(124th General Assembly)
(Substitute Senate Bill Number 191)

AN ACT

To amend sections 4731.053, 5123.19, 5123.50, 5123.611, 5126.30, 5126.31, 5126.312, 5126.354, 5126.355, and 5126.357; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 5126.312 (5126.34), 5126.354 (5123.422), 5126.355 (5123.651), and 5126.357 (5123.47); to enact sections 4723.071, 5123.195, 5123.41, 5123.42, 5123.421, 5123.43, 5123.44, 5123.441, 5123.45, 5123.451, 5123.46, 5123.65, and 5126.36; and to repeal sections 4723.61, 4723.62, 5123.193, 5126.35, 5126.351, 5126.352, 5126.353, and 5126.356 of the Revised Code to revise the laws governing the licensure of residential facilities for individuals with mental retardation and developmental disabilities, to revise the laws governing the authority of MR/DD personnel to perform specified health activities, to specify that individuals with mental retardation and developmental disabilities have the right to self-administer medication, to require MR/DD boards to provide training for their employees and others authorized to implement adult protective services, and to create the MR/DD Consumer Information Advisory Council.

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

SECTION 1. That sections 4731.053, 5123.19, 5123.50, 5123.611, 5126.30, 5126.31, 5126.312, 5126.354, 5126.355, and 5126.357 be amended; sections 5126.312 (5126.34), 5126.354 (5123.422), 5126.355 (5123.651), and 5126.357 (5123.47) be amended for the purpose of adopting

new section numbers as indicated in parentheses; and sections 4723.071, 5123.195, 5123.41, 5123.42, 5123.421, 5123.43, 5123.44, 5123.441, 5123.45, 5123.451, 5123.46, 5123.65, and 5126.36 of the Revised Code be enacted to read as follows:

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

(B) The board of nursing shall adopt rules as it considers necessary to govern nursing delegation as it applies to MR/DD personnel who administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. The board shall not establish in the rules any requirement that is inconsistent with the authority of MR/DD personnel granted under that section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

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

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

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

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

(1) On-site supervision when the delegation occurs in an institution or other facility that is used primarily for the purpose of providing health care, unless the board establishes a specific exception to the on-site supervision requirement with respect to routine administration of a topical drug, such as the use of a medicated shampoo;

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

(3) Training and competency requirements that must be met by the person administering the drugs;

(4) Other standards and procedures the board considers relevant.

(D) The board shall not adopt rules that do any of the following:

(1) Authorize a physician to transfer the physician's responsibility for supervising a person who is performing a delegated medical task to a health professional other than another physician;

(2) Authorize an individual to whom a medical task is delegated to delegate the performance of that task to another individual;

(3) Except as provided in divisions (D)(4) to ~~(8)~~(7) of this section, authorize a physician to delegate the administration of anesthesia, controlled substances, drugs administered intravenously, or any other drug or category of drug the board considers to be inappropriate for delegation;

(4) Prevent an individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under Chapter 3323. of the Revised Code;

(5) ~~Prevent delegation from occurring pursuant to section 5126.356 of the Revised Code within the programs and services offered by a county board of mental retardation and developmental disabilities;~~

~~(6)~~ Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;

~~(7)~~(6) Conflict with any rule adopted pursuant to the Revised Code that is in effect on the effective date of this section, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;

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

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

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

(1) "Residential facility" means a home or facility in which a mentally retarded or developmentally disabled person resides, except the home of a relative or legal guardian in which a mentally retarded or developmentally disabled person resides, a respite care home certified under section 5126.05 of the Revised Code, a county home or district home operated pursuant to Chapter 5155. of the Revised Code, or a dwelling in which the only

mentally retarded or developmentally disabled residents are in an independent living arrangement or are being provided supported living.

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

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

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

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

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

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

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

(D) If it is determined that an applicant or licensee is not in compliance

with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, 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 consistent with the director's authority under this chapter regarding residential facilities. 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 license, if the director determines that the applicant or licensee has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of residents of a residential facility.

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

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

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

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

provision of this chapter that applies to residential facilities or the rules adopted under such a provision.

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

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

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

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

(E) The director shall establish a program under which public notification may be made when the director has initiated license revocation proceedings or has issued an order for the suspension of admissions, placement of a monitor, or removal of residents. The director shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this division. The rules shall establish the procedures by which the public notification will be made and specify the circumstances for which the notification must be made. The rules shall require that public notification be made if the director has taken action against the facility in the eighteen-month period immediately preceding the director's latest action against the facility and the latest action is being taken for the same or a substantially similar violation of a provision of this chapter that applies to residential facilities or the rules adopted under such a provision. The rules

shall specify a method for removing or amending the public notification if the director's action is found to have been unjustified or the violation at the residential facility has been corrected.

