

AN ACT

To amend sections 3350.15, 5124.01, 5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 5124.192, 5124.193, 5124.195, 5124.21, 5124.23, 5124.28, 5124.29, 5124.30, 5124.38, 5124.39, 5124.40, 5124.41, 5124.46, 5124.68, 5705.21, 5709.121, 5709.17, 5735.01, 5735.024, 5735.04, and 5747.01; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 5124.17 (5124.171), 5124.19 (5124.195), 5124.191 (5124.196), 5124.192 (5124.197), 5124.193 (5124.198), 5124.195 (5124.199), 5124.21 (5124.211), and 5124.23 (5124.231); to enact new sections 5124.17, 5124.19, 5124.191, 5124.192, 5124.193, 5124.194, 5124.21, and 5124.23 and section 5124.24; to repeal sections 5124.155 and 5124.194 of the Revised Code; to amend Section 261.168 of Am. Sub. H.B. 49 of the 132nd General Assembly; and to repeal Section 261.169 of Am. Sub. H.B. 49 of the 132nd General Assembly to modify the existing tax exemption for veterans organizations' property, to make appropriations and otherwise provide authorization and conditions for the operation of state programs, and to declare an emergency.

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

SECTION 1. That sections 3350.15, 5124.01, 5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 5124.192, 5124.193, 5124.195, 5124.21, 5124.23, 5124.28, 5124.29, 5124.30, 5124.38, 5124.39, 5124.40, 5124.41, 5124.46, 5124.68, 5705.21, 5709.121, 5709.17, 5735.01, 5735.024, 5735.04, and 5747.01 be amended; sections 5124.17 (5124.171), 5124.19 (5124.195), 5124.191 (5124.196), 5124.192 (5124.197), 5124.193 (5124.198), 5124.195 (5124.199), 5124.21 (5124.211), and 5124.23 (5124.231) be amended for the purpose of adopting new section numbers as indicated in parentheses; and new sections 5124.17, 5124.19, 5124.191, 5124.192, 5124.193, 5124.194, 5124.21, and 5124.23 and section 5124.24 of the Revised Code be enacted to read as follows:

Sec. 3350.15. (A) The northeast Ohio medical university may enter into a partnership with Cleveland state university to establish the northeast Ohio medical university academic campus at Cleveland state university, to enable fifty per cent or more of the medical curriculum taught to students enrolled under this partnership to be based in Cleveland at Cleveland state university, local hospitals, and community- and neighborhood-based primary care clinics. Cleveland state university shall not receive state capital appropriations to pay for facilities for the academic campus.

(B) The Ohio university heritage college of osteopathic medicine may be a member of the partnership established under division (A) of this section and may admit and enroll a portion of the

Cleveland state university students provided for under division (A) of this section.

Sec. 5124.01. As used in this chapter:

(A) "Addition" means an increase in an ICF/IID's square footage.

(B) "Affiliated operator" means an operator affiliated with either of the following:

(1) The exiting operator for whom the affiliated operator is to assume liability for the entire amount of the exiting operator's debt under the medicaid program or the portion of the debt that represents the franchise permit fee the exiting operator owes;

(2) The entering operator involved in the change of operator with the exiting operator specified in division ~~(A)~~(B)(1) of this section.

~~(B)~~(C) "Allowable costs" means an ICF/IID's costs that the department of developmental disabilities determines are reasonable. Fines paid under section 5124.99 of the Revised Code are not allowable costs.

~~(C)~~(D) "Capital costs" means an ICF/IID's costs of ownership and costs of nonextensive renovation.

~~(D)~~(E) "Case-mix score" means the measure determined under section 5124.192, 5124.193, or 5124.197 of the Revised Code of the relative direct-care resources needed to provide care and habilitation to an ICF/IID resident.

~~(E)~~(F) "Change of operator" means an entering operator becoming the operator of an ICF/IID in the place of the exiting operator.

(1) Actions that constitute a change of operator include the following:

(a) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(b) A transfer of all the exiting operator's ownership interest in the operation of the ICF/IID to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the ICF/IID is also transferred;

(c) A lease of the ICF/IID to the entering operator or the exiting operator's termination of the exiting operator's lease;

(d) If the exiting operator is a partnership, dissolution of the partnership;

(e) If the exiting operator is a partnership, a change in composition of the partnership unless both of the following apply:

(i) The change in composition does not cause the partnership's dissolution under state law.

(ii) The partners agree that the change in composition does not constitute a change in operator.

(f) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

(2) The following, alone, do not constitute a change of operator:

(a) A contract for an entity to manage an ICF/IID as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(b) A change of ownership, lease, or termination of a lease of real property or personal property associated with an ICF/IID if an entering operator does not become the operator in place of an exiting operator;

(c) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stock, if the same corporation continues to be the operator.

~~(F)~~~~(G)~~ "Cost center" means the following:

- (1) Capital costs;
- (2) Direct care costs;
- (3) Indirect care costs;
- (4) Other protected costs.

~~(G)~~~~(H)~~(1) Except as provided in division (H)(2) of this section, "cost report year" means the calendar year immediately preceding the calendar year in which a fiscal year for which a medicaid payment rate determination is made begins.

(2) When a cost report the department of developmental disabilities accepts under division (A) or (C)(1)(b) of section 5124.101 of the Revised Code is used in determining an ICF/IID's medicaid payment rate, "cost report year" means the period that the cost report covers.

~~(I)~~ "Costs of nonextensive renovations" means the following:

(1) For the purpose of determining an ICF/IID's per medicaid day capital component rate under section 5124.17 of the Revised Code, the actual expense incurred by the ICF/IID for depreciation or amortization and interest on renovations approved by the department of developmental disabilities as nonextensive renovations;

(2) For the purpose of determining an ICF/IID's per medicaid day payment rate for reasonable capital costs under section 5124.171 of the Revised Code, the actual expense incurred by an the ICF/IID for depreciation or amortization and interest on renovations that are not extensive renovations.

~~(H)~~~~(J)~~(1) "Costs of ownership" means the actual expenses incurred by an ICF/IID for all of the following:

(a) Subject to division ~~(H)~~~~(J)~~(2) of this section, depreciation and interest on any capital assets that cost five hundred dollars or more per item, including the following:

- (i) Buildings;
- (ii) Building improvements that are not approved as nonextensive renovations ~~under for the purpose of section 5124.17 or 5124.171 of the Revised Code;~~

(iii) Equipment;

(iv) ~~Extensive renovations;~~

~~(v)~~ Transportation equipment;

(v) For the purpose of determining an ICF/IID's per medicaid day payment rate for reasonable capital costs under section 5124.171 of the Revised Code, extensive renovations.

(b) Amortization and interest on land improvements and leasehold improvements;

(c) Amortization of financing costs;

(d) Except as provided in division ~~(Z)~~~~(BB)~~ of this section, lease and rent of land, building, and equipment.

(2) The costs of capital assets of less than five hundred dollars per item may be considered costs of ownership in accordance with an ICF/IID provider's practice.

~~(H)~~~~(K)~~(1) "Date of licensure" means the following:

(a) In the case of an ICF/IID that was originally licensed as a nursing home under Chapter 3721. of the Revised Code, the date that it was originally so licensed, regardless that it was subsequently licensed as a residential facility under section 5123.19 of the Revised Code;

(b) In the case of an ICF/IID that was originally licensed as a residential facility under section 5123.19 of the Revised Code, the date it was originally so licensed;

(c) In the case of an ICF/IID that was not required by law to be licensed as a nursing home or residential facility when it was originally operated as a residential facility, the date it first was operated as a residential facility, regardless of the date the ICF/IID was first licensed as a nursing home or residential facility.

(2) If, after an ICF/IID's original date of licensure, more residential facility beds are added to the ICF/IID or all or part of the ICF/IID undergoes an extensive renovation, the ICF/IID has a different date of licensure for the additional beds or extensively renovated portion of the ICF/IID. This does not apply, however, to additional beds when both of the following apply:

(a) The additional beds are located in a part of the ICF/IID that was constructed at the same time as the continuing beds already located in that part of the ICF/IID.

(b) The part of the ICF/IID in which the additional beds are located was constructed as part of the ICF/IID at a time when the ICF/IID was not required by law to be licensed as a nursing home or residential facility.

(3) The definition of "date of licensure" in this section applies in determinations of ICFs/IID's medicaid payment rates but does not apply in determinations of ICFs/IID's franchise permit fees under sections 5168.60 to 5168.71 of the Revised Code.

~~(J)~~(L) "Desk-reviewed" means that an ICF/IID's costs as reported on a cost report filed under section 5124.10 or 5124.101 of the Revised Code have been subjected to a desk review under section 5124.108 of the Revised Code and preliminarily determined to be allowable costs.

~~(K)~~(M) "Developmental center" means a residential facility that is maintained and operated by the department of developmental disabilities.

~~(I)~~(N) "Direct care costs" means all of the following costs incurred by an ICF/IID:

(1) Costs for registered nurses, licensed practical nurses, and nurse aides employed by the ICF/IID;

(2) Costs for direct care staff, administrative nursing staff, medical directors, respiratory therapists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, audiologists, habilitation staff (including habilitation supervisors), qualified intellectual disability professionals, program directors, social services staff, activities staff, ~~off-site day programming~~, psychologists, psychology assistants, social workers, counselors, and other persons holding degrees qualifying them to provide therapy;

(3) Costs of purchased nursing services;

(4) Costs of training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims and related costs as specified in rules adopted under section 5124.03 of the Revised Code, for personnel listed in divisions ~~(I)~~(N)(1), (2), and (3) of this section;

(5) Costs of quality assurance;

(6) Costs of consulting and management fees related to direct care;

(7) Allocated direct care home office costs;

(8) Costs of off-site day programming, including day programming that is provided in an area that is not certified by the director of health as an ICF/IID under Title XIX and regardless of either of the following:

(a) Whether or not the area in which the day programming is provided is less than two hundred feet away from the ICF/IID;

(b) Whether or not the day programming is provided by an individual or organization that is a related party to the ICF/IID provider.

(9) Costs of other direct-care resources that are specified as direct care costs in rules adopted under section 5124.03 of the Revised Code.

~~(M)~~(O) "Downsized ICF/IID" means an ICF/IID that permanently reduced its medicaid-certified capacity pursuant to a plan approved by the department of developmental disabilities under section 5123.042 of the Revised Code.

~~(N)~~(P) "Effective date of a change of operator" means the day the entering operator becomes the operator of the ICF/IID.

~~(O)~~(Q) "Effective date of a facility closure" means the last day that the last of the residents of the ICF/IID resides in the ICF/IID.

~~(P)~~(R) "Effective date of an involuntary termination" means the date the department of medicaid terminates the operator's provider agreement for the ICF/IID or the last day that such a provider agreement is in effect when the department cancels or refuses to revalidate it.

~~(Q)~~(S) "Effective date of a voluntary termination" means the day the ICF/IID ceases to accept medicaid recipients.

~~(R)~~(T) "Entering operator" means the person or government entity that will become the operator of an ICF/IID when a change of operator occurs or following an involuntary termination.

~~(S)~~(U) "Exiting operator" means any of the following:

(1) An operator that will cease to be the operator of an ICF/IID on the effective date of a change of operator;

(2) An operator that will cease to be the operator of an ICF/IID on the effective date of a facility closure;

(3) An operator of an ICF/IID that is undergoing or has undergone a voluntary termination;

(4) An operator of an ICF/IID that is undergoing or has undergone an involuntary termination.

~~(T)~~(V)(1) "Extensive-For the purpose of determining an ICF/IID's per medicaid day payment rate for reasonable capital costs under section 5124.171 of the Revised Code, "extensive renovation" means the following:

(a) An ICF/IID's betterment, improvement, or restoration to which both of the following apply:

(i) It was started before July 1, 1993.

(ii) It meets the definition of "extensive renovation" established in rules that were adopted by the director of job and family services and in effect on December 22, 1992.

(b) An ICF/IID's betterment, improvement, or restoration to which all of the following apply:

(i) It was started on or after July 1, 1993.

(ii) Except as provided in division ~~(F)~~(V)(2) of this section, it costs more than sixty-five per cent and not more than eighty-five per cent of the cost of constructing a new bed.

(iii) It extends the useful life of the assets for at least ten years.

(2) The department of developmental disabilities may treat a renovation that costs more than eighty-five per cent of the cost of constructing new beds as an extensive renovation if the department determines that the renovation is more prudent than construction of new beds.

(3) For the purpose of division ~~(F)~~(V)(1)(b)(ii) of this section, the cost of constructing a new bed shall be considered to be forty thousand dollars, adjusted for the estimated rate of inflation from January 1, 1993, to the end of the calendar year during which the extensive renovation is completed, using the consumer price index for shelter costs for all urban consumers for the north central region, as published by the United States bureau of labor statistics.

~~(U)~~(W)(1) Subject to divisions ~~(U)~~(W)(2) and (3) of this section, "facility closure" means either of the following:

(a) Discontinuance of the use of the building, or part of the building, that houses the facility as an ICF/IID that results in the relocation of all of the facility's residents;

(b) Conversion of the building, or part of the building, that houses an ICF/IID to a different use with any necessary license or other approval needed for that use being obtained and one or more of the facility's residents remaining in the facility to receive services under the new use.

(2) A facility closure occurs regardless of any of the following:

(a) The operator completely or partially replacing the ICF/IID by constructing a new ICF/IID or transferring the ICF/IID's license to another ICF/IID;

(b) The ICF/IID's residents relocating to another of the operator's ICFs/IID;

(c) Any action the department of health takes regarding the ICF/IID's medicaid certification that may result in the transfer of part of the ICF/IID's survey findings to another of the operator's ICFs/IID;

(d) Any action the department of developmental disabilities takes regarding the ICF/IID's license under section 5123.19 of the Revised Code.

(3) A facility closure does not occur if all of the ICF/IID's residents are relocated due to an emergency evacuation and one or more of the residents return to a medicaid-certified bed in the ICF/IID not later than thirty days after the evacuation occurs.

~~(V)~~(X) "Fiscal year" means the fiscal year of this state, as specified in section 9.34 of the Revised Code.

~~(W)~~(Y) "Franchise permit fee" means the fee imposed by sections 5168.60 to 5168.71 of the Revised Code.

~~(X)~~(Z) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.

~~(Y)~~(AA) "ICF/IID services" has the same meaning as in 42 C.F.R. 440.150.

