D)~~ An ambulance, ambulette, rotorcraft air ambulance, fixed wing air ambulance, or nontransport vehicle owned or leased and operated by the federal government;

~~(5)(E)~~ A publicly owned and operated fire department vehicle;

~~(6)(F)~~ Emergency vehicles owned by a corporation and operating only on the corporation's premises, for the sole use by that corporation;

~~(7)~~(G) An ambulance, nontransport vehicle, or other emergency medical service organization vehicle owned and operated by a municipal corporation;

~~(8)~~(H) A motor vehicle titled in the name of a volunteer rescue service organization, as defined in section 4503.172 of the Revised Code;

~~(9)~~(I) A public emergency medical service organization;

~~(10)~~(J) A fire department, rescue squad, or life squad comprised of volunteers who provide services without expectation of remuneration and do not receive payment for services other than reimbursement for expenses;

~~(11)~~(K) A private, nonprofit emergency medical service organization when fifty per cent or more of its personnel are volunteers, as defined in section 4765.01 of the Revised Code;

~~(12)~~(L) Emergency medical service personnel who are regulated by the state board of emergency medical services under Chapter 4765. of the Revised Code;

~~(13)~~A(M) Any of the following that operates a transit bus, as that term is defined in division (Q) of section 5735.01 of the Revised Code, unless the entity provides ambulette services that are reimbursed under the state medicaid plan:

(1) A public nonemergency medical service organization

~~(B) Except for the requirements specified in section 4766.14 of the Revised Code, this chapter does not apply to an ambulette service provider operating under standards adopted by rule by the department of aging, but only during the period of time on any day that the provider is solely serving the department or the department's designee. This chapter applies to an ambulette service provider at any time that the ambulette service provider is not solely serving the department or the department's designee;~~

(2) An urban or rural public transit system;

(3) A private nonprofit organization that receives grants under section 5501.07 of the Revised Code.

(N) An entity or vehicle owned by an entity that is certified by the department of aging or the department's designee under section 173.391 of the Revised Code and meets the requirements of section 4766.14 of the Revised Code, unless the entity or vehicle provides ambulette services that are reimbursed under the state medicaid plan;

(O) A vehicle that meets both of the following criteria, unless the vehicle provides services that are reimbursed under the state medicaid plan:

(1) The vehicle was purchased with funds from a grant made by the United States secretary of transportation under 49 U.S.C. 5310;

(2) The department of transportation holds a lien on the vehicle.

Sec. 4766.14. (A) An ambulette service provider described in division ~~(B)~~(M) or (N) of section 4766.09 of the Revised Code or the entity responsible for a vehicle described in division (O) of section 4766.09 of the Revised Code that provides ambulette services shall do all of the following:

(1) Make available to all its ambulette drivers while operating ambulette vehicles a means of two-way communication using either ambulette vehicle radios or cellular telephones;

(2) Equip every ambulette vehicle with one isolation and biohazard disposal kit that is permanently installed or secured in the vehicle's cabin;

(3) Before hiring an applicant for employment as an ambulette driver, obtain all of the following:

(a) A valid copy of a signed statement from a licensed physician acting within the scope of the physician's practice declaring that the applicant does not have a medical condition or physical condition, including vision impairment that cannot be corrected, that could interfere with safe driving, passenger assistance, and emergency treatment activity or could jeopardize the health and welfare of a client or the general public;

(b) All of the certificates and results required under divisions (A)(2), (3), and (4) of section 4766.15 of the Revised Code.

(B) No ambulette service provider described in division ~~(B)~~(M) or the (N) of section 4766.09 of the Revised Code or entity responsible for a vehicle described in division (O) of section 4766.09 of the Revised Code that provides ambulette services shall employ an applicant as an ambulette driver if the applicant has six or more points on the applicant's driving record pursuant to section 4510.036 of the Revised Code.

(C) ~~The (1)~~ Except as provided in division (C)(2) of this section, the department of aging shall administer and enforce this section.

(2) The department of transportation shall administer and enforce this section as it applies to entities described in division (M) of section 4766.09 of the Revised Code.

Sec. 5111.971. (A) As used in this section, "long-term care medicaid waiver component" means any of the following:

(1) The PASSPORT program created under section 173.40 of the Revised Code;

(2) The medicaid waiver component called the choices program that the department of aging administers;

(3) A medicaid waiver component that the department of job and family services administers.

(B) The director of job and family services shall submit a request to the United States secretary of health and human services for a waiver of federal

medicaid requirements that would be otherwise violated in the creation of a pilot program under which not more than two hundred individuals who meet the pilot program's eligibility requirements specified in division (D) of this section receive a spending authorization to pay for the cost of medically necessary ~~health-care~~ home and community-based services that the pilot program covers. The spending authorization shall be in an amount not exceeding seventy per cent of the average cost under the medicaid program for providing nursing facility services to an individual. An individual participating in the pilot program shall also receive necessary support services, including fiscal intermediary and other case management services, that the pilot program covers.