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

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

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

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

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

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

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

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

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

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

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

(2) Procedures and criteria for denying, refusing to renew, terminating, and revoking licenses and for ordering the suspension of admissions to a

facility, placement of a monitor at a facility, and the immediate removal of residents from a facility;

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

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

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

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

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

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

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

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

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

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

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

Following each ~~inspection~~ survey, unless the director initiates a license revocation proceeding, the director or the director's designee shall provide the licensee with a report listing any deficiencies, specifying a timetable within which the licensee shall submit a plan of correction describing how the deficiencies will be corrected, and, when appropriate, specifying a timetable within which the licensee must correct the deficiencies. After a

plan of correction is submitted, the director or the director's designee shall approve or disapprove the plan. A copy of the report and any approved plan of correction shall be provided to any person who requests it.

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

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

~~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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(L)~~(O) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen persons with mental retardation or a developmental disability as a permitted

use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned unit development districts may exclude these residential facilities from such districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate these residential facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

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

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

(3) Limit excessive concentration of these residential facilities.

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

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

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

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

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

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

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

(2) To be eligible to receive an interim license, an applicant must meet the same criteria that must be met to receive a permanent license under this

section, except for any differing procedures and time frames that may apply to issuance of a permanent license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Taking vital signs;

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

(3) Basic measurement of bodily intake and output;

(4) Oral suctioning;

(5) Use of glucometers;

(6) External urinary catheter care;

(7) Emptying and replacing colostomy bags;

(8) Collection of specimens by noninvasive means.

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

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

Revised Code.

(I) "MR/DD personnel" means the employees and the workers under contract who provide specialized services to individuals with mental retardation and developmental disabilities. "MR/DD personnel" includes those who provide the services as follows:

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

(2) Through an entity under contract with the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities;

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

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

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

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

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

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

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

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

(2) Recipients of adult services offered or provided pursuant to this

chapter or Chapter 5126. of the Revised Code;

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

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

(5) Recipients of residential support services from certified home and community-based services providers, if the services are received in a community living arrangement that includes not more than four individuals with mental retardation and developmental disabilities and the services are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

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

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

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

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

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

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

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

(d) According to the instructions of a health care professional acting within the scope of the professional's practice, the health needs of the participants who require administration of prescribed medications by MR/DD personnel are such that the participants must receive the

medications during the field trip to avoid jeopardizing their health and safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

doses of insulin through subcutaneous injections and insulin pumps.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the

tubes being used are stable and labeled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

department of mental retardation and developmental disabilities shall adopt rules governing its implementation of this section. The rules shall include the following:

(1) Requirements for documentation of the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under this section;

(2) Procedures for reporting errors that occur in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under this section;

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

Sec. 5123.421. The department of mental retardation and developmental disabilities shall accept complaints from any person or government entity regarding the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under section 5123.42 of the Revised Code. The department shall conduct investigations of complaints as it considers appropriate. The department shall adopt rules in accordance with section 5123.46 of the Revised Code establishing procedures for accepting complaints and conducting investigations under this section.

Sec. ~~5126.354~~ 5123.422. ~~A county board worker authorized to give or apply~~ MR/DD personnel who administer prescribed ~~medication or~~ medications, perform ~~a delegated nursing task~~ health-related activities, or ~~both, is~~ perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code are not liable for any injury caused by administering the ~~medication~~ medications, performing the health-related activities, or ~~task~~ performing the tube feedings, if ~~all~~ both of the following apply:

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

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

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

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

(B)(1) The department shall adopt rules in accordance with section 5123.46 of the Revised Code that specify the content and length of the training courses developed under this section. The rules may include any other standards the department considers necessary for the training courses.

(2) In adopting rules that specify the content of a training course or part of a training course that trains MR/DD personnel in the administration of prescribed medications, the department shall ensure that the content includes all of the following:

(a) Infection control and universal precautions;

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

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

(d) The requirements for documentation of medications administered to each individual;

(e) The requirements for documentation and notification of medication errors;

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

(g) Information about proper receipt of prescriptions and transcription of prescriptions into an individual's medication administration record, except when the MR/DD personnel being trained will administer prescribed medications only to residents of a residential facility with seventeen or more resident beds who are participating in a field trip, as specified in division (A)(9) of section 5123.42 of the Revised Code;

(h) Course completion standards that require successful demonstration of proficiency in administering prescribed medications;

partment considers relevant to the administration of prescribed medications by MR/DD personnel.