~~(Z)~~(BB)(1) "Indirect care costs" means all reasonable costs incurred by an ICF/IID other than capital costs, direct care costs, and other protected costs. "Indirect care costs" includes costs of habilitation supplies, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, liability insurance, bookkeeping, purchasing department, human resources,

communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repair expenses, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims and related costs, as specified in rules adopted under section 5124.03 of the Revised Code, for personnel listed in this division. Notwithstanding division ~~(H)~~~~(J)~~ of this section, "indirect care costs" also means the cost of equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the ICF/IID's cost report for the cost reporting period ending December 31, 1992.

(2) For the purpose of division ~~(Z)~~~~(BB)~~(1) of this section, an operating lease shall be construed in accordance with generally accepted accounting principles.

~~(AA)~~~~(CC)~~ "Inpatient days" means both of the following:

(1) All days during which a resident, regardless of payment source, occupies a bed in an ICF/IID that is included in the ICF/IID's medicaid-certified capacity;

(2) All days for which payment is made under section 5124.34 of the Revised Code.

~~(BB)~~~~(DD)~~ "Intermediate care facility for individuals with intellectual disabilities" and "ICF/IID" mean an intermediate care facility for the mentally retarded as defined in the "Social Security Act," section 1905(d), 42 U.S.C. 1396d(d).

~~(CC)~~~~(EE)~~ "Involuntary termination" means the department of medicaid's termination of, cancellation of, or refusal to revalidate the operator's provider agreement for the ICF/IID when such action is not taken at the operator's request.

~~(DD)~~~~(FF)~~ "Maintenance and repair expenses" means, except as provided in division ~~(WW)~~~~(XX)~~(2)(b) of this section, expenditures that are necessary and proper to maintain an asset in a normally efficient working condition and that do not extend the useful life of the asset two years or more. "Maintenance and repair expenses" includes the costs of ordinary repairs such as painting and wallpapering.

~~(EE)~~~~(GG)~~ "Medicaid-certified capacity" means the number of an ICF/IID's beds that are certified for participation in medicaid as ICF/IID beds.

~~(FF)~~~~(HH)~~ "Medicaid days" means both of the following:

(1) All days during which a resident who is a medicaid recipient eligible for ICF/IID services occupies a bed in an ICF/IID that is included in the ICF/IID's medicaid-certified capacity;

(2) All days for which payment is made under section 5124.34 of the Revised Code.

~~(GG)~~~~(II)~~(1) "New ICF/IID" means an ICF/IID for which the provider obtains an initial provider agreement following the director of health's medicaid certification of the ICF/IID, including such an ICF/IID that replaces one or more ICFs/IID for which a provider previously held a provider agreement.

(2) "New ICF/IID" does not mean either of the following:

(a) An ICF/IID for which the entering operator seeks a provider agreement pursuant to section 5124.511 or 5124.512 or (pursuant to section 5124.515) section 5124.07 of the Revised Code;

(b) A downsized ICF/IID or partially converted ICF/IID.

~~(HH)~~~~(JJ)~~ "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.

~~(H)~~~~(KK)~~ "Operator" means the person or government entity responsible for the daily operating and management decisions for an ICF/IID.

~~(J)~~~~(LL)~~ "Other protected costs" means costs incurred by an ICF/IID for medical supplies; real estate, franchise, and property taxes; natural gas, fuel oil, water, electricity, sewage, and refuse and hazardous medical waste collection; allocated other protected home office costs; and any additional costs defined as other protected costs in rules adopted under section 5124.03 of the Revised Code.

~~(KK)~~~~(MM)~~(1) "Owner" means any person or government entity that has at least five per cent ownership or interest, either directly, indirectly, or in any combination, in any of the following regarding an ICF/IID:

- (a) The land on which the ICF/IID is located;
- (b) The structure in which the ICF/IID is located;
- (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure on or in which the ICF/IID is located;
- (d) Any lease or sublease of the land or structure on or in which the ICF/IID is located.

(2) "Owner" does not mean a holder of a debenture or bond related to an ICF/IID and purchased at public issue or a regulated lender that has made a loan related to the ICF/IID unless the holder or lender operates the ICF/IID directly or through a subsidiary.

~~(LL)~~~~(NN)~~ "Partially converted ICF/IID" means an ICF/IID that converted some, but not all, of its beds to providing home and community-based services under the individual options waiver pursuant to section 5124.60 or 5124.61 of the Revised Code.

~~(MM)~~~~(OO)~~(1) For the purpose of the total per medicaid day payment rate determined for an ICF/IID under division (B) of section 5124.15 of the Revised Code and the initial total per medicaid day payment rate determined for a new ICF/IID under section 5124.151 of the Revised Code:

(a) "Peer group 1-A" means each ICF/IID with a medicaid-certified capacity exceeding sixteen.

(b) "Peer group 2-A" means each ICF/IID with a medicaid-certified capacity exceeding eight but not exceeding sixteen.

(c) "Peer group 3-A" means each ICF/IID with a medicaid-certified capacity of seven or eight.

(d) "Peer group 4-A" means each ICF/IID with a medicaid-certified capacity not exceeding six, other than an ICF/IID that is in peer group 5-A.

(e) "Peer group 5-A" means each ICF/IID to which all of the following apply:

(i) The ICF/IID is first certified as an ICF/IID after July 1, 2014.

(ii) The ICF/IID has a medicaid-certified capacity not exceeding six.

(iii) The ICF/IID has a contract with the department of developmental disabilities that is for fifteen years and includes a provision for the department to approve all admissions to, and discharges from, the ICF/IID.

(iv) The ICF/IID's residents are admitted to the ICF/IID directly from a developmental center or have been determined by the department to be at risk of admission to a developmental center.

(2) For the purpose of the total per medicaid day payment rate determined for an ICF/IID under division (C) of section 5124.15 of the Revised Code:

(a) "Peer group 1-B" means each ICF/IID with a medicaid-certified capacity exceeding eight.

~~(NN)~~ (b) "Peer group 2-B" means each ICF/IID with a medicaid-certified capacity not exceeding eight, other than an ICF/IID that is in peer group 3.

~~(OO)~~ (c) "Peer group 3-B" means each ICF/IID to which all of the following apply:

(1) (i) The ICF/IID is first certified as an ICF/IID after July 1, 2014;

(2) (ii) The ICF/IID has a medicaid-certified capacity not exceeding six;

(3) (iii) The ICF/IID has a contract with the department of developmental disabilities that is for fifteen years and includes a provision for the department to approve all admissions to, and discharges from, the ICF/IID;

(4) (iv) The ICF/IID's residents are admitted to the ICF/IID directly from a developmental center or have been determined by the department to be at risk of admission to a developmental center.

(PP)(1) Except as provided in divisions (PP)(2) and (3) of this section, "per diem" means an ICF/IID's desk-reviewed, actual, allowable costs in a given cost center in a cost reporting period, divided by the facility's inpatient days for that cost reporting period.

(2) When determining capital costs for the purpose of section ~~5124.17~~ 5124.171 of the Revised Code, "per diem" means an ICF/IID's actual, allowable capital costs in a cost reporting period divided by the greater of the facility's inpatient days for that period or the number of inpatient days the ICF/IID would have had during that period if its occupancy rate had been ninety-five per cent.

(3) When determining indirect care costs for the purpose of section ~~5124.21~~ or 5124.211 of the Revised Code, "per diem" means an ICF/IID's actual, allowable indirect care costs in a cost reporting period divided by the greater of the ICF/IID's inpatient days for that period or the number of inpatient days the ICF/IID would have had during that period if its occupancy rate had been eighty-five per cent.

(QQ) "Provider" means an operator with a valid provider agreement.

(RR) "Provider agreement" means a provider agreement, as defined in section 5164.01 of the Revised Code, that is between the department of medicaid and the operator of an ICF/IID for the provision of ICF/IID services under the medicaid program.

(SS) "Purchased nursing services" means services that are provided in an ICF/IID by registered nurses, licensed practical nurses, or nurse aides who are not employees of the ICF/IID.

(TT) "Reasonable" means that a cost is an actual cost that is appropriate and helpful to develop and maintain the operation of resident care facilities and activities, including normal standby costs, and that does not exceed what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider to provider and from time to time for the same provider.

(UU) "Related party" means an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by, a provider.

(1) An individual who is a relative of an owner is a related party.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in both the provider and the other organization. Significant ownership or equity exists when an individual or individuals possess five per cent ownership or equity in both the

provider and a supplier. Significant ownership or equity is presumed to exist when an individual or individuals possess ten per cent ownership or equity in both the provider and another organization from which the provider purchases or leases real property.

(3) Control exists when an individual or organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization.

(4) An individual or organization that supplies goods or services to a provider shall not be considered a related party if all of the following conditions are met:

(a) The supplier is a separate bona fide organization.

(b) A substantial part of the supplier's business activity of the type carried on with the provider is transacted with others than the provider and there is an open, competitive market for the types of goods or services the supplier furnishes.

(c) The types of goods or services are commonly obtained by other ICFs/IID from outside organizations and are not a basic element of resident care ordinarily furnished directly to residents by the ICFs/IID.

(d) The charge to the provider is in line with the charge for the goods or services in the open market and no more than the charge made under comparable circumstances to others by the supplier.

(VV) "Relative of owner" means an individual who is related to an owner of an ICF/IID by one of the following relationships:

(1) Spouse;

(2) Natural parent, child, or sibling;

(3) Adopted parent, child, or sibling;

(4) Stepparent, stepchild, stepbrother, or stepsister;

(5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;

(6) Grandparent or grandchild;

(7) Foster caregiver, foster child, foster brother, or foster sister.

(WW) For the purpose of determining an ICF/IID's per medicaid day capital component rate under section 5124.17 of the Revised Code, "renovation" means an ICF/IID's betterment, improvement, or restoration, other than an addition, through a capital expenditure.

~~(XX)(1) "Renovation" For the purpose of determining an ICF/IID's per medicaid day payment rate for reasonable capital costs under section 5124.171 of the Revised Code, "renovation" means the following:~~

(a) An ICF/IID's betterment, improvement, or restoration to which both of the following apply:

(i) It was started before July 1, 1993.

(ii) It meets the definition of "renovation" established in rules that were adopted by the director of job and family services and in effect on December 22, 1992.

(b) An ICF/IID's betterment, improvement, or restoration to which both of the following apply:

(i) It was started on or after July 1, 1993.

(ii) It betters, improves, or restores the ICF/IID beyond its current functional capacity through a structural change that costs at least five hundred dollars per bed.

(2) ~~A~~ For the purpose of division (XX)(1) of this section, a renovation started on or after July

1, 1993, may include both of the following:

(a) A betterment, improvement, restoration, or replacement of assets that are affixed to a building and have a useful life of at least five years;

(b) Costs that otherwise would be considered maintenance and repair expenses if they are an integral part of the structural change that makes up the renovation project.

(3) ~~"Renovation"~~ For the purpose of division (XX)(1) of this section, "renovation" does not mean construction of additional space for beds that will be added to an ICF/IID's licensed capacity or medicaid-certified capacity.

~~(XX)-(YY)~~ "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

~~(YY)-(ZZ)~~ "Secondary building" means a building or part of a building, other than an ICF/IID, in which the owner of one or more ICFs/IID has administrative work regarding the ICFs/IID performed or records regarding the ICFs/IID stored.

~~(AAA)~~ "Sponsor" means an adult relative, friend, or guardian of an ICF/IID resident who has an interest or responsibility in the resident's welfare.

~~(ZZ)-(BBB)~~ "Title XIX" means Title XIX of the "Social Security Act," 42 U.S.C. 1396, et seq.

~~(AAA)-(CCC)~~ "Title XVIII" means Title XVIII of the "Social Security Act," 42 U.S.C. 1395, et seq.

~~(BBB)-(DDD)~~ "Voluntary termination" means an operator's voluntary election to terminate the participation of an ICF/IID in the medicaid program but to continue to provide service of the type provided by a residential facility as defined in section 5123.19 of the Revised Code.

Sec. 5124.101. (A) The provider of an ICF/IID in peer group 1-A, peer group 2-A, peer group 3-A, peer group 4-A, peer group 1-B, or peer group 2-B that becomes a downsized ICF/IID or partially converted ICF/IID on or after July 1, 2013, or becomes a new ICF/IID on or after that date, may file with the department of developmental disabilities a cost report covering the period specified in division (B) of this section if the following applies to the ICF/IID:

(1) In the case of an ICF/IID that becomes a downsized ICF/IID or partially converted ICF/IID, the ICF/IID has either of the following on the day it becomes a downsized ICF/IID or partially converted ICF/IID:

(a) A medicaid-certified capacity that is at least ten per cent less than its medicaid-certified capacity on the day immediately preceding the day it becomes a downsized ICF/IID or partially converted ICF/IID;

(b) At least five fewer beds certified as ICF/IID beds than it has on the day immediately preceding the day it becomes a downsized ICF/IID or partially converted ICF/IID.

(2) In the case of a new ICF/IID, the ICF/IID's beds are from a downsized ICF/IID and the downsized ICF/IID has either of the following on the day it becomes a downsized ICF/IID:

(a) A medicaid-certified capacity that is at least ten per cent less than its medicaid-certified capacity on the day immediately preceding the day it becomes a downsized ICF/IID;

(b) At least five fewer beds certified as ICF/IID beds than it has on the day immediately preceding the day it becomes a downsized ICF/IID.

(B) A cost report filed under division (A) of this section shall cover the period that begins and

ends as follows:

(1) In the case of an ICF/IID that becomes a downsized ICF/IID or partially converted ICF/IID:

(a) The period begins with the day that the ICF/IID becomes a downsized ICF/IID or partially converted ICF/IID.

(b) The period ends on the last day of the last month of the first three full months of operation as a downsized ICF/IID or partially converted ICF/IID.

(2) In the case of a new ICF/IID:

(a) The period begins with the day that the provider agreement for the ICF/IID takes effect.

(b) The period ends on the last day of the last month of the first three full months that the provider agreement is in effect.

(C)(1) If the department accepts a cost report filed under division (A) of this section for an ICF/IID that becomes a downsized ICF/IID or partially converted ICF/IID on or before the first day of October of a calendar year, the provider also shall do both of the following:

(a) File with the department a cost report for the ICF/IID in accordance with division (A) of section 5124.10 of the Revised Code;

(b) File with the department another cost report for the ICF/IID that covers the portion of the initial calendar year that the ICF/IID operated as a downsized ICF/IID or partially converted ICF/IID.

(2) If the department accepts a cost report filed under division (A) of this section for an ICF/IID that becomes a downsized ICF/IID or partially converted ICF/IID after the first day of October of a calendar year, the provider is not required to file a cost report that covers that calendar year in accordance with division (A) of section 5124.10 of the Revised Code. Instead, the provider shall file a cost report for the ICF/IID in accordance with division (A) of section 5124.10 of the Revised Code covering the immediately following calendar year.

