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H.C.R. 21
134th General Assembly

Bill Analysis

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Primary Sponsors: Reps. Wiggam and Ferguson

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SUMMARY

- Rescinds certain health orders related to COVID-19 in whole.
- Rescinds certain executive orders related to COVID-19 in whole.
- Rescinds certain agency rules related to COVID-19, some in whole and some in part.

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DETAILED ANALYSIS

The General Assembly has authority under R.C. 101.36, as enacted by S.B. 22 of the 134th General Assembly and effective June 23, 2021, to rescind, in whole or in part, a special or standing order or rule for preventing the spread of contagious or infectious disease issued by the Ohio Department of Health (ODH) under R.C. 3701.13. The General Assembly also has authority under R.C. 107.43, likewise enacted in S.B. 22, to rescind, in whole or in part, any order or rule issued or adopted by an administrative department, administrative department head, state agency, or statewide elected officer in response to a state of emergency. H.C.R. 21 utilizes the General Assembly’s authority and rescinds orders and rules, as detailed below.

ODH and Director of Health COVID-19 orders

The resolution rescinds, in whole, the following orders issued by ODH under R.C. 3701.13. On May 12, 2021, Governor DeWine indicated that most orders issued by ODH in

response to COVID-19, including many of the orders included in the resolution, will be rescinded on June 2, 2021. The only orders that will not be rescinded on this date relate to (1) nursing homes and assisted living facilities and (2) data collection related to COVID-19.¹

Ohio Department of Health and Director of Health Orders		
Date issued	Title of Order	Description
April 8, 2021 ²	Director's Amended Order for Social Distancing, Facial Coverings, and Non-Congregating Available here	Requires the continued use of facial coverings, the practicing of social distancing, and other practices.
March 22, 2021	Director's Seventh Amended Order to Permit Access to Ohio's Nursing Homes, with Exceptions Available here	Modifies the requirements for visitation at nursing homes to comply with updated guidance prepared by the Centers for Medicare and Medicaid Services.
March 22, 2021	Director's Amended Order to Permit Access to Ohio's Residential Care Facilities, with Exceptions Available here	Modifies the requirements for visitation at residential care (assisted living) facilities.
March 22, 2021 ³	Director's Amended Order for the Testing of the Residents and Staff of all Residential Care Facilities Available here	Updates testing requirements for all residents and staff of residential care facilities.

¹ Ohio Department of Health, Governor DeWine Announces Vaccine Incentives, End Date for Health Orders, <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/news-releases-news-you-can-use/covid-19-update-05-12-21>.

² On May 17, 2021, ODH issued an amended version of this order. See <https://coronavirus.ohio.gov/static/publicorders/rev-2nd-final-amended-do-soc-dist-remove-face-cover-21.pdf>.

³ On May 4, 2021, ODH issued an amended version of this order. See <https://coronavirus.ohio.gov/static/publicorders/amended-do-testing-residents-staff-all-res-care-facilities-21.pdf>.

Ohio Department of Health and Director of Health Orders		
Date issued	Title of Order	Description
March 22, 2021 ⁴	Director's Amended Order for the Testing of the Residents and Staff of all Nursing Homes Available here	Updates testing requirements for all residents and staff of nursing homes.
March 17, 2021 ⁵	Second Amended Director's Order on Adult Day Support Services and Vocational Habilitation Services Available here	Modifies requirements for the provision of adult day support services and vocational habilitation services.
March 11, 2021	Director's Order that Reopens Fairs and Animal Exhibitions, with Exceptions Available here	Permits the opening of fairs and animal exhibitions so long as certain safety requirements are satisfied.
November 13, 2020	Director's Order for Retail and Business Compliance for Facial Coverings throughout the State of Ohio Available here	Requires stores and retailers to require patrons to wear facial coverings while on or in the premises.
September 24, 2020 ⁶	Director's Order to Limit Access to Ohio's Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and to Permit Visitation Available here	Modifies the requirements for visitation at ICFs/IID.