(C) If the United States secretary of health and human services approves the waiver submitted under division (B) of this section, the department of job and family services shall enter into a contract with the department of aging under section 5111.91 of the Revised Code that provides for the department of aging to administer the pilot program that the waiver authorizes.

(D) To be eligible to participate in the pilot program created under division (B) of this section, an individual must meet all of the following requirements:

(1) Need an intermediate level of care as determined under rule 5101:3-3-06 of the Administrative Code or a skilled level of care as determined under rule 5101:3-3-05 of the Administrative Code;

(2) At the time the individual applies to participate in the pilot program, be one of the following:

(a) A nursing facility resident ~~who is seeking to move to a residential care facility or county or district home and~~ who would remain in a nursing facility if not for the pilot program;

(b) A participant of any long-term care medicaid waiver component who would move to a nursing facility if not for the pilot program.

(3) Meet all other eligibility requirements for the pilot program established in rules adopted under section 5111.85 of the Revised Code.

(E) The director of job and family services may adopt rules under section 5111.85 of the Revised Code as the director considers necessary to implement the pilot program created under division (B) of this section. The director of aging may adopt rules under Chapter 119. of the Revised Code as the director considers necessary for the pilot program's implementation. The rules may establish a list of medicaid-covered services not covered by the pilot program that an individual participating in the pilot program may not receive if the individual also receives medicaid-covered services outside of



the pilot program.

Sec. 5126.15. (A) A county board of mental retardation and developmental disabilities shall provide service and support administration to each individual three years of age or older who is eligible for service and support administration if the individual requests, or a person on the individual's behalf requests, service and support administration. A board shall provide service and support administration to each individual receiving home and community-based services. A board may provide, in accordance with the service coordination requirements of 34 C.F.R. 303.23, service and support administration to an individual under three years of age eligible for early intervention services under 34 C.F.R. part 303. A board may provide service and support administration to an individual who is not eligible for other services of the board. Service and support administration shall be provided in accordance with rules adopted under section 5126.08 of the Revised Code.

A board may provide service and support administration by directly employing service and support administrators or by contracting with entities for the performance of service and support administration. Individuals employed or under contract as service and support administrators shall not be in the same collective bargaining unit as employees who perform duties that are not administrative.

Individuals employed by a board as service and support administrators shall not be assigned responsibilities for implementing other services for individuals and shall not be employed by or serve in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with mental retardation or developmental disabilities. An individual employed as a conditional status service and support administrator shall perform the duties of service and support administration only under the supervision of a management employee who is a service and support administration supervisor ~~or a professional employee who is a service and support administrator.~~

(B) The individuals employed by or under contract with a board to provide service and support administration shall do all of the following:

(1) Establish an individual's eligibility for the services of the county board of mental retardation and developmental disabilities;

(2) Assess individual needs for services;

(3) Develop individual service plans with the active participation of the individual to be served, other persons selected by the individual, and, when applicable, the provider selected by the individual, and recommend the plans for approval by the department of mental retardation and developmental

disabilities when services included in the plans are funded through medicaid;

(4) Establish budgets for services based on the individual's assessed needs and preferred ways of meeting those needs;

(5) Assist individuals in making selections from among the providers they have chosen;

(6) Ensure that services are effectively coordinated and provided by appropriate providers;

(7) Establish and implement an ongoing system of monitoring the implementation of individual service plans to achieve consistent implementation and the desired outcomes for the individual;

(8) Perform quality assurance reviews as a distinct function of service and support administration;

(9) Incorporate the results of quality assurance reviews and identified trends and patterns of unusual incidents and major unusual incidents into amendments of an individual's service plan for the purpose of improving and enhancing the quality and appropriateness of services rendered to the individual;

(10) Ensure that each individual receiving services has a designated person who is responsible on a continuing basis for providing the individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services in accordance with the individual's service plan. The service and support administrator shall give the individual receiving services an opportunity to designate the person to provide daily representation. If the individual declines to make a designation, the administrator shall make the designation. In either case, the individual receiving services may change at any time the person designated to provide daily representation.

(C) Subject to available funds, the department of mental retardation and developmental disabilities shall pay a county board an annual subsidy for service and support administration. The amount of the subsidy shall be equal to the greater of twenty thousand dollars or two hundred dollars times the board's certified average daily membership. The payments shall be made in quarterly installments of equal amounts, which shall be made no later than the thirtieth day of September, the thirty-first day of December, the thirty-first day of March, and the thirtieth day of June. Funds received shall be used solely for service and support administration.

Sec. 5126.20. As used in this section and sections 5126.21 to 5126.29 of the Revised Code:

(A) "Service employee" means a person employed by a county board of

mental retardation and developmental disabilities in a position which may require evidence of registration under section 5126.25 of the Revised Code but for which a bachelor's degree from an accredited college or university is not required, and includes employees in the positions listed in division (C) of section 5126.22 of the Revised Code.

(B)(1) "Professional employee" means a both of the following:

(a) A person employed by a board in a position for which either a bachelor's degree from an accredited college or university or a license or certificate issued under Title XLVII of the Revised Code is a minimum requirement, except in the case of a person employed as a conditional status service and support administrator for which an appropriate associate degree is the minimum requirement, and;

(b) A person employed by a board as a conditional status service and support administrator.