(3) If the department accepts a cost report filed under division (A) of this section for a new ICF/IID that has a provider agreement that takes effect on or before the first day of October of a calendar year, the provider also shall file a cost report for the ICF/IID in accordance with division (A) of section 5124.10 of the Revised Code covering the portion of that calendar year that the provider agreement was in effect.

(4) If the department accepts a cost report filed under division (A) of this section for a new ICF/IID that has a provider agreement that takes effect after the first day of October of a calendar year, the provider is not required to file a cost report that covers that calendar year in accordance with division (A) of section 5124.10 of the Revised Code. The provider shall file a cost report for the ICF/IID in accordance with division (A) of section 5124.10 of the Revised Code covering the immediately following calendar year.

(D) The department shall refuse to accept a cost report filed under division (A) or (C)(1)(b) of this section if either of the following apply:

(1) Except as provided in division (E) of section 5124.10 of the Revised Code, the provider fails to file the cost report with the department not later than ninety days after the last day of the period the cost report covers;

(2) The cost report is incomplete or inadequate.

(E) If the department accepts a cost report filed under division (A) or (C)(1)(b) of this

section, the department shall use that cost report, rather than the cost report that otherwise would be used pursuant to section 5124.17, 5124.171, 5124.19, 5124.195, 5124.21, ~~or 5124.211~~, 5124.23, or 5124.231 of the Revised Code, to determine the ICF/IID's medicaid payment rate in accordance with this chapter for ICF/IID services the ICF/IID provides during the period that begins and ends as follows:

(1) For a cost report filed under division (A) of this section, the period begins on the following:

(a) In the case of an ICF/IID that becomes a downsized ICF/IID or partially converted ICF/IID:

(i) The day that the ICF/IID becomes a downsized ICF/IID or partially converted ICF/IID if that day is the first day of a month;

(ii) The first day of the month immediately following the month that the ICF/IID becomes a downsized ICF/IID or partially converted ICF/IID if division (E)(1)(a)(i) of this section does not apply.

(b) In the case of a new ICF/IID, the day that the ICF/IID's provider agreement takes effect.

(2) For a cost report filed under division (A) of this section, the period ends on the following:

(a) In the case of an ICF/IID that becomes a downsized ICF/IID or partially converted ICF/IID:

(i) The last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID is paid a rate determined using a cost report filed under division (C)(1)(b) of this section if the ICF/IID became a downsized ICF/IID or partially converted ICF/IID on or before the first day of October of a calendar year;

(ii) The last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID begins to be paid a rate determined using a cost report that division (C)(2) of this section requires be filed in accordance with division (A) of section 5124.10 of the Revised Code if the ICF/IID became a downsized ICF/IID or partially converted ICF/IID after the first day of October of a calendar year.

(b) In the case of a new ICF/IID, the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID begins to be paid a rate determined using a cost report that division (C)(3) or (4) of this section requires be filed in accordance with division (A) of section 5124.10 of the Revised Code.

(3) For a cost report filed under division (C)(1)(b) of this section, the period begins on the day immediately following the day specified in division (E)(2)(a)(i) of this section.

(4) For a cost report filed under division (C)(1)(b) of this section, the period ends on the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID begins to be paid a rate determined using the cost report filed with the department in accordance with division (A) of section 5124.10 of the Revised Code that covers the calendar year that immediately follows the initial calendar year that the ICF/IID operated as a downsized ICF/IID or partially converted ICF/IID.

(F) If the department accepts a cost report filed under division (A) or (C)(1)(b) of this section by the provider of a downsized ICF/IID or partially converted ICF/IID, the following modifications shall be made for the purpose of determining the medicaid payment rate for ICF/IID services the ICF/IID provides during the period specified in division (E) of this section:

(1) In place of the quarterly case mix score otherwise used in determining the ICF/IID's per medicaid day direct care costs component rate under division (A) of section 5124.19 of the Revised Code, the ICF/IID's case mix score in effect on the last day of the calendar quarter that ends during the period the cost report covers (or, if more than one calendar quarter ends during that period, the last of those calendar quarters) shall be used to determine the ICF/IID's per medicaid day direct care costs component rate.

(2) In place of the annual average case mix score otherwise used in determining the ICF/IID's per medicaid day payment rate for direct care costs under division (A) of section ~~5124.19~~ 5124.195 of the Revised Code, the ICF/IID's case mix score in effect on the last day of the calendar quarter that ends during the period the cost report covers (or, if more than one calendar quarter ends during that period, the last of those calendar quarters) shall be used to determine the ICF/IID's per medicaid day payment rate for direct care costs.

~~(2) If the ICF/IID becomes a downsized ICF/IID or partially converted ICF/IID:-~~

~~(a)-(3) The ICF/IID shall not be subject to the limit on the costs of ownership per diem payment rate specified in divisions (B) and (C) of section ~~5124.17~~ 5124.171 of the Revised Code.~~

~~(b)-(4) The ICF/IID shall not be subject to the limit on the payment rate for per diem capitalized costs of nonextensive renovations specified in division (E)(1) of section ~~5124.17~~ 5124.171 of the Revised Code.~~

~~(e)-(5) The ICF/IID shall be subject to the limit on the total payment rate for costs of ownership, capitalized costs of nonextensive renovations, and the efficiency incentive specified in division (H) of section ~~5124.17~~ 5124.171 of the Revised Code regardless of whether the ICF/IID is in peer group 1-B or peer group 2-B.~~

Sec. 5124.15. (A) Except as otherwise provided by section 5124.101 of the Revised Code, sections 5124.151 to ~~5124.155~~ 5124.154 of the Revised Code, and divisions ~~(B)-(D)~~ and ~~(E)-(E)~~ of this section, the total per medicaid day payment rate that the department of developmental disabilities shall pay to an ICF/IID provider for ICF/IID services the provider's ICF/IID provides during a fiscal year shall equal the following:

(1) Until July 1, 2021, the greater of the total per medicaid day payment rates determined under divisions (B) and (C) of this section;

(2) Beginning July 1, 2021, the total per medicaid day payment rate determined under division (B) of this section.

(B) The total per medicaid day payment rate determined under this division is the sum of all of the following:

(1) The per medicaid day capital component rate determined for the ICF/IID under section 5124.17 of the Revised Code;

(2) The per medicaid day direct care costs component rate determined for the ICF/IID under section 5124.19 of the Revised Code;

(3) The per medicaid day indirect care costs component rate determined for the ICF/IID under section 5124.21 of the Revised Code;

(4) The per medicaid day other protected costs component rate determined for the ICF/IID under section 5124.23 of the Revised Code;

(5) Until July 1, 2020, a direct support personnel payment equal to three and four-hundredths

per cent of the ICF/IID's desk-reviewed, actual, allowable, per medicaid day direct care costs from the applicable cost report year;

(6) Beginning July 1, 2020, the per medicaid day quality incentive payment determined for the ICF/IID under section 5124.24 of the Revised Code.

(C) The total per medicaid day payment rate determined under this division is the sum of all of the following:

(1) The per medicaid day payment rate for capital costs determined for the ICF/IID under section ~~5124.17-5124.171~~ of the Revised Code;

(2) The per medicaid day payment rate for direct care costs determined for the ICF/IID under section ~~5124.19-5124.195~~ of the Revised Code;

(3) The per medicaid day payment rate for indirect care costs determined for the ICF/IID under section ~~5124.21-5124.211~~ of the Revised Code;

(4) The per medicaid day payment rate for other protected costs determined for the ICF/IID under section ~~5124.23-5124.231~~ of the Revised Code;

(5) A direct support personnel payment equal to three and four-hundredths per cent of the ICF/IID's desk-reviewed, actual, allowable, per medicaid day direct care costs from the applicable cost report year.

~~(B)-(D)~~ The total per medicaid day payment rate for an ICF/IID in peer group 3 the following shall not exceed the average total per medicaid day payment rate in effect on July 1, 2013, for developmental centers:

(1) An ICF/IID that is in peer group 5-A for the purpose of the total per medicaid day payment rate determined under division (B) of this section;

(2) An ICF/IID that is in peer group 3-B for the purpose of the total per medicaid day payment rate determined under division (C) of this section.

~~(C)-(E)~~ The department shall adjust the total per medicaid day payment rate otherwise determined for an ICF/IID under division ~~(A)~~ divisions (B) and (C) of this section as directed by the general assembly through the enactment of law governing medicaid payments to ICF/IID providers.

~~(D)-(F)~~ In addition to paying an ICF/IID provider the total per medicaid day payment rate determined for the provider's ICF/IID under divisions ~~(A)~~, ~~(B)~~, ~~and (C)~~, (D), and (E) of this section for a fiscal year, the department, in accordance with section 5124.25 of the Revised Code, may pay the provider a rate add-on for ventilator-dependent outlier ICF/IID services if the rate add-on is to be paid under that section and the department approves the provider's application for the rate add-on. The rate add-on is not to be part of the ICF/IID's total per medicaid day payment rate.

Sec. 5124.151. (A) The total per medicaid day payment rate determined under section 5124.15 of the Revised Code shall not be the initial rate for ICF/IID services provided by a new ICF/IID. Instead, the initial total per medicaid day payment rate for ICF/IID services provided by a new ICF/IID shall be determined in accordance with this section.

(B) The initial total per medicaid day payment rate for ICF/IID services provided by a new ICF/IID, other than an ICF/IID in peer group 1 or peer group 2-5-A, shall be determined in the following manner:

(1) The initial rate for per medicaid day capital costs component rate shall be determined under section 5124.17 of the Revised Code using the greater of the new ICF/IID's actual inpatient

~~days or an imputed occupancy rate of eighty per cent~~ the median per medicaid day capital component rate for the ICF/IID's peer group for the fiscal year.

(2) The initial ~~rate for per medicaid day~~ direct care costs component rate shall be determined as follows:

(a) If there are no cost or resident assessment data for the new ICF/IID as necessary to determine a rate under section 5124.19 of the Revised Code, the rate shall be determined as follows:

(i) Determine the median cost per case-mix unit under division (B) of section 5124.19 of the Revised Code for the new ICF/IID's peer group for the ~~calendar~~ applicable cost report year immediately preceding the fiscal year in which the rate will be paid;

(ii) Multiply the amount determined under division (B)(2)(a)(i) of this section by the median annual average case-mix score for the new ICF/IID's peer group for that period;

(iii) Adjust the product determined under division (B)(2)(a)(ii) of this section by the rate of inflation estimated under division (D) of section 5124.19 of the Revised Code.

(b) If the new ICF/IID is a replacement ICF/IID and the ICF/IID or ICFs/IID that are being replaced are in operation immediately before the new ICF/IID opens, the rate shall be the same as the rate for the replaced ICF/IID or ICFs/IID, proportionate to the number of ICF/IID beds in each replaced ICF/IID.

(c) If the new ICF/IID is a replacement ICF/IID and the ICF/IID or ICFs/IID that are being replaced are not in operation immediately before the new ICF/IID opens, the rate shall be determined under division (B)(2)(a) of this section.

(3) The initial ~~rate for per medicaid day~~ indirect care costs component rate shall be the maximum rate for the new ICF/IID's peer group as determined for the fiscal year in accordance with division (C) of section 5124.21 of the Revised Code.

(4) The initial ~~rate for per medicaid day~~ other protected costs component rate shall be one hundred fifteen per cent of the median rate for ICFs/IID determined for the fiscal year under section 5124.23 of the Revised Code.

(C) The initial total medicaid day payment rate for ICF/IID services provided by a new ICF/IID in peer group ~~3-5-A~~ shall be determined in the following manner:

(1) The initial ~~rate for per medicaid day~~ capital costs component rate shall be \$29.61.

(2) The initial ~~rate for per medicaid day~~ direct care costs component rate shall be \$264.89.

(3) The initial ~~rate for per medicaid day~~ indirect care costs component rate shall be \$59.85.

(4) The initial ~~rate for per medicaid day~~ other protected costs component rate shall be \$25.99.

(D)(1) Except as provided in division (D)(2) of this section, the department of developmental disabilities shall adjust a new ICF/IID's initial total per medicaid day payment rate determined under this section effective the first day of July, to reflect new rate determinations for all ICFs/IID under this chapter.

(2) If the department accepts, under division (A) of section 5124.101 of the Revised Code, a cost report filed by the provider of a new ICF/IID, the department shall adjust the ICF/IID's initial total per medicaid day payment rate in accordance with divisions (E) and (F) of that section rather than division (D)(1) of this section.

Sec. 5124.152. (A) The total per medicaid day payment rate determined under section 5124.15 of the Revised Code shall not be paid for ICF/IID services provided by an ICF/IID, or

discrete unit of an ICF/IID, designated by the department of developmental disabilities as an outlier ICF/IID or unit. Instead, the provider of a designated outlier ICF/IID or unit shall be paid each fiscal year a total per medicaid day payment rate that the department shall prospectively determine in accordance with a methodology established in rules authorized by this section.

(B) The department may designate an ICF/IID, or discrete unit of an ICF/IID, as an outlier ICF/IID or unit if the ICF/IID or unit serves residents who have either of the following:

(1) Diagnoses or special care needs that require direct care resources that are not measured adequately by the resident assessment instrument specified in rules authorized by ~~section~~sections 5124.191 and 5124.196 of the Revised Code;

(2) Diagnoses or special care needs that are specified in rules authorized by this section as otherwise qualifying for consideration under this section.

(C) Notwithstanding any other provision of this chapter, the costs incurred by a designated outlier ICF/IID or unit shall not be considered in establishing medicaid payment rates for other ICFs/IID or units.

(D) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section.

(1)(a) The rules shall do both of the following:

(i) Specify the criteria and procedures the department will apply when designating an ICF/IID, or discrete unit of an ICF/IID, as an outlier ICF/IID or unit;

(ii) Establish a methodology for prospectively determining the total per medicaid day payment rate that will be paid each fiscal year for ICF/IID services provided by a designated outlier ICF/IID or unit.

(b) The rules adopted under division (D)(1)(a)(i) of this section regarding the criteria for designating outlier ICFs/IID and units shall do both of the following:

(i) Provide for consideration of whether all of the allowable costs of an ICF/IID, or discrete unit of an ICF/IID, would be paid by the rate determined under section 5124.15 of the Revised Code;

(ii) Specify the minimum number of ICF/IID beds that an ICF/IID, or discrete unit of an ICF/IID, must have to be designated an outlier ICF/IID or unit.