⁴ On May 4, 2021, ODH issued an amended version of this order. See <https://coronavirus.ohio.gov/static/publicorders/amended-do-testing-residents-staff-all-nursing-homes-21.pdf>.

⁵ On May 4, 2021, ODH issued an amended version of this order and an order related to other senior centers. See <https://coronavirus.ohio.gov/static/publicorders/third-amended-do-opening-adult-day-centers-21.pdf> and <https://coronavirus.ohio.gov/static/publicorders/third-amended-do-opening-of-senior-centers-21.pdf>.

⁶ On April 27, 2021, ODH issued a new order that rescinded this order. See <https://coronavirus.ohio.gov/static/publicorders/icf-iid-rescind-order-v1-21.pdf>.

Ohio Department of Health and Director of Health Orders		
Date issued	Title of Order	Description
September 3, 2020	Director's Order Requiring Reporting and Notification Regarding COVID-19 Cases in Kindergarten through Twelfth Grade Schools Available here	Requires schools to establish a reporting system to notify parents of positive COVID-19 cases within the school.
August 13, 2020	Director's Order Requiring the Use of Facial Coverings in Child Education Settings Available here	Requires the use of facial coverings in schools and child education settings.
March 15, 2020	Health Director Order Limit Access to Jails and Detention Facilities Available here	Restricts access of visitors and other personnel to jails and other detention facilities.
March 14, 2020	Health Screening for Admission to State Operated Psychiatric Hospitals or to DYS Facilities Available here	Requires individuals to be screened for COVID-19 before being admitted to a state operated psychiatric hospital or Department of Youth Services facility.

Executive orders

The resolution rescinds, in whole, the following executive orders signed by Governor DeWine.

Executive orders		
Date issued	Title of Order	Description
June 16, 2020 ⁷	2020-24D: Unemployment Insurance During COVID-19 Pandemic Available here	Specifies circumstances that constitute "good cause" for refusing "suitable work" under the Ohio Unemployment Insurance program.

⁷ This order is to remain in full force for the duration of the COVID-19 state of emergency, unless rescinded by Governor DeWine before that date. To LSC's knowledge, this order is still in effect.

Executive orders		
Date issued	Title of Order	Description
December 16, 2020 ⁸	2020-41D: The Rescission of Executive Order 2020-36D and Emergency Adoption of Rules 3301-32-06.1 and 3301-37-03.1 of the Ohio Administrative Code by the State Board of Education and Ohio Department of Education Available here	Authorizes the immediate adoption of revised rules 3301-32-06.1 and 3301-37-03.1 of the Ohio Administrative Code, which are indicated in the table below.

Agency rules rescinded in whole

The resolution rescinds, in whole, the following rules:

Agency rules rescinded in whole		
Rule number and agency	Nature and effective date of rule	Description of rule
3301-32-06.1 Ohio Department of Education (ODE) Available here	Emergency rule Effective: December 16, 2020 Expired: April 16, 2021 ⁹	Permits a school district board of education, county board of developmental disabilities, community school, or eligible nonpublic school to apply to ODE for a temporary pandemic school child program license.

⁸ This executive order is expired. The emergency rules that this executive order authorized are no longer in effect; they expired April 16, 2021. Nonemergency versions of these rules are being considered under normal rulemaking procedures involving the Joint Committee on Agency Rule Review (JCARR). Currently, these rules are not in effect.

⁹ This rule is expired. A nonemergency version of this rule is being considered under normal rulemaking procedures involving JCARR. Currently, this rule is not in effect.