(2) "Professional employee" includes employees in the positions listed in division (B) of section 5126.22 of the Revised Code.

(C) "Management employee" means a person employed by a board in a position having supervisory or managerial responsibilities and duties, and includes employees in the positions listed in division (A) of section 5126.22 of the Revised Code.

(D) "Limited contract" means a contract of limited duration which is renewable at the discretion of the superintendent.

(E) "Continuing contract" means a contract of employment that was issued prior to June 24, 1988, to a classified employee under which the employee has completed the employee's probationary period and under which the employee retains employment until the employee retires or resigns, is removed pursuant to section 5126.23 of the Revised Code, or is laid off.

(F) "Supervisory responsibilities and duties" includes the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of the board; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(G) "Managerial responsibilities and duties" includes formulating policy on behalf of the board, responsibly directing the implementation of policy, assisting in the preparation for the conduct of collective negotiations, administering collectively negotiated agreements, or having a major role in personnel administration.

(H) "Investigative agent" means an individual who conducts

investigations under section 5126.313 of the Revised Code.

Sec. 5126.201. A person may be employed by a county board of mental retardation and developmental disabilities as a conditional status service and support administrator only if either of the following is true:

(A) The person has at least an appropriate associate degree;

(B) The person meets both of the following requirements:

(1) The person was employed by the county board and performed service and support administration duties on June 30, 2005;

(2) The person holds a high school diploma or a general educational development certificate of high school equivalence.

SECTION 2. That existing sections 3721.011, 3721.04, 4766.09, 4766.14, 5111.971, 5126.15, and 5126.20 of the Revised Code are hereby repealed.

SECTION 3. That Section 206.66.53 of Am. Sub. H.B. 66 of the 126th General Assembly be amended to read as follows:

Sec. 206.66.53. MEDICAID ADMINISTRATIVE STUDY COUNCIL

(A) There is hereby created the Medicaid Administrative Study Council composed of the following:

(1) One member of the Ohio Commission to Reform Medicaid, appointed by the Governor;

(2) One member of the staff of the Governor's office, appointed by the Governor;

(3) One individual with expertise in health-care finance, appointed by the Governor;

(4) One individual with expertise in health-care management, appointed by the Governor;

(5) One individual with expertise in health-care information technology, appointed by the Governor;

(6) One individual with expertise in health insurance, appointed by the Governor;

(7) One individual with expertise in health care quality assurance, appointed by the Governor;

(8) Two individuals with expertise in organizational change representing the business community, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

(9) The Director of Budget and Management or the Director's designee;

(10) The State Chief Information Officer or the Officer's designee;

(11) The Administrator of Workers' Compensation or the

Administrator's designee;

(12) The following non-voting members:

(a) The Director of Job and Family Services or the Director's designee;

(b) The Director of Aging or the Director's designee;

(c) The Director of Drug and Alcohol Addiction Services or the Director's designee;

(d) The Director of Health or the Director's designee;

(e) The Director of Mental Health or the Director's designee;

(f) The Director of Mental Retardation and Developmental Disabilities or the Director's designee;

(g) Two members of the House of Representatives, one from each of the political parties in the House, and both appointed by the Speaker of the House;

(h) Two members of the Senate, one from each of the political parties in the Senate, and both appointed by the President of the Senate.

(B) The Governor shall appoint a member of the Council to serve as the chairperson of the Council.

(C) The Council shall study the administration of the Medicaid program. In conducting the study, the Council shall operate under the assumption that the General Assembly will enact by July 1, 2007, a law establishing a new cabinet level department to administer the program. The Council shall examine and consider all of the following as part of the study:

(1) Structuring the program's administration in a manner that optimizes the program's fiscal and operational objectives;

(2) Centralizing financing and information technology functions to coordinate the new department's activities with other state agencies, if any, that assist in the program's administration;

(3) Creating a unified budget for Medicaid-funded long-term care services;

(4) The fiscal and operating impact that a new administrative structure for the program would have on the Department of Job and Family Services and other state agencies that currently assist in the program's administration;

(5) The role of government entities that administer the Medicaid program on the local level and the fiscal and operating impact that a new administrative structure for the program would have on those entities;

(6) The recommendations of the Ohio Commission to Reform Medicaid.

(D) Beginning ninety days after ~~the effective date of this section~~ June 30, 2005, the Council shall submit written, quarterly reports on the Council's progress to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Council shall submit a final written report of

its study to the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than December 31, 2006. The final report shall include all of the following:

(1) Recommendations regarding the scope and structure of the new department;

(2) A business plan that directs the transition of the Medicaid program's administration from the Department of Job and Family Services and the other state agencies that assist the Department to the new department and addresses the transition's fiscal and operational impact;

(3) Identification of the resources needed to implement the business plan.

(E) The Council may hire staff, enter into contracts, and take other actions the Council deems necessary to fulfill its duties.

SECTION 4. That existing Section 206.66.53 of Am. Sub. H.B. 66 of the 126th General Assembly is hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_