(c) The rules authorized by division (D)(1)(a)(i) of this section regarding the criteria for designating outlier ICFs/IID and units shall not limit the designation to ICFs/IID, or discrete units of ICFs/IID, located in large cities.

(d) The rules authorized by division (D)(1)(a)(ii) of this section regarding the methodology for prospectively determining the rates of designated outlier ICFs/IID and units shall provide for the methodology to consider the historical costs of providing ICF/IID services to the residents of designated outlier ICFs/IID and units.

(2)(a) The rules may do both of the following:

(i) Include for designation as an outlier ICF/IID or unit, an ICF/IID, or discrete unit of an ICF/IID, that serves residents who have complex medical conditions or severe behavioral problems;

(ii) Require that a designated outlier ICF/IID or unit receive authorization from the department before admitting or retaining a resident.

(b) If the director adopts rules authorized by division (D)(2)(a)(ii) of this section regarding the authorization of a designated outlier ICF/IID or unit to admit or retain a resident, the rules shall

specify the criteria and procedures the department will apply when granting the authorization.

Sec. 5124.17. (A) For each fiscal year, the department of developmental disabilities shall determine each ICF/IID's per medicaid day capital component rate. An ICF/IID's rate for a fiscal year shall equal the sum of the following:

(1) The lesser of the following:

(a) The sum of all of the following:

(i) The ICF/IID's per diem fair rental value rate for the fiscal year as determined under division (B) of this section;

(ii) The ICF/IID's per diem equipment rate for the fiscal year as determined under division (D) of this section;

(iii) The ICF/IID's per diem secondary building rate for the fiscal year as determined under division (E) of this section.

(b) The sum determined for the fiscal year under division (G) of this section.

(2) The ICF/IID's per diem nonextensive renovation rate for the fiscal year as determined under division (H) of this section.

(B) An ICF/IID's per diem fair rental value rate for a fiscal year is the quotient of the following:

(1) The ICF/IID's fair rental value as determined under division (C) of this section;

(2) The greater of the following:

(a) The number of the ICF/IID's inpatient days for the applicable cost report year;

(b) The number of inpatient days the ICF/IID would have had during the applicable cost report year if its occupancy rate had been ninety-two per cent that year.

(C)(1) An ICF/IID's fair rental value is the product of the following:

(a) The sum of the following:

(i) The ICF/IID's depreciated current asset value as determined under division (C)(2) of this section;

(ii) The ICF/IID's land value as determined under division (C)(10) of this section.

(b) Eleven per cent.

(2) An ICF/IID's depreciated current asset value is its current asset value, as determined under division (C)(3) of this section, depreciated by the product of the following:

(a) The ICF/IID's effective age as determined under division (C)(5) of this section;

(b) One and six-tenths per cent.

(3) An ICF/IID's current asset value is the product of the following:

(a) The ICF/IID's value per square foot as determined under division (C)(4) of this section;

(b) The lesser of the ICF/IID's square footage and the following:

(i) If the ICF/IID is in peer group 1-A and is a downsized ICF/IID, its medicaid-certified capacity on the last day of the applicable cost report year multiplied by one thousand;

(ii) If the ICF/IID is in peer group 1-A and is not a downsized ICF/IID, its medicaid-certified capacity on the last day of the applicable cost report year multiplied by five hundred fifty;

(iii) If the ICF/IID is in peer group 2-A and is a downsized ICF/IID, its medicaid-certified capacity on the last day of the applicable cost report year multiplied by one thousand;

(iv) If the ICF/IID is in peer group 2-A and is not a downsized ICF/IID, its medicaid-certified

capacity on the last day of the applicable cost report year multiplied by seven hundred fifty;

(v) If the ICF/IID is in peer group 3-A, its medicaid-certified capacity on the last day of the applicable cost report year multiplied by eight hundred fifty;

(vi) If the ICF/IID is in peer group 4-A or peer group 5-A, its medicaid-certified capacity on the last day of the applicable cost report year multiplied by nine hundred.

(4)(a) An ICF/IID's value per square foot shall be determined by using the version of the following RS means data that was most recently published at the time the determination is made:

(i) If the ICF/IID is in peer group 1-A or peer group 2-A, the RS means data for assisted-senior living facility construction costs;

(ii) If the ICF/IID is in peer group 3-A, peer group 4-A, or peer group 5-A, the RS means data for nursing home construction costs.

(b) Except as provided in division (C)(4)(c) of this section, in determining an ICF/IID's value per square foot, the following modifier shall be used:

(i) If the ICF/IID is located in Summit county, the modifier specified in the applicable RS means data for Akron;

(ii) If the ICF/IID is located in Athens county, the modifier specified in the applicable RS means data for Athens;

(iii) If the ICF/IID is located in Ashtabula, Geauga, Lake, Medina, Portage, Stark, Trumbull, or Wayne county, the modifier specified in the applicable RS means data for Canton;

(iv) If the ICF/IID is located in Ross county, the modifier specified in the applicable RS means data for Chillicothe;

(v) If the ICF/IID is located in Hamilton county, the modifier specified in the applicable RS means data for Cincinnati;

(vi) If the ICF/IID is located in Cuyahoga county, the modifier specified in the applicable RS means data for Cleveland;

(vii) If the ICF/IID is located in Franklin county, the modifier specified in the applicable RS means data for Columbus;

(viii) If the ICF/IID is located in Montgomery county, the modifier specified in the applicable RS means data for Dayton;

(ix) If the ICF/IID is located in Brown, Butler, Clermont, Clinton, Champaign, Darke, Greene, Logan, Miami, Preble, Shelby, or Warren county, the modifier specified in the applicable RS means data for Hamilton;

(x) If the ICF/IID is located in Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Henry, Huron, Mercer, Paulding, Putnam, Ottawa, Sandusky, Seneca, Van Wert, Williams, or Wood county, the modifier specified in the applicable RS means data for Lima;

(xi) If the ICF/IID is located in Lorain county, the modifier specified in the applicable RS means data for Lorain;

(xii) If the ICF/IID is located in Ashland, Crawford, Delaware, Fairfield, Fayette, Hardin, Knox, Licking, Madison, Morrow, Pickaway, Richland, Union, or Wyandot county, the modifier specified in the applicable RS means data for Mansfield;

(xiii) If the ICF/IID is located in Marion county, the modifier specified in the applicable RS means data for Marion;

(xiv) If the ICF/IID is located in Clark county, the modifier specified in the applicable RS means data for Springfield;

(xv) If the ICF/IID is located in Jefferson county, the modifier specified in the applicable RS means data for Steubenville;

(xvi) If the ICF/IID is located in Lucas county, the modifier specified in the applicable RS means data for Toledo;

(xvii) If the ICF/IID is located in Mahoning county, the modifier specified in the applicable RS means data for Youngstown;

(xviii) If the ICF/IID is located in Adams, Belmont, Carroll, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Scioto, Tuscarawas, Vinton, or Washington county, the modifier specified in the applicable RS means data for Zanesville.

(c) If a modifier ceases to be specified in the applicable RS means data for a city listed in division (C)(4)(b) of this section, the director of developmental disabilities shall specify in rules adopted under section 5124.03 of the Revised Code a different modifier for the counties that are affected by the change.

(5) An ICF/IID's effective age shall be determined as follows:

(a) Determine the sum of the numbers of the ICF/IID's new bed equivalents for renovations for the applicable cost report year and the immediately preceding thirty-nine calendar years as determined for each of those years under division (C)(7)(a) of this section;

(b) Determine the sum of the numbers of the ICF/IID's new bed equivalents for additions that do not increase the ICF/IID's medicaid-certified capacity for the applicable cost report year and the immediately preceding thirty-nine calendar years as determined for each of those years under division (C)(8)(a) of this section;

(c) Determine the sum of the numbers of the ICF/IID's new beds resulting from additions that increase the ICF/IID's medicaid-certified capacity for the applicable cost report year and the immediately preceding thirty-nine calendar years as determined for each of those years under division (C)(9)(a) of this section;

(d) Determine the sum of the sums determined under divisions (C)(5)(a), (b), and (c) of this section;

(e) Determine the difference of the following:

(i) The ICF/IID's medicaid-certified capacity on the last day of the applicable cost report year;

(ii) The lesser of the amount specified in division (C)(5)(e)(i) of this section and the sum determined under division (C)(5)(d) of this section.

(f) For the purpose of determining the weighted age of the ICF/IID's original beds, determine the product of the following:

(i) The difference determined under division (C)(5)(e) of this section;

(ii) The ICF/IID's age as determined under division (C)(6) of this section.

(g) Determine the sum of the weighted ages of the ICF/IID's new bed equivalents for renovations for the applicable cost report year and the immediately preceding thirty-nine calendar years as determined for each of those years under division (C)(7)(c) of this section;

(h) Determine the sum of the weighted ages of the ICF/IID's new bed equivalents for additions that do not increase its medicaid-certified capacity for the applicable cost report year and the immediately preceding thirty-nine calendar years as determined for each of those years under division (C)(8)(d) of this section;

(i) Determine the sum of the weighted ages of the ICF/IID's new beds resulting from additions that increase its medicaid-certified capacity for the applicable cost report year and the immediately preceding thirty-nine calendar years as determined for that period and each of those years under division (C)(9)(b) of this section;

(j) Determine the sum of the following:

(i) The product determined under division (C)(5)(f) of this section;

(ii) The sum of the sums determined under divisions (C)(5)(g), (h), and (i) of this section.

(k) Determine the quotient of the following:

(i) The sum determined under division (C)(5)(j) of this section;

(ii) The ICF/IID's medicaid-certified capacity on the last day of the applicable cost report year.

(6) An ICF/IID's age is the lesser of the following:

(a) The difference between the following:

(i) The calendar year in which occurs the last day of the period covered by the cost report being used to determine the ICF/IID's rate under this section;

(ii) The calendar year in which the ICF/IID was initially constructed.

(b) Forty.

(7)(a) The number, for a year, of an ICF/IID's new bed equivalents for renovations is the quotient of the following:

(i) The ICF/IID's desk-reviewed, actual, allowable renovation costs for the year;

(ii) Seventy thousand dollars.

(b) The age of an ICF/IID's new bed equivalents for renovations is the difference of the following:

(i) The calendar year in which occurs the last day of the period covered by the cost report being used to determine the ICF/IID's rate under this section;

(ii) The calendar year the renovations were completed.

(c) The weighted age, for a year, of an ICF/IID's new bed equivalents for renovations is the product of the following:

(i) The number, for that year, of the ICF/IID's new bed equivalents for renovations as determined under division (C)(7)(a) of this section;

(ii) The age of those new bed equivalents as determined under division (C)(7)(b) of this section.

(8)(a) The number, for a year, of an ICF/IID's new bed equivalents for additions that do not increase its medicaid-certified capacity is the quotient of the following:

(i) The value of such additions made to the ICF/IID that year as determined under division (C)(8)(b) of this section;

(ii) Seventy thousand dollars.

(b) The value of additions that do not increase an ICF/IID's medicaid-certified capacity is the

product of the following:

(i) The total square footage of the additions;

(ii) The ICF/IID's value per square foot as determined under division (C)(4) of this section.

(c) The age of an ICF/IID's new bed equivalents for additions that do not increase its medicaid-certified capacity is the difference of the following:

(i) The calendar year in which occurs the last day of the period covered by the cost report being used to determine the ICF/IID's rate under this section;

(ii) The calendar year the additions were completed.

(d) The weighted age, for a year, of an ICF/IID's new bed equivalents for additions that do not increase its medicaid-certified capacity is the product of the following:

(i) The number, for that year, of the ICF/IID's new bed equivalents for such additions as determined under division (C)(8)(a) of this section;

(ii) The age of those new bed equivalents as determined under division (C)(8)(c) of this section.

(9)(a) The number, for a year, of new beds resulting from additions that increase an ICF/IID's medicaid-certified capacity is the number by which the new beds increased the ICF/IID's medicaid-certified capacity that year.

(b) The weighted age, for a year, of new beds resulting from additions that increase an ICF/IID's medicaid-certified capacity is the product of the following:

(i) The number by which those new beds increased the ICF/IID's medicaid-certified capacity that year;

(ii) The difference of the calendar year in which occurs the last day of the period covered by the cost report being used to determine the ICF/IID's rate under this section and the calendar year the ICF/IID's medicaid-certified capacity was so increased.

(10) An ICF/IID's land value is the product of the following:

(a) The ICF/IID's current asset value as determined under division (C)(3) of this section;

(b) Ten per cent.

(D) An ICF/IID's per diem equipment rate for a fiscal year shall be the lesser of the following:

(1) The quotient of the following:

(a) The ICF/IID's costs for capital equipment for the applicable cost report year;

(b) The greater of the following:

(i) The number of the ICF/IID's inpatient days for the applicable cost report year;

(ii) The number of inpatient days the ICF/IID would have had during the applicable cost report year if its occupancy rate had been ninety-two per cent that year.

(2) The following amount:

(a) If the ICF/IID is in peer group 1-A, five dollars;

(b) If the ICF/IID is in peer group 2-A, six dollars and fifty cents;

(c) If the ICF/IID is in peer group 3-A, eight dollars;

(d) If the ICF/IID is in peer group 4-A or peer group 5-A, nine dollars.