Agency rules rescinded in whole		
Rule number and agency	Nature and effective date of rule	Description of rule
3301-37-03.1 ODE Available here	Emergency rule Effective: December 16, 2020 Expired: April 16, 2021 ¹⁰	Requires a child daycare program to notify ODH if any administrator, employee, child care staff member, or child tests positive for COVID-19.
5101:2-12-02.2 Department of Job and Family Services (JFS) Available here	Via JCARR process Effective: April 1, 2021	Establishes transitional pandemic requirements for a licensed child care center as Ohio transitions out of pandemic child care for the COVID-19 pandemic and back to child care licensing requirements.
5101:2-12-02.3 JFS Available here	Via JCARR process Effective: April 1, 2021	Authorizing temporary pandemic school-age child care centers. These will end June 30, 2021, under the rule.
5101:2-13-02.2 JFS Available here	Via JCARR process Effective: April 1, 2021	Establishes transitional pandemic requirements for a licensed family child care provider as Ohio transitions out of pandemic child care for the COVID-19 pandemic and back to family child care licensing requirements.
5101:2-14-02.2 JFS Available here	Via JCARR process Effective: April 1, 2021	Establishes transitional pandemic requirements for a certified in-home aide as Ohio transitions out of pandemic child care for the COVID-19 pandemic and back to certified in-home aide requirements.
5160-3-80 Ohio Department of Medicaid (ODM) Available here	Via JCARR process Effective: March 25, 2021	Establishes requirements for health care isolation centers (HCIC) and reimbursement levels for HCICs that provide services to individuals eligible for Medicaid benefits.

¹⁰ This rule is expired. A nonemergency version of this rule is being considered under normal rulemaking procedures involving JCARR. Currently, this rule is not in effect.

Agency rules rescinded in part

The resolution rescinds, in part as indicated in the table below, the following rules:

Agency rules rescinded in part			
Rule number and agency	Nature and effective date of rule	Rescinded portion	Description of rescinded portion
173-3-06.2 Ohio Department of Aging (ODA) Available here	Via JCARR process Effective: December 31, 2020	The portion in division (B)(5)(f) that states, "During a state of emergency declared by the governor, the provider may verify each job provided without collecting the unique identifier."	During a declared state of emergency, allows a provider who has entered into an agreement with an Area Agency on Aging (AAA) to provide home maintenance and chore services to provide those services without collecting a unique identifier from the consumer receiving services.
173-3-06.3 ODA Available here	Via JCARR process Effective: December 31, 2020	The portion in division (B)(9)(f) that states, "During a state of emergency declared by the Governor, the provider may verify each job provided without collecting the unique identifier."	During a declared state of emergency, allows a provider who has entered into an agreement with an AAA to provide home modification services to provide those services without collecting a unique identifier from the consumer receiving services.
173-3-06.6 ODA Available here	Via JCARR process Effective: December 31, 2020	The portion in division (B)(4)(a) that states, "During a state of emergency declared by the governor, the provider may verify each trip provided without collecting the unique identifier if the provider also collects the driver's signature as an attestation to the completion of the trip."	During a declared state of emergency, allows a provider who has entered into an agreement with an AAA to provide transportation services to provide those services without collecting a unique identifier from the consumer receiving services.

Agency rules rescinded in part			
Rule number and agency	Nature and effective date of rule	Rescinded portion	Description of rescinded portion
173-4-04 ODA Available here	Via JCARR process Effective: December 31, 2020	Division (C)	During a state of emergency, permits an AAA to suspend certain criteria used when procuring a provider to provide congregate dining.
173-4-05.3 ODA Available here	Via JCARR process Effective: December 31, 2020	Division (F)(3)	During a declared state of emergency, allows a provider who has entered into an agreement with an AAA to provide congregate dining to provide dining services without collecting a unique identifier from the consumer receiving services.
173-4-10 ODA Available here	Via JCARR process Effective: October 29, 2020	Division (B)(5)(c)	During a declared state of emergency, allows a provider who has entered into an agreement with an AAA to provide grocery shopping assistance without collecting a unique identifier from a consumer during each episode of service.
173-4-11 ODA Available here	Via JCARR process Effective: October 29, 2020	Division (B)(4)(c)	During a declared state of emergency, allows a provider who has entered into an agreement with an AAA to deliver meals without collecting a unique identifier from a consumer during each transaction.
173-39-04 ODA Available here	Via JCARR process Effective: October 23, 2020	Division (E)(6)(g)	During a declared state of emergency, allows ODA to conduct a review of providers that is based on a smaller sample size than what would normally be required.