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

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

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

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

(2) A registered nurse is not required to obtain a certificate to provide a training course to MR/DD personnel if the only MR/DD personnel to whom the course or courses are provided are those who administer prescribed medications, perform health-related activities, or perform tube feedings for residents of a residential facility with seventeen or more resident beds who are on a field trip from the facility, as specified in division (A)(9) of section 5123.42 of the Revised Code. To provide the training course or courses, the registered nurse shall successfully complete the training required by the department through the courses it develops under section 5123.44 of the Revised Code. The registered nurse shall provide only the training courses authorized by the training the registered nurse completes.

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

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

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

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

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

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

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

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

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

established under Chapter 4723. of the Revised Code may be counted toward meeting the continuing education requirements established in the rules adopted under division (D) of this section.

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

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

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

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

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

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

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

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

Sec. 5123.451. The department of mental retardation and developmental disabilities shall establish and maintain a registry that lists all MR/DD personnel and registered nurses holding valid certificates issued under section 5123.45 of the Revised Code. The registry shall specify the type of certificate held and any limitations that apply to a certificate holder. The department shall make the information in the registry available to the public in computerized form or any other manner that provides continuous access to the information in the registry.

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

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

(1) "In-home care" means the supportive services provided within the home of an individual with mental retardation or a developmental disability 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~~ as 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 "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 may be an unlicensed in-home care worker.~~

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

misconduct.

~~(D)~~(E) A county board of mental retardation and developmental disabilities may evaluate the authority granted by a family member under this section to an unlicensed in-home care worker at any time it considers necessary and shall evaluate the authority on receipt of a complaint. If the board determines that a family member has acted in a manner that is inappropriate for the health and safety of the individual receiving the ~~services~~ care, the authorization granted by the family member to an unlicensed in-home care worker is void, and the family member may not authorize other unlicensed in-home care workers to provide the care. In making such a determination, the board shall use appropriately licensed health care professionals and shall provide the family member an opportunity to file a complaint under section 5126.06 of the Revised Code.

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

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

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

(2) Sexual abuse;

(3) Verbal abuse.

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

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

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

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

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

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

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

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

(F) "Sexual abuse" means unlawful sexual conduct or sexual contact, as

those terms are defined in section 2907.01 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 5123.65. In addition to the rights specified in section 5123.62 of

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

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

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

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

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

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

(3) Assist, on request by or with the consent of, a physically impaired but mentally alert individual, with removal of oral or topical medication from the container and with the individual's taking or applying of the medication. If an individual is physically unable to place a dose of oral medication to the individual's mouth without spilling or dropping it, MR/DD personnel may place the dose in another container and place that container to the individual's mouth.

Sec. 5126.30. As used in sections 5126.30 to ~~5126.33~~ 5126.34 of the

Revised Code:

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

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

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

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

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

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

Sec. 5126.31. (A) A county board of mental retardation and developmental disabilities shall review reports of abuse and neglect made under section 5123.61 of the Revised Code and reports referred to it under section 5101.611 of the Revised Code to determine whether the person who is the subject of the report is an adult with mental retardation or a developmental disability in need of services to deal with the abuse or neglect. The board shall give notice of each report to the registry office of the department of mental retardation and developmental disabilities established pursuant to section 5123.61 of the Revised Code on the first working day after receipt of the report. If the report alleges that there is a substantial risk to the adult of immediate physical harm or death, the board shall initiate review within twenty-four hours of its receipt of the report. If the board determines that the person is sixty years of age or older but does not have mental retardation or a developmental disability, it shall refer the case to the county department of job and family services. If the board determines that the person is an adult with mental retardation or a developmental disability, it shall continue its review of the case.

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

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

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

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

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

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

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

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

To arrange services, the board shall:

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

(2) In accordance with rules established by the director of mental retardation and developmental disabilities, obtain the consent of the adult or the adult's guardian to the provision of any of these services and obtain the signature of the adult or guardian on the individual service plan. An adult who has been found incompetent under Chapter 2111. of the Revised Code may consent to services. If the board is unable to obtain consent, it may

seek, if the adult is incapacitated, a court order pursuant to section 5126.33 of the Revised Code authorizing the board to arrange these services.

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

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

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

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

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

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

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

SECTION 2. That existing sections 4731.053, 5123.19, 5123.50, 5123.611, 5126.30, 5126.31, 5126.312, 5126.354, 5126.355, and 5126.357

of the Revised Code are hereby repealed.

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

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

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

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

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

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

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

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

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

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

association's president;

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

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

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

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

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

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

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

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

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

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

_____

Director, Legislative Service Commission.

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

_____

Secretary of State.

File No. _____ Effective Date _____