(E) An ICF/IID's per diem secondary building rate for a fiscal year is the quotient of the following:

- (1) The ICF/IID's secondary building value as determined under division (F) of this section;
- (2) The greater of the following:
- (a) The number of the ICF/IID's inpatient days for the applicable cost report year;
- (b) The number of inpatient days the ICF/IID would have had during the applicable cost report year if its occupancy rate had been ninety-two per cent that year.
- (F)(1) An ICF/IID's secondary building value is the product of the following:
- (a) The sum of the following:
- (i) The sum of the depreciated current asset values of the ICF/IID's secondary buildings as determined under division (F)(2) of this section;
- (ii) The sum of the land values of the ICF/IID's secondary buildings as determined under division (F)(6) of this section.
- (b) A rental rate of eleven per cent.
- (2) The depreciated current asset value of an ICF/IID's secondary building is the current asset value of the secondary building, as determined under division (F)(3) of this section, depreciated by the product of the following:
- (a) The age of the secondary building as determined under division (F)(5) of this section;
- (b) One and six-tenths per cent.
- (3) The current asset value of an ICF/IID's secondary building is the product of the following:
- (a) The part of the secondary building's square footage that is allocated to the ICF/IID;
- (b) The secondary building's value per square foot as determined under division (F)(4) of this section.
- (4) The value per square foot of an ICF/IID's secondary building shall be determined by using the following:
- (a) Except as provided in division (F)(4)(b) of this section, the most recent national average commercial cost estimate for office/warehouse buildings according to information available at buildingjournal.com on the last day of the applicable cost report year;
- (b) If the national average commercial cost estimate for office/warehouse buildings ceases to be available at buildingjournal.com, the most recent comparable cost estimate as specified in rules the director of developmental disabilities shall adopt under section 5124.03 of the Revised Code.
- (5) The age of an ICF/IID's secondary building is the lesser of the following:
- (a) The difference of the following:
- (i) The calendar year in which occurs the last day of the period covered by the cost report being used to determine the ICF/IID's rate under this section;
- (ii) The calendar year the secondary building was initially constructed.
- (b) Forty.
- (6) The land value of an ICF/IID's secondary building is the product of the following:
- (a) The current asset value of the ICF/IID's secondary building as determined under division (F)(3) of this section;
- (b) Ten per cent.
- (G) For the purposes of divisions (A)(1)(b) and (H)(1)(b)(ii) of this section, the department shall determine the sum of the following for each ICF/IID for each fiscal year:
- (1) The quotient of the following:

(a) The ICF/IID's desk-reviewed, actual, allowable capital costs for the applicable cost report year;

(b) The greater of the following:

(i) The number of the ICF/IID's inpatient days for the applicable cost report year;

(ii) The number of inpatient days the ICF/IID would have had during the applicable cost report year if its occupancy rate had been ninety-two per cent that year.

(2) The following amount:

(a) If the ICF/IID is in peer group 1-A or peer group 2-A, three dollars;

(b) If the ICF/IID is in peer group 3-A, peer group 4-A, or peer group 5-A, five dollars.

(3) The greater of the following:

(a) Ten per cent of the difference of the following:

(i) The sum of the quotient determined for the fiscal year under division (G)(1) of this section and the applicable amount specified in division (G)(2) of this section;

(ii) The sum determined for the fiscal year under division (A)(1)(a) of this section.

(b) Zero.

(H) An ICF/IID's per diem nonextensive renovation rate for a fiscal year is the following:

(1) If the sum of the ICF/IID's per diem costs of nonextensive renovations for the applicable cost report year as determined under division (I) of this section and the ICF/IID's per diem costs of ownership for the applicable cost report year as determined under division (J) of this section is greater than the sum determined for the ICF/IID for the fiscal year under division (G) of this section, the lesser of the following:

(a) The ICF/IID's per diem costs of nonextensive renovations for the applicable cost report year as determined under division (I) of this section;

(b) The difference of the following:

(i) The sum of the ICF/IID's per diem costs of nonextensive renovation for the applicable cost report year as determined under division (I) of this section and the ICF/IID's per diem costs of ownership for the applicable cost report year as determined under division (J) of this section;

(ii) The sum determined for the ICF/IID for the fiscal year under division (G) of this section.

(2) If the sum of the ICF/IID's per diem costs of nonextensive renovation for the applicable cost report year as determined under division (I) of this section and the ICF/IID's per diem costs of ownership for the applicable cost report year as determined under division (J) of this section is less than or equal to the sum determined for the ICF/IID for the fiscal year under division (G) of this section, zero.

(I) An ICF/IID's per diem costs of nonextensive renovations for an applicable cost report year are the quotient of the following:

(1) The ICF/IID's desk-reviewed, actual, allowable costs of nonextensive renovations for the applicable cost report year;

(2) The greater of the following:

(a) The number of the ICF/IID's inpatient days for the applicable cost report year;

(b) The number of inpatient days the ICF/IID would have had during the applicable cost report year if its occupancy rate had been ninety-two per cent that year.

(J) An ICF/IID's per diem costs of ownership for an applicable cost report year are the

quotient of the following:

(1) The ICF/IID's desk-reviewed, actual, allowable costs of ownership for the applicable cost report year;

(2) The greater of the following:

(a) The number of the ICF/IID's inpatient days for the applicable cost report year;

(b) The number of inpatient days the ICF/IID would have had during the applicable cost report year if its occupancy rate had been ninety-two per cent that year.

~~Sec. 5124.17~~ 5124.171. (A) For each fiscal year until fiscal year 2022 and for the purpose of division (C) of section 5124.15 of the Revised Code, the department of developmental disabilities shall determine each ICF/IID's per medicaid day payment rate for reasonable capital costs. Except as otherwise provided in this chapter, an ICF/IID's rate shall be determined prospectively and based on the ICF/IID's capital costs for the calendar year preceding the fiscal year ~~in~~ for which the rate will be ~~paid~~ determined. Subject to section 5124.28 of the Revised Code, an ICF/IID's rate shall equal the sum of the following:

(1) The ICF/IID's desk-reviewed, actual, allowable, per diem costs of ownership for the immediately preceding cost reporting period, limited as provided in divisions (B), (C), and (D) of this section;

(2) The ICF/IID's per medicaid day payment for the ICF/IID's per diem capitalized costs of nonextensive renovations determined under division (E)(1) of this section if the ICF/IID qualifies for a payment for such costs as specified in division (E)(2) of this section;

(3) The ICF/IID's per medicaid day efficiency incentive determined under division (F) of this section.

(B) The costs of ownership per diem payment rates for ICFs/IID in peer group 1-~~B~~ shall not exceed the following limits as adjusted for inflation in accordance with division (G) of this section:

(1) For ICFs/IID with dates of licensure prior to January 1, 1958, not exceeding two dollars and fifty cents;

(2) For ICFs/IID with dates of licensure after December 31, 1957, but prior to January 1, 1968, not exceeding:

(a) Three dollars and fifty cents if the cost of construction was three thousand five hundred dollars or more per bed;

(b) Two dollars and fifty cents if the cost of construction was less than three thousand five hundred dollars per bed.

(3) For ICFs/IID with dates of licensure after December 31, 1967, but prior to January 1, 1976, not exceeding:

(a) Four dollars and fifty cents if the cost of construction was five thousand one hundred fifty dollars or more per bed;

(b) Three dollars and fifty cents if the cost of construction was less than five thousand one hundred fifty dollars per bed, but exceeds three thousand five hundred dollars per bed;

(c) Two dollars and fifty cents if the cost of construction was three thousand five hundred dollars or less per bed.

(4) For ICFs/IID with dates of licensure after December 31, 1975, but prior to January 1, 1979, not exceeding:

(a) Five dollars and fifty cents if the cost of construction was six thousand eight hundred dollars or more per bed;

(b) Four dollars and fifty cents if the cost of construction was less than six thousand eight hundred dollars per bed but exceeds five thousand one hundred fifty dollars per bed;

(c) Three dollars and fifty cents if the cost of construction was five thousand one hundred fifty dollars or less per bed, but exceeds three thousand five hundred dollars per bed;

(d) Two dollars and fifty cents if the cost of construction was three thousand five hundred dollars or less per bed.

(5) For ICFs/IID with dates of licensure after December 31, 1978, but prior to January 1, 1980, not exceeding:

(a) Six dollars if the cost of construction was seven thousand six hundred twenty-five dollars or more per bed;

(b) Five dollars and fifty cents if the cost of construction was less than seven thousand six hundred twenty-five dollars per bed but exceeds six thousand eight hundred dollars per bed;

(c) Four dollars and fifty cents if the cost of construction was six thousand eight hundred dollars or less per bed but exceeds five thousand one hundred fifty dollars per bed;

(d) Three dollars and fifty cents if the cost of construction was five thousand one hundred fifty dollars or less but exceeds three thousand five hundred dollars per bed;

(e) Two dollars and fifty cents if the cost of construction was three thousand five hundred dollars or less per bed.

(6) For ICFs/IID with dates of licensure after December 31, 1979, but prior to January 1, 1981, not exceeding:

(a) Twelve dollars if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Six dollars if the beds were originally licensed as nursing home beds by the department of health.

(7) For ICFs/IID with dates of licensure after December 31, 1980, but prior to January 1, 1982, not exceeding:

(a) Twelve dollars if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Six dollars and forty-five cents if the beds were originally licensed as nursing home beds by the department of health.

(8) For ICFs/IID with dates of licensure after December 31, 1981, but prior to January 1, 1983, not exceeding:

(a) Twelve dollars if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Six dollars and seventy-nine cents if the beds were originally licensed as nursing home beds by the department of health.

(9) For ICFs/IID with dates of licensure after December 31, 1982, but prior to January 1, 1984, not exceeding:

(a) Twelve dollars if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and nine cents if the beds were originally licensed as nursing home beds by the department of health.

(10) For ICFs/IID with dates of licensure after December 31, 1983, but prior to January 1, 1985, not exceeding:

(a) Twelve dollars and twenty-four cents if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and twenty-three cents if the beds were originally licensed as nursing home beds by the department of health.

(11) For ICFs/IID with dates of licensure after December 31, 1984, but prior to January 1, 1986, not exceeding:

(a) Twelve dollars and fifty-three cents if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and forty cents if the beds were originally licensed as nursing home beds by the department of health.

(12) For ICFs/IID with dates of licensure after December 31, 1985, but prior to January 1, 1987, not exceeding:

(a) Twelve dollars and seventy cents if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and fifty cents if the beds were originally licensed as nursing home beds by the department of health.

(13) For ICFs/IID with dates of licensure after December 31, 1986, but prior to January 1, 1988, not exceeding:

(a) Twelve dollars and ninety-nine cents if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and sixty-seven cents if the beds were originally licensed as nursing home beds by the department of health.

(14) For ICFs/IID with dates of licensure after December 31, 1987, but prior to January 1, 1989, not exceeding thirteen dollars and twenty-six cents;

(15) For ICFs/IID with dates of licensure after December 31, 1988, but prior to January 1, 1990, not exceeding thirteen dollars and forty-six cents;

(16) For ICFs/IID with dates of licensure after December 31, 1989, but prior to January 1, 1991, not exceeding thirteen dollars and sixty cents;

(17) For ICFs/IID with dates of licensure after December 31, 1990, but prior to January 1, 1992, not exceeding thirteen dollars and forty-nine cents;

(18) For ICFs/IID with dates of licensure after December 31, 1991, but prior to January 1, 1993, not exceeding thirteen dollars and sixty-seven cents;

(19) For ICFs/IID with dates of licensure after December 31, 1992, not exceeding fourteen dollars and twenty-eight cents.

(C)(1) The costs of ownership per diem payment rate for an ICF/IID in peer group 2-B shall not exceed the following limits:

(a) Eighteen dollars and thirty cents as adjusted for inflation pursuant to division (C)(2) of this section if any of the following apply to the ICF/IID:

(i) The ICF/IID has a date of licensure, or was granted project authorization by the department of developmental disabilities, before July 1, 1993.

(ii) The ICF/IID has a date of licensure, or was granted project authorization by the department, on or after July 1, 1993, and the provider demonstrates that the provider made substantial commitments of funds for the ICF/IID before that date.

(iii) The ICF/IID has a date of licensure, or was granted project authorization by the department, on or after July 1, 1993, the provider made no substantial commitment of funds for the ICF/IID before that date, and the department of job and family services or department of developmental disabilities gave prior approval for the ICF/IID's construction.

(b) If division (C)(1)(a) of this section does not apply to the ICF/IID, the amount that would apply to the ICF/IID under division (B) of this section if it were in peer group 1-B.

(2) The eighteen-dollar and thirty-cent payment rate specified in division (C)(1)(a) of this section shall be increased as follows:

(a) For the period beginning June 30, 1990, and ending July 1, 1993, by the change in the "Dodge building cost indexes, northeastern and north central states," published by Marshall and Swift;

(b) For each fiscal year thereafter, in accordance with division (G) of this section.

(D) The costs of ownership per diem payment rate for an ICF/IID in peer group 3-B shall not exceed the amount that is used for the purpose of division (C)(1)(a) of this section and is in effect on July 1, 2014. That rate shall be increased each fiscal year that begins after ~~the effective date of this section~~ September 15, 2014, and ends not later than July 1, 2021, in accordance with division (G) of this section.

(E)(1) Beginning January 1, 1981, regardless of the original date of licensure, the payment rate for the per diem capitalized costs of nonextensive renovations made after January 1, 1981, to a qualifying ICF/IID, shall not exceed six dollars per medicaid day using 1980 as the base year and adjusting the amount annually until June 30, 1993, for fluctuations in construction costs calculated by the department using the "Dodge building cost indexes, northeastern and north central states," published by Marshall and Swift. The payment rate shall be further adjusted in accordance with division (G) of this section. The payment provided for in this division is the only payment that shall be made for an ICF/IID's capitalized costs of nonextensive renovations. Costs of nonextensive renovations shall not be included in costs of ownership and shall not affect the date of licensure for purposes of division (B) or (C) of this section. This division applies to nonextensive renovations regardless of whether they are made by an owner or a lessee. If the tenancy of a lessee that has made nonextensive renovations ends before the depreciation expense for the costs of nonextensive renovations has been fully reported, the former lessee shall not report the undepreciated balance as an expense.

(2) An ICF/IID qualifies for a payment for costs of nonextensive renovations if all of the following apply:

(a) Either of the following applies:

(i) The ICF/IID is in peer group 1-B and either the department approved the nonextensive renovation before July 1, 2013, or the nonextensive renovation is part of a project that results in the ICF/IID becoming a downsized ICF/IID or partially converted ICF/IID.

(ii) The ICF/IID is in peer group 2-~~B~~ or peer group 3-~~B~~.

(b) At least five years have elapsed since the ICF/IID's date of licensure or date of an extensive renovation of the portion of the ICF/IID that is proposed to be nonextensively renovated, unless the nonextensive renovation is necessary to meet the requirements of federal, state, or local statutes, ordinances, rules, or policies.

(c) The provider of the ICF/IID does both of the following:

(i) Submits to the department a plan that describes in detail the changes in capital assets to be accomplished by means of the nonextensive renovation and the timetable for completing the project, which shall be not more than eighteen months after the nonextensive renovation begins;

(ii) Obtains prior approval from the department for the nonextensive renovation.

(3) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code that specify criteria and procedures for prior approval of nonextensive renovation and extensive renovation projects. No provider shall separate a project with the intent to evade the characterization of the project as a nonextensive renovation or as an extensive renovation. No provider shall increase the scope of a project after it is approved by the department unless the increase in scope is approved by the department.