Agency rules rescinded in part			
Rule number and agency	Nature and effective date of rule	Rescinded portion	Description of rescinded portion
173-40-03 ODA Available here	Via JCARR process Effective: December 31, 2020	The portion in division (A)(1) that states, “or during a state of emergency declared by the governor”; the portion in division (A)(2)(a) that states, “unless ODA’s director approves an extended number of days”; the portion in division (A)(2)(b) that states, “unless ODA’s director approves an extended number of days.”	Adds an exception to the requirement that ODA disenroll ineligible individuals from the state-funded portion of the PASSPORT program and allows individuals to stay enrolled during a declared state of emergency.
173-51-03 ODA Available here	Via JCARR process Effective: December 31, 2020	The portion in division (A)(1) that states, “or during a state of emergency declared by the governor”; the portion in division (A)(4) that states, “unless ODA’s director approves an extended number of days.”	Adds an exception to the requirement that ODA disenroll ineligible individuals from the state-funded portion of the assisted living program and allows individuals to stay enrolled during a declared state of emergency.
5101:2-16-10 JFS Available here	Via JCARR process Effective: April 1, 2021	Division (O)	Specifies that providers of publicly funded child care are eligible for payment for 35 “pandemic days” a year. A “pandemic day” is a day the provider would normally provide child care but is required to close as a result of the COVID-19 pandemic.

Agency rules rescinded in part			
Rule number and agency	Nature and effective date of rule	Rescinded portion	Description of rescinded portion
5122-30-27 Department of Mental Health and Addiction Services (MHAS) Available here	Via JCARR process Effective: November 21, 2020	Division (C)	Prohibits certain facilities from conducting any emergency discharge during the COVID-19 state of emergency, except for nonpayment of rent.
5123-2-04 Department of Developmental Disabilities (DDD) Available here	Via JCARR process Effective: November 19, 2020	Division (H)	During the COVID-19 state of emergency, allows the Director to suspend or alter the scheduling of routine compliance reviews and submission and review of plans of correction.
5123-6-07 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (I)	During the COVID-19 state of emergency, the DD Director may suspend quality assessment reviews regarding the performance of health related activities and administration of prescribed medication.
5123-9-01 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (K)	During the COVID-19 state of emergency, allows the DD Director to suspend certain disenrollment criteria for home and community-based services.
5123-9-06 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (M)	During the COVID-19 state of emergency, allows the Director to waive or modify certain standards governing documentation and payment for home and community-based services under the individual options waiver and level one waiver components of the Medicaid program.

Agency rules rescinded in part			
Rule number and agency	Nature and effective date of rule	Rescinded portion	Description of rescinded portion
5123-9-07 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (H)	During the COVID-19 state of emergency, allows the Director to waive or suspend certain standards and procedures regarding home and community-based services waivers.
5123-9-31 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (H)	During the COVID-19 state of emergency, allows the Director to suspend a rule so that the Medicaid services system does not adjust the payment rate for each individual and generate an alert to an agency provider and a county board when the total direct service hours entered by the agency provider are more than 3% below the original projected service utilization entered by the county board.
5123-9-34 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (G)	During the COVID-19 state of emergency, allows the Director to modify or suspend provisions of a rule regarding home and community-based services waivers.
5123-10-01 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (M)	During the COVID-19 state of emergency, allows the Director to waive requirements to complete specified early intervention forms if the required information, notice, or consent described in a form is otherwise provided or secured and documented in writing.

Agency rules rescinded in part			
Rule number and agency	Nature and effective date of rule	Rescinded portion	Description of rescinded portion
5123-10-02 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (Q)	During the COVID-19 state of emergency, allows the Director to modify or suspend provisions of a rule regarding the early intervention program's eligibility and services.
5123-10-03 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (I)	During the COVID-19 state of emergency, allows the Director to waive requirements to complete specified early intervention forms if the required information, notice, or consent described in a form is otherwise provided or secured and documented in writing.
5123-17-02 DDD Available here	Via JCARR process Effective: November 19, 2020	Division (Q)	During the COVID-19 state of emergency, allows the Director to modify requirements for addressing major unusual incidents and unusual incidents.

HISTORY

Action	Date
Introduced	05-19-21