(F)(1) Subject to division (F)(2) of this section, an ICF/IID's per medicaid day efficiency incentive payment rate shall equal the following percentage of the difference between the ICF/IID's desk-reviewed, actual, allowable per diem costs of ownership and the applicable limit on costs of ownership payment rates established by division (B) of this section:

(a) In the case of an ICF/IID in peer group 1-~~B~~, the following percentage:

(i) Fifty per cent if the provider of the ICF/IID obtains the department's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018;

(ii) Twenty-five per cent if division (F)(1)(a)(i) of this section does not apply;

(b) In the case of an ICF/IID in peer group 2-~~B~~ or peer group 3-~~B~~, fifty per cent.

(2) The efficiency incentive payment rate for an ICF/IID in peer group 2-~~B~~ or peer group 3-~~B~~ shall not exceed three dollars per medicaid day, adjusted annually in accordance with division (G) of this section. For the purpose of determining an ICF/IID's efficiency incentive payment rate, both of the following apply:

(a) Depreciation for costs paid or reimbursed by any government agency shall be considered as a cost of ownership;

(b) The applicable limit under division (B) of this section shall apply to all ICFs/IID regardless of which peer group they are in.

(G) The amounts specified in divisions (B), (C), (D), (E), and (F) of this section shall be adjusted beginning on the first day of each fiscal year until fiscal year 2022 for the estimated inflation rate for the twelve-month period beginning on the first day of July of the calendar year immediately preceding the calendar year that immediately precedes the fiscal year for which rate ~~will be paid~~ is determined and ending on the thirtieth day of the following June, using the consumer price index for shelter costs for all urban consumers for the midwest region, as published by the United States bureau of labor statistics.

(H) Notwithstanding divisions (C) and (E) of this section, the total payment rate for costs of

ownership, capitalized costs of nonextensive renovations, and the efficiency incentive for an ICF/IID in peer group 2-B shall not exceed the sum of the limitations specified in divisions (C) and (E) of this section. Notwithstanding divisions (D) and (E) of this section, the total payment rate for costs of ownership, capitalized costs of nonextensive renovations, and the efficiency incentive for an ICF/IID in peer group 3-B shall not exceed the sum of the limitations specified in divisions (D) and (E) of this section.

(I)(1) For the purpose of determining ICFs/IID's medicaid payment rates for capital costs under this section:

(a) Buildings shall be depreciated using the straight line method over forty years or over a different period approved by the department.

(b) Components and equipment shall be depreciated using the straight line method over a period designated by the director of developmental disabilities in rules adopted under section 5124.03 of the Revised Code, consistent with the guidelines of the American hospital association, or over a different period approved by the department.

(2) Any rules authorized by division (I)(1) of this section that specify useful lives of buildings, components, or equipment apply only to assets acquired on or after July 1, 1993. Depreciation for costs paid or reimbursed by any government agency shall not be included in costs of ownership or costs of nonextensive renovations unless that part of the payment under this chapter is used to reimburse the government agency.

(J)(1) Except as provided in division (J)(2) of this section, if a provider leases or transfers an interest in an ICF/IID to another provider who is a related party, the related party's allowable costs of ownership shall include the lesser of the following:

(a) The annual lease expense or actual cost of ownership, whichever is applicable;

(b) The reasonable cost to the lessor or provider making the transfer.

(2) If a provider leases or transfers an interest in an ICF/IID to another provider who is a related party, regardless of the date of the lease or transfer, the related party's allowable cost of ownership shall include the annual lease expense or actual cost of ownership, whichever is applicable, subject to the limitations specified in divisions (B) to (I) of this section, if all of the following conditions are met:

(a) The related party is a relative of owner;

(b) In the case of a lease, if the lessor retains any ownership interest, it is, except as provided in division (J)(2)(d)(ii) of this section, in only the real property and any improvements on the real property;

(c) In the case of a transfer, the provider making the transfer retains, except as provided in division (J)(2)(d)(iv) of this section, no ownership interest in the ICF/IID;

(d) The department determines that the lease or transfer is an arm's length transaction pursuant to rules adopted under section 5124.03 of the Revised Code. The rules shall provide that a lease or transfer is an arm's length transaction if all of the following, as applicable, apply:

(i) In the case of a lease, once the lease goes into effect, the lessor has no direct or indirect interest in the lessee or, except as provided in division (J)(2)(b) of this section, the ICF/IID itself, including interest as an owner, officer, director, employee, independent contractor, or consultant, but excluding interest as a lessor.

(ii) In the case of a lease, the lessor does not reacquire an interest in the ICF/IID except through the exercise of a lessor's rights in the event of a default. If the lessor reacquires an interest in the ICF/IID in this manner, the department shall treat the ICF/IID as if the lease never occurred when the department determines its payment rate for capital costs.

(iii) In the case of a transfer, once the transfer goes into effect, the provider that made the transfer has no direct or indirect interest in the provider that acquires the ICF/IID or the ICF/IID itself, including interest as an owner, officer, director, employee, independent contractor, or consultant, but excluding interest as a creditor.

(iv) In the case of a transfer, the provider that made the transfer does not reacquire an interest in the ICF/IID except through the exercise of a creditor's rights in the event of a default. If the provider reacquires an interest in the ICF/IID in this manner, the department shall treat the ICF/IID as if the transfer never occurred when the department determines its payment rate for capital costs.

(v) The lease or transfer satisfies any other criteria specified in the rules.

(e) Except in the case of hardship caused by a catastrophic event, as determined by the department, or in the case of a lessor or provider making the transfer who is at least sixty-five years of age, not less than twenty years have elapsed since, for the same ICF/IID, allowable cost of ownership was determined most recently under this division.

(K) This section is obsolete beginning July 1, 2021.

Sec. 5124.19. (A) For each fiscal year, the department of developmental disabilities shall determine each ICF/IID's per medicaid day direct care costs component rate. An ICF/IID's rate shall be determined as follows:

(1) Determine the product of the following:

(a) The ICF/IID's quarterly case-mix score determined or assigned under section 5124.193 of the Revised Code for the following calendar quarter:

(i) For the rate determined for fiscal year 2019, the calendar quarter ending December 31, 2017;

(ii) For the rate determined for each subsequent fiscal year, the calendar quarter ending on the last day of March of the calendar year in which the fiscal year begins.

(b) The lesser of the following:

(i) The ICF/IID's cost per case-mix unit for the applicable cost report year as determined under division (B) of this section;

(ii) The maximum cost per case-mix unit for the ICF/IID's peer group for the fiscal year for which the rate is determined as determined under division (C) of this section.

(2) Adjust the product determined under division (A)(1) of this section by the inflation rate estimated under division (D) of this section.

(B) To determine an ICF/IID's cost per case-mix unit for a cost report year, the department shall determine the quotient of the following:

(1) The ICF/IID's desk-reviewed, actual, allowable, per diem direct care costs for the cost report year;

(2) The ICF/IID's annual average case-mix score as determined under section 5124.193 of the Revised Code for the fiscal year for which the rate is determined.

(C)(1) The maximum cost per case-mix unit for a peer group for a fiscal year, other than peer

group 5-A, is the following percentage above the peer group's median cost per case-mix unit for that fiscal year:

- (a) For peer group 1-A, sixteen per cent;
- (b) For peer group 2-A, fourteen per cent;
- (c) For peer group 3-A, eighteen per cent;
- (d) For peer group 4-A, twenty-two per cent.

(2) The maximum cost per case-mix unit for peer group 5-A for a fiscal year is the ninety-fifth percentile of all ICFs/IID in peer group 5-A for the applicable cost report year.

(3) In determining the maximum cost per case-mix unit for a peer group under division (C) (1) of this section, the department shall exclude from its determination the cost per case-mix unit of any ICF/IID in the peer group that participated in the medicaid program under the same provider for less than twelve months during the applicable cost report year.

(4) In determining the maximum cost per case-mix unit for a peer group under division (C) (1) or (2) of this section, the department shall exclude from its determination the cost per case-mix unit of any ICF/IID in the peer group that has a case-mix score that was assigned by the department to the ICF/IID under division (B) of section 5124.193 of the Revised Code.

(5) The department shall not reset a peer group's maximum cost per case-mix unit for a fiscal year under division (C)(1) or (2) of this section based on additional information that the department receives after it sets the maximum for that fiscal year. The department shall reset a peer group's maximum cost per case-mix unit for a fiscal year only if it made an error in setting the maximum for that fiscal year based on information available to the department at the time it originally sets the maximum for that fiscal year.

(D) The department shall estimate the rate of inflation for the eighteen-month period beginning on the first day of July of the applicable cost report year and ending on the last day of December of the fiscal year for which the rate is determined, using the following:

(1) Subject to division (D)(2) of this section, the employment cost index for total compensation, health care and social assistance component, published by the United States bureau of labor statistics;

(2) If the United States bureau of labor statistics ceases to publish the index specified in division (D)(1) of this section, the index that is subsequently published by the bureau and covers the staff costs of ICFs/IID.

Sec. 5124.191. (A) As used in sections 5124.191 to 5124.193 of the Revised Code, "ICF/IID resident" includes an individual who is on hospital or therapeutic leave from an ICF/IID.

(B) In accordance with rules adopted under section 5124.03 of the Revised Code, the department of developmental disabilities shall assess each ICF/IID resident regardless of payment source and compile complete assessment data on the residents. The department shall perform the initial assessment of an ICF/IID resident. The department may perform a subsequent assessment of an ICF/IID resident under any of the following circumstances:

(1) The provider of the ICF/IID in which the resident resides or from which the resident is on hospital or therapeutic leave has submitted to the department under division (D) of this section revised assessment data for the resident or an attestation of no changes in the resident's assessment data and the department has reason to believe that the revised assessment data or attestation is

inaccurate:

(2) The department has reason to believe that the resident's most recent assessment no longer accurately reflects the resident's condition;

(3) The department determines that the resident's most recent assessment should be updated because of the passage of time since that assessment was performed.

(C) If an ICF/IID provider disagrees with the results of an assessment performed by the department under this section, the provider may request that the department reconsider the results in accordance with rules adopted under section 5124.03 of the Revised Code.

(D) After the department assesses an ICF/IID resident under this section, the provider of the ICF/IID in which the resident resides or from which the resident is on hospital or therapeutic leave shall submit to the department, not later than fifteen days after the end of each subsequent calendar quarter and through the medium or media specified in rules adopted under section 5124.03 of the Revised Code, either of the following:

(1) Revised assessment data for the resident if there are changes in the resident's assessment data;

(2) An attestation that there are no changes in the resident's assessment data.

(E) A resident assessment instrument specified in rules adopted under section 5124.03 of the Revised Code shall be used to compile or revise assessment data of ICF/IID residents under this section. The resident assessment instrument used for the purpose of this section may be different from the resident assessment instrument used for the purpose of section 5124.196 of the Revised Code.

Sec. 5124.192. (A) The department of developmental disabilities shall establish six acuity groups for the purpose of assigning case-mix scores to ICF/IID residents. An ICF/IID resident's case-mix score shall be the score of the resident's acuity group as specified in rules authorized by this section.

(B) The department shall place each ICF/IID resident into one of the acuity groups. In determining which acuity group an ICF/IID resident is to be placed into, the department shall do all of the following:

(1) In accordance with rules authorized by this section and using the most recent resident assessment data for the ICF/IID resident available to the department, calculate for the resident an assessment score for each of the medical, behavioral, and adaptive skills domains on the resident assessment instrument used to compile or revise assessment data for ICF/IID residents under section 5124.191 of the Revised Code;

(2) For each of the ICF/IID resident's domain assessment scores and using values specified in rules authorized by this section, assign the following points:

(a) If the resident's assessment score for the domain is more than one standard deviation above the mean assessment score for the domain for all ICF/IID residents as of December 31, 2017, one point;

(b) If the resident's assessment score for the domain is more than one-half standard deviation above the mean assessment score for the domain for all ICF/IID residents as of December 31, 2017, and not more than one standard deviation above that mean, two points;

(c) If the resident's assessment score for the domain is more than the mean assessment score

for the domain for all ICF/IID residents as of December 31, 2017, and not more than one-half standard deviation above that mean, three points;

(d) If the resident's assessment score for the domain is not more than the mean assessment score for the domain for all ICF/IID residents as of December 31, 2017, and not more than one-half standard deviation below that mean, four points;

(e) If the resident's assessment score for the domain is more than one-half standard deviation below the mean assessment score for the domain for all ICF/IID residents as of December 31, 2017, and not more than one standard deviation below that mean, five points;

(f) If the resident's assessment score for the domain is more than one standard deviation below the mean assessment score for the domain for all ICF/IID residents as of December 31, 2017, six points.

(3) Using the following weights, determine the weighted sum of the points assigned under division (B)(2) of this section to each of the ICF/IID resident's domain assessment scores and round the weighted sum to the nearest whole number:

(a) Points assigned to the resident's assessment score for the medical domain shall be weighted at thirty-five per cent.

(b) Points assigned to the resident's assessment score for the behavioral domain shall be weighted at thirty per cent.

(c) Points assigned to the resident's assessment score for the adaptive skills domain shall be weighted at thirty-five per cent.

(4) Place the ICF/IID resident into the following acuity group:

(a) If the resident's weighted sum of points is five or lower, group one;

(b) If the resident's weighted sum of points is at least six and not more than eight, group two;

(c) If the resident's weighted sum of points is nine or ten, group three;

(d) If the resident's weighted sum of points is eleven or twelve, group four;

(e) If the resident's weighted sum of points is at least thirteen and not more than fifteen, group five;

(f) If the resident's weighted sum of points is sixteen or higher, group six.

(C)(1) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section, including rules that do all of the following:

(a) Subject to division (C)(2) of this section, specify case-mix scores for each acuity group established under this section;

(b) Prescribe a methodology for calculating assessment scores for the medical, behavioral, and adaptive skills domains on the resident assessment instrument used to compile or revise assessment data of ICF/IID residents under section 5124.191 of the Revised Code;

(c) Specify values to be used in assigning points to domain assessment scores.

(2) The case-mix score specified for an acuity group shall be based on relative resource use by ICF/IID residents who are placed in the group and were included in a time study of ICF/IID residents performed by the department.

Sec. 5124.193. (A) Except as provided in division (B) of this section, the department of developmental disabilities shall do both of the following:

(1) For each calendar quarter, determine a case-mix score for each ICF/IID using both of the

following:

(a) The most recent (as of the date the determination is made) resident assessment data compiled and revised for the ICF/IID's residents under section 5124.191 of the Revised Code;

(b) The case-mix scores of the ICF/IID's residents as determined under section 5124.192 of the Revised Code.

(2) After the end of each calendar year, determine an annual average case-mix score for each ICF/IID using the ICF/IID's quarterly case-mix scores for that calendar year.

(B)(1) Subject to divisions (B)(2) and (3) of this section, the department, for one or more months of a calendar quarter, may assign to an ICF/IID a case-mix score that is five per cent less than the ICF/IID's case-mix score as of the day immediately preceding the day on which the reduction takes effect if the provider does not timely comply with division (D) of section 5124.191 of the Revised Code.

(2) Subject to division (B)(3) of this section, before assigning a case-mix score to an ICF/IID under division (B)(1) of this section, the department shall permit the provider to come into compliance with division (D) of section 5124.191 of the Revised Code. The department may assign the case-mix score if the provider fails to comply not later than forty-five days after the end of the calendar quarter to which the noncompliance pertains or a later date specified in rules authorized by this section.

(3) The department shall take action under division (B)(1) or (2) of this section only in accordance with rules authorized by this section. The department shall not take an action that affects medicaid payment rates for prior payment periods except in accordance with sections 5124.41 and 5124.42 of the Revised Code.

(C) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section.

Sec. 5124.194. (A) No change that the department of developmental disabilities makes to either of the following is valid unless the change is applied prospectively and the department complies with division (B) of this section:

(1) The department's instructions or guidelines for the resident assessment instrument used to compile or revise assessment data of ICF/IID residents under section 5124.191 of the Revised Code;

(2) The methodology prescribed in rules authorized by division (C)(1)(b) of section 5124.192 of the Revised Code for calculating assessment scores for the medical, behavioral, and adaptive skills domains on the resident assessment instrument.

(B) Before making a change described in division (A) of this section, the department shall do all of the following:

(1) Notify all ICF/IID providers of the proposed change;

(2) Provide representatives of ICF/IID providers an opportunity to provide the department their concerns about, and suggestions to revise, the proposed change;

(3) In the case of a proposed change described in division (A)(2) of this section, determine that the proposed change is consistent with the documentation of ICF/IID staff time that was used to validate the methodology.

Sec. ~~5124.19~~ 5124.195. (A)(1) For each fiscal year until fiscal year 2022 and for the purpose of division (C) of section 5124.15 of the Revised Code, the department of developmental disabilities

shall determine each ICF/IID's per medicaid day payment rate for direct care costs as follows:

(a) Multiply the lesser of the following by the ICF/IID's annual average case-mix score determined or assigned under section ~~5124.192~~ 5124.197 of the Revised Code for the calendar year immediately preceding the fiscal year for which the rate ~~will be paid~~ is determined:

(i) The ICF/IID's cost per case-mix unit for the calendar year immediately preceding the fiscal year for which the rate ~~will be paid~~ is determined, as determined under division (B) of this section;

(ii) The maximum cost per case-mix unit for the ICF/IID's peer group for the fiscal year for which the rate ~~will be paid~~ is determined, as set under division (C) of this section;

(b) Adjust the product determined under division (A)(1)(a) of this section by the inflation rate estimated under division (D)(1) of this section and modified under division (D)(2) of this section.

(2) Except as otherwise directed by law enacted by the general assembly, the department shall determine each ICF/IID's rate for direct care costs prospectively.

(B) To determine an ICF/IID's cost per case-mix unit for the calendar year immediately preceding the fiscal year ~~in for~~ for which the rate will be paid is determined, the department shall divide the ICF/IID's desk-reviewed, actual, allowable, per diem direct care costs for that calendar year by its annual average case-mix score determined under section ~~5124.192~~ 5124.197 of the Revised Code for the same calendar year.

(C)(1) For each fiscal year for which a rate ~~will be paid~~ is determined under this section, the department shall set the maximum cost per case-mix unit for ICFs/IID in peer group 1-B at a percentage above the cost per case-mix unit determined under division (B) of this section for the ICF/IID in peer group 1-B that has the peer group's median number of medicaid days for the calendar year immediately preceding the fiscal year ~~in for~~ for which the rate will be paid is determined. The percentage shall be no less than twenty-two and forty-six hundredths per cent.

(2) For each fiscal year for which a rate ~~will be paid~~ is determined under this section, the department shall set the maximum cost per case-mix unit for ICFs/IID in peer group 2-B at a percentage above the cost per case-mix unit determined under division (B) of this section for the ICF/IID in peer group 2-B that has the peer group's median number of medicaid days for the calendar year immediately preceding the fiscal year ~~in for~~ for which the rate will be paid is determined. The percentage shall be no less than eighteen and eight-tenths per cent.

(3) For each fiscal year for which a rate ~~will be paid~~ is determined under this section, the department shall set the maximum cost per case-mix unit for ICFs/IID in peer group 3-B at the ninety-fifth percentile of all ICFs/IID in peer group 3-B for the calendar year immediately preceding the fiscal year ~~in for~~ for which the rate will be paid is determined.

(4) In determining the maximum cost per case-mix unit under divisions (C)(1) and (2) of this section for peer group 1-B and peer group 2-B, the department shall exclude from its determinations the cost per case-mix unit of any ICF/IID in peer group 1-B or peer group 2-B that participated in the medicaid program under the same provider for less than twelve months during the calendar year immediately preceding the fiscal year ~~in for~~ for which the rate will be paid is determined.

(5) The department shall not reset a peer group's maximum cost per case-mix unit for a fiscal year under division (C)(1), (2), or (3) of this section based on additional information that it receives after it sets the maximum for that fiscal year. The department shall reset a peer group's maximum cost

per case-mix unit for a fiscal year only if it made an error in setting the maximum for that fiscal year based on information available to the department at the time it originally sets the maximum for that fiscal year.

(D)(1) The department shall estimate the rate of inflation for the eighteen-month period beginning on the first day of July of the calendar year preceding the fiscal year ~~in for~~ for which a rate will be paid is determined under this section and ending on the thirty-first day of December of the fiscal year ~~in for~~ for which the rate will be paid is determined, using the following:

(a) Subject to division (D)(1)(b) of this section, the employment cost index for total compensation, health care and social assistance component, published by the United States bureau of labor statistics;

(b) If the United States bureau of labor statistics ceases to publish the index specified in division (D)(1)(a) of this section, the index that is subsequently published by the bureau and covers the staff costs of ICFs/IID.

(2) If the estimated inflation rate for the eighteen-month period specified in division (D)(1) of this section is different from the actual inflation rate for that period, as measured using the same index, the difference shall be added to or subtracted from the inflation rate estimated under division (D)(1) of this section for the following fiscal year.

(E) This section is obsolete beginning July 1, 2021.

Sec. ~~5124.191~~ 5124.196. Each calendar quarter until the calendar quarter beginning July 1, 2021, each ICF/IID provider shall compile complete assessment data for each resident of each of the provider's ICFs/IID, regardless of payment source, who is in the ICF/IID, or on hospital or therapeutic leave from the ICF/IID, on the last day of the quarter. A resident assessment instrument specified in rules adopted under section 5124.03 of the Revised Code shall be used to compile the resident assessment data. The resident assessment instrument used for the purpose of this section may be different from the resident assessment instrument used for the purpose of section 5124.191 of the Revised Code. Each provider shall submit the resident assessment data to the department of developmental disabilities not later than fifteen days after the end of the calendar quarter for which the data is compiled. The resident assessment data shall be submitted to the department through the medium or media specified in rules adopted under section 5124.03 of the Revised Code.

This section is obsolete beginning July 1, 2021.

Sec. ~~5124.192~~ 5124.197. (A) Except as provided in division (B) of this section, the department of developmental disabilities shall do both of the following until July 1, 2021:

(1) For each calendar quarter, determine a case-mix score for each ICF/IID using the resident assessment data submitted to the department under section ~~5124.191~~ 5124.196 of the Revised Code and the grouper methodology prescribed in rules authorized by this section;

(2) After the end of each calendar year and in accordance with rules authorized by this section, determine an annual average case-mix score for each ICF/IID using the ICF/IID's quarterly case-mix scores for that calendar year.

(B)(1) Subject to division (B)(2) of this section and until July 1, 2021, the department, for one or more months of a calendar quarter, may assign to an ICF/IID a case-mix score that is five per cent less than the ICF/IID's case-mix score for the immediately preceding calendar quarter if any of the following apply:

(a) The provider does not timely submit complete and accurate resident assessment data necessary to determine the ICF/IID's case-mix score for the calendar quarter;

(b) The ICF/IID was subject to an exception review under section ~~5124.193~~5124.198 of the Revised Code for the immediately preceding calendar quarter;

(c) The ICF/IID was assigned a case-mix score for the immediately preceding calendar quarter.

(2) Before assigning a case-mix score to an ICF/IID due to the submission of incorrect resident assessment data, the department shall permit the provider to correct the data. The department may assign the case-mix score if the provider fails to submit the corrected resident assessment data not later than forty-five days after the end of the calendar quarter to which the data pertains or later due date specified in rules authorized by this section.

(3) If, for more than six months during a calendar year, a provider is paid a rate determined for an ICF/IID using a case-mix score assigned to the ICF/IID under division (B)(1) of this section, the department may assign the ICF/IID a cost per case-mix unit that is five per cent less than the ICF/IID's actual or assigned cost per case-mix unit for the immediately preceding calendar year. The department may use the assigned cost per case-mix unit, instead of determining the ICF/IID's actual cost per case-mix unit in accordance with section ~~5124.19~~5124.195 of the Revised Code, to establish the ICF/IID's rate for direct care costs for the fiscal year immediately following the calendar year for which the cost per case-mix unit is assigned.

(4) The department shall take action under division (B)(1), (2), or (3) of this section only in accordance with rules authorized by this section. The department shall not take an action that affects medicaid payment rates for prior payment periods except in accordance with sections 5124.41 and 5124.42 of the Revised Code.

(C) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section.

(1) The rules shall do all of the following:

(a) Prescribe a grouper methodology to be used when determining the case-mix scores for ICFs/IID;

(b) Specify the process for determining the annual average case-mix scores for ICFs/IID;

(c) Establish procedures under which resident assessment data is to be reviewed for accuracy and providers are to be notified of any data that requires correction;

(d) Establish procedures for providers to correct resident assessment data and, if necessary, specify a due date for corrections that is later than the due date specified in division (B)(2) of this section.

(e) Specify when and how the department will assign a case-mix score or cost per case-mix unit to an ICF/IID under division (B) of this section if information necessary to calculate the ICF/IID's case-mix score is not provided or corrected in accordance with the procedures established by the rules.

(2) Notwithstanding any other provision of this chapter except division (D) of this section, the rules may provide for excluding case-mix scores assigned to an ICF/IID under division (B) of this section from the determination of the ICF/IID's annual average case-mix score and the maximum cost per case-mix unit for the ICF/IID's peer group.

(D) This section is obsolete beginning July 1, 2021.

~~Sec. 5124.193~~ 5124.198. (A) ~~The~~ Until July 1, 2021, the department of developmental disabilities may, pursuant to rules authorized by this section, conduct an exception review of resident assessment data submitted by an ICF/IID provider under section ~~5124.191~~ 5124.196 of the Revised Code. The department may conduct an exception review based on the findings of a medicaid certification survey conducted by the department of health, a risk analysis, or prior performance of the provider.

Exception reviews shall be conducted at the ICF/IID by appropriate health professionals under contract with or employed by the department. The professionals may review resident assessment forms and supporting documentation, conduct interviews, and observe residents to identify any patterns or trends of inaccurate resident assessments and resulting inaccurate case-mix scores.

(B)(1) If an exception review is conducted before the effective date of an ICF/IID's rate for direct care costs that is based on the resident assessment data being reviewed and the review results in findings that exceed tolerance levels specified in the rules authorized by this section, the department, in accordance with the rules authorized by this section, may use the findings to redetermine individual resident case-mix scores, the ICF/IID's case-mix score for the quarter, and the ICF/IID's annual average case-mix score. ~~The~~ Except as provided in division (B)(2) of this section, ~~the~~ department may use the ICF/IID's redetermined quarterly and annual average case-mix scores to determine the ICF/IID's rate for direct care costs for the appropriate calendar quarter or quarters.

(2) If an ICF/IID provider disagrees with a redetermination of the ICF/IID's quarterly or annual average case-mix score made under division (B)(1) of this section, the provider may request that the department reconsider the redetermination in accordance with rules authorized by this section. If the department reconsiders the redetermination and revises the ICF/IID's quarterly or annual average case-mix score, the department shall use the revised case-mix score to determine the ICF/IID's rate for direct care costs for the appropriate calendar quarter or quarters.

(C) The department shall prepare a written summary of any exception review finding that is made after the effective date of an ICF/IID's rate for direct care costs that is based on the resident assessment data that was reviewed. Where the provider is pursuing judicial or administrative remedies in good faith regarding the finding, the department shall not withhold from the provider's current payments any amounts the department claims to be due from the provider pursuant to section 5124.41 of the Revised Code.

(D)(1) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section. The rules shall establish an exception review program that does all of the following:

- (a) Requires each exception review to comply with Title XIX;
- (b) Requires a written summary for each exception review that states whether resident assessment forms have been completed accurately;
- (c) Prohibits each health professional who conducts an exception review from doing either of the following:
 - (i) During the period of the professional's contract or employment with the department, having or being committed to acquire any direct or indirect financial interest in the ownership,

financing, or operation of ICFs/IID in this state;

(ii) Reviewing any provider that has been a client of the professional.

(2) For the purposes of division (D)(1)(c)(i) of this section, employment of a member of a health professional's family by an ICF/IID that the professional does not review does not constitute a direct or indirect financial interest in the ownership, financing, or operation of the ICF/IID.

(E) This section is obsolete beginning July 1, 2021.

Sec. ~~5124.195~~ 5124.199. (A) No change that the department of developmental disabilities makes to either of the following is valid unless the change is applied prospectively and the department complies with division (B) of this section:

(1) The department's instructions or guidelines for the resident assessment forms that are used for the purpose of section ~~5124.191~~ 5124.196 of the Revised Code;

(2) The manner in which the grouper methodology prescribed in rules authorized by section ~~5124.192~~ 5124.197 of the Revised Code is applied in determining case-mix scores under that section.

(B) Before making a change described in division (A) of this section, the department shall do all of the following:

(1) Notify all ICF/IID providers of the proposed change;

(2) Provide representatives of ICF/IID providers an opportunity to provide the department their concerns about, and suggestions to revise, the proposed change;

(3) In the case of a proposed change described in division (A)(2) of this section, determine that the proposed change is consistent with the documentation of ICF/IID staff time that was used to create the grouper methodology.

(C) This section is obsolete beginning July 1, 2021.

Sec. 5124.21. (A) For each fiscal year, the department of developmental disabilities shall determine each ICF/IID's per medicaid day indirect care costs component rate. An ICF/IID's rate shall be the lesser of the individual rate determined under division (B) of this section and the maximum rate determined for the ICF/IID's peer group under division (C) of this section.

(B) An ICF/IID's individual rate is the sum of the following:

(1) The ICF/IID's desk-reviewed, actual, allowable, per diem indirect care costs for the applicable cost report year, adjusted for the inflation rate estimated under division (E) of this section;

(2) Subject to division (D) of this section, an efficiency incentive equal to the difference between the amount of the per diem indirect care costs for the applicable cost report year determined for the ICF/IID under division (B)(1) of this section and the maximum rate established for the ICF/IID's peer group under division (C) of this section for that year.

(C)(1) The maximum rate for an ICF/IID's peer group shall be the following percentage above the peer group's median per diem indirect care costs for the applicable cost report year:

(a) For ICFs/IID in peer group 1-A, eight per cent;

(b) For ICFs/IID in peer group 2-A or peer group 3-A, ten per cent;

(c) For ICFs/IID in peer group 4-A or peer group 5-A, twelve per cent.

(2) The department shall not redetermine a peer group's maximum rate under division (C)(1) of this section based on additional information that it receives after the maximum rate is set. The department shall redetermine a peer group's maximum rate only if the department made an error in computing the maximum rate based on the information available to the department at the time of the

original calculation.

(D) The efficiency incentive for an ICF/IID shall not exceed the following:

(1) If the ICF/IID is in peer group 1-A, five per cent of the peer group's maximum rate established under division (C)(1)(a) of this section;

(2) If the ICF/IID is in peer group 2-A, peer group 3-A, peer group 4-A, or peer group 5-A, six per cent of the peer group's maximum rate established under division (C)(1)(b) or (c) of this section.

(E) When adjusting rates for inflation under division (B)(1) of this section, the department shall estimate the rate of inflation for the eighteen-month period beginning on the first day of July of the applicable cost report year and ending on the thirty-first day of December of the fiscal year for which the rate is determined. To estimate the rate of inflation, the department shall use the following:

(1) Subject to division (E)(2) of this section, the consumer price index for all items for all urban consumers for the midwest region, published by the United States bureau of labor statistics;

(2) If the United States bureau of labor statistics ceases to publish the index specified in division (E)(1) of this section, a comparable index that the bureau publishes and the department determines is appropriate.

Sec. ~~5124.21~~ 5124.211. (A) For each fiscal year until fiscal year 2022 and for the purpose of division (C) of section 5124.15 of the Revised Code, the department of developmental disabilities shall determine each ICF/IID's per medicaid day payment rate for indirect care costs. Except as otherwise provided in this chapter, an ICF/IID's rate shall be determined prospectively. Subject to section 5124.28 of the Revised Code, an ICF/IID's rate shall be the lesser of the individual rate determined under division (B) of this section and the maximum rate determined for the ICF/IID's peer group under division (C) of this section.

(B) An ICF/IID's individual rate is the sum of the following:

(1) The ICF/IID's desk-reviewed, actual, allowable, per diem indirect care costs from the calendar year immediately preceding the fiscal year ~~in for~~ which the rate ~~will be paid is determined~~, adjusted for the inflation rate estimated under division (E)(1) of this section;

(2) Subject to division (D) of this section, an efficiency incentive equal to the difference between the amount of the per diem indirect care costs determined for the ICF/IID under division (B) (1) of this section for the fiscal year ~~in for~~ which the rate ~~will be paid is determined~~ and the maximum rate established for the ICF/IID's peer group under division (C) of this section for that fiscal year.

(C)(1) The maximum rate for indirect care costs for each ICF/IID in peer group 1-B shall be determined as follows:

(a) For each fiscal year ending in an even-numbered calendar year, the maximum rate for ICFs/IID in peer group 1-B shall be the rate that is no less than twelve and four-tenths per cent above the median desk-reviewed, actual, allowable, per diem indirect care cost for all ICFs/IID in peer group 1-B (excluding ICFs/IID in peer group 1-B whose indirect care costs for that period are more than three standard deviations from the mean desk-reviewed, actual, allowable, per diem indirect care cost for all ICFs/IID in peer group 1-B) for the calendar year immediately preceding the fiscal year ~~in for~~ which the rate ~~will be paid is determined~~, adjusted by the inflation rate estimated under division (E)(1) of this section.

(b) For each fiscal year ending in an odd-numbered calendar year, the maximum rate for ICFs/IID in peer group 1-B is the maximum rate for ICFs/IID in peer group 1-B for the previous fiscal year, adjusted for the inflation rate estimated under division (E)(2) of this section.

(2) The maximum rate for indirect care costs for ICFs/IID in peer group 2-B or peer group 3-B shall be determined as follows:

(a) For each fiscal year ending in an even-numbered calendar year, the maximum rate for ICFs/IID in peer group 2-B or peer group 3-B shall be the rate that is no less than ten and three-tenths per cent above the median desk-reviewed, actual, allowable, per diem indirect care cost for all ICFs/IID in peer group 2-B or peer group 3-B (excluding ICFs/IID in peer group 2-B or peer group 3-B whose indirect care costs are more than three standard deviations from the mean desk-reviewed, actual, allowable, per diem indirect care cost for all ICFs/IID in peer group 2-B or peer group 3-B) for the calendar year immediately preceding the fiscal year ~~in for~~ which the rate will be paid is determined, adjusted by the inflation rate estimated under division (E)(1) of this section.

(b) For each fiscal year ending in an odd-numbered calendar year, the maximum rate for ICFs/IID in peer group 2-B or peer group 3-B is the maximum rate for ICFs/IID in peer group 2-B or peer group 3-B for the previous fiscal year, adjusted for the inflation rate estimated under division (E)(2) of this section.

(3) The department shall not redetermine a maximum rate for indirect care costs under division (C)(1) or (2) of this section based on additional information that it receives after the maximum rate is set. The department shall redetermine the maximum rate for indirect care costs only if it made an error in computing the maximum rate based on the information available to the department at the time of the original calculation.

(D)(1) The efficiency incentive for an ICF/IID in peer group 1-B shall not exceed the following:

(a) ~~For fiscal year 2014, seven and one-tenth per cent of the maximum rate established for ICFs/IID in peer group 1 under division (C) of this section;~~

(b) ~~For fiscal year 2015, the following amount:~~

(i) ~~The amount calculated for fiscal year 2014 under division (D)(1)(a) of this section if the provider of the ICF/IID obtains the department's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018;~~

(ii) ~~One-half of the amount calculated for fiscal year 2014 under division (D)(1)(a) of this section if division (D)(1)(b)(i) of this section does not apply to the ICF/IID.~~

(e) ~~For fiscal year 2016 and each fiscal year thereafter ending in an even-numbered calendar year, the following percentages of the maximum rate established for ICFs/IID in peer group 1-B under division (C) of this section:~~

(i) ~~Seven and one-tenth per cent if the provider of the ICF/IID obtains the department's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018;~~

(ii) ~~Three and fifty-five hundredths per cent if division (D)(1)(e)(a)(i) of this section does not apply to the ICF/IID.~~

(d) ~~(b) For fiscal year 2017 and each fiscal year thereafter ending in an odd-numbered calendar year, the amount calculated for the immediately preceding fiscal year under division (D)(1)~~

(e)(a) of this section.

(2) The efficiency incentive for an ICF/IID in peer group 2-B or peer group 3-B shall not exceed the following:

(a) For each fiscal year ending in an even-numbered calendar year, seven per cent of the maximum rate established for ICFs/IID in peer group 2-B or peer group 3-B under division (C) of this section;

(b) For each fiscal year ending in an odd-numbered calendar year, the amount calculated for the immediately preceding fiscal year under division (D)(2)(a) of this section.

(E)(1) When adjusting rates for inflation under divisions (B)(1), (C)(1)(a), and (C)(2)(a) of this section, the department shall estimate the rate of inflation for the eighteen-month period beginning on the first day of July of the calendar year immediately preceding the fiscal year ~~in for~~ which the rate ~~will be paid is determined~~ and ending on the thirty-first day of December of the fiscal year ~~in for~~ which the rate ~~will be paid is determined~~. To estimate the rate of inflation, the department shall use the following:

(a) Subject to division (E)(1)(b) of this section, the consumer price index for all items for all urban consumers for the midwest region, published by the United States bureau of labor statistics;

(b) If the United States bureau of labor statistics ceases to publish the index specified in division (E)(1)(a) of this section, a comparable index that the bureau publishes and the department determines is appropriate.

(2) When adjusting rates for inflation under divisions (C)(1)(b) and (C)(2)(b) of this section, the department shall estimate the rate of inflation for the twelve-month period beginning on the first day of January of the fiscal year immediately preceding the fiscal year ~~in for~~ which the rate ~~will be paid is determined~~ and ending on the thirty-first day of December of the fiscal year ~~in for~~ which the rate ~~will be paid is determined~~. To estimate the rate of inflation, the department shall use the following:

(a) Subject to division (E)(2)(b) of this section, the consumer price index for all items for all urban consumers for the midwest region, published by the United States bureau of labor statistics;

(b) If the United States bureau of labor statistics ceases to publish the index specified in division (E)(2)(a) of this section, a comparable index that the bureau publishes and the department determines is appropriate.

(3) If an inflation rate estimated under division (E)(1) or (2) of this section is different from the actual inflation rate for the relevant time period, as measured using the same index, the difference shall be added to or subtracted from the inflation rate estimated pursuant to this division for the following fiscal year.

(F) This section is obsolete beginning July 1, 2021.

Sec. 5124.23. For each fiscal year, the department of developmental disabilities shall determine each ICF/IID's per medicaid day other protected costs component rate. An ICF/IID's rate shall be the ICF/IID's desk-reviewed, actual, allowable, per diem other protected costs from the applicable cost report year, adjusted for inflation using the following:

(A) Subject to division (B) of this section, the consumer price index for all urban consumers for nonprescription drugs and medical supplies, as published by the United States bureau of labor statistics;

(B) If the United States bureau of labor statistics ceases to publish the index specified in division (B)(1) of this section, the index that is subsequently published by the bureau and covers nonprescription drugs and medical supplies.

Sec. 5124.23 5124.231. (A) For each fiscal year until fiscal year 2022 and for the purpose of division (C) of section 5124.15 of the Revised Code, the department of developmental disabilities shall determine each ICF/IID's per medicaid day payment rate for other protected costs. Except as otherwise provided in this chapter, an ICF/IID's rate shall be determined prospectively. An ICF/IID's rate shall be the ICF/IID's desk-reviewed, actual, allowable, per diem other protected costs from the calendar year immediately preceding the fiscal year in for which the rate will be paid is determined, all adjusted for the estimated inflation rate for the eighteen-month period beginning on the first day of July of the calendar year immediately preceding the fiscal year in for which the rate will be paid is determined and ending on the thirty-first day of December of that fiscal year. The department shall estimate inflation using the index specified in division (B) of this section. If the estimated inflation rate for the eighteen-month period is different from the actual inflation rate for that period, the difference shall be added to or subtracted from the inflation rate estimated for the following year.

(B) The department shall use the following index for the purpose of division (A) of this section:

(1) Subject to division (B)(2) of this section, the consumer price index for all urban consumers for nonprescription drugs and medical supplies, as published by the United States bureau of labor statistics;

(2) If the United States bureau of labor statistics ceases to publish the index specified in division (B)(1) of this section, the index that is subsequently published by the bureau and covers nonprescription drugs and medical supplies.

(C) This section is obsolete beginning July 1, 2021.

Sec. 5124.24. (A) For fiscal year 2021 and each fiscal year thereafter, the department of developmental disabilities shall determine in accordance with division (C) of this section a per medicaid day quality incentive payment for each ICF/IID that earns for the fiscal year at least one point under division (B) of this section.

(B) Each fiscal year beginning with fiscal year 2021, the department, in accordance with rules authorized by this section, shall award to an ICF/IID points for the following quality indicators the ICF/IID meets for the fiscal year:

(1) The ICF/IID created and promoted diverse opportunities for its residents to participate in the broader community in the applicable cost report year.

(2) The ICF/IID offers its residents multiple opportunities for off-site day programming activities, including resident-specific activities.

(3) All of the ICF/IID's residents who are least eighteen years of age and interested in employment have an identified place on the path to community employment specified in rules adopted under section 5123.022 of the Revised Code.

(4) The ICF/IID has an active advocacy group that is driven by its residents or fosters its residents' participation in a community-wide group.

(5) The ICF/IID meets both of the following standards:

(a) The ICF/IID's bedrooms are designed and arranged to enhance privacy, promote

personalization, and meet its residents' needs;

(b) The ICF/IID encourages residents to bring to the ICF/IID their own home and room decor.

(6) The ICF/IID has and follows a policy specifying how it seeks direction from its residents.

(7) The ICF/IID has a policy for doing both of the following:

(a) Evaluating each hospital emergency department visit by its residents to identify precipitating factors that led to the visit;

(b) Developing a plan to mitigate any identified precipitating factors.

(8) The ICF/IID has adopted the recommendations for resident health screenings that the department publishes on its web site.

(9) Each month, the ICF/IID offers at least the number of wellness and fitness activities specified for this purpose in rules authorized by this section.

(10) The number of the ICF/IID's staff who were trained in positive behavior support strategies, trauma-informed care, and similar topics in the applicable cost report year is at least the number specified for this purpose in rules authorized by this section.

(11) Members of the ICF/IID's staff are involved in orienting and mentoring new staff.

(12) The ICF/IID's ratio of direct care staff to residents is at least the ratio specified for this purpose in rules authorized by this section.

(13) The ICF/IID's direct care staff retention percentage is at least the percentage specified for this purpose in rules authorized by this section.

(C) An ICF/IID's per medicaid day quality incentive payment for a fiscal year shall be the product of the following:

(1) The relative weight point value for the fiscal year as determined under division (D) of this section;

(2) The number of points the ICF/IID was awarded under division (C) of this section for the fiscal year.

(D) The relative weight point value for a fiscal year shall be determined as follows:

(1) For each ICF/IID, determine the product of the following:

(a) The number of inpatient days the ICF/IID had for the applicable cost report year;

(b) The number of points the ICF/IID was awarded under division (C) of this section for the fiscal year.

(2) Determine the sum of all of the products determined under division (D)(1) of this section for the fiscal year;

(3) Determine the amount equal to three and four hundredths per cent of the total desk-reviewed, actual, allowable direct care costs of all ICFs/IID for the applicable cost report year;

(4) Divide the amount determined under division (D)(3) of this section by the sum determined under division (D)(2) of this section.

(E) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section, including rules that specify or establish all of the following:

(1) The data needed for the department to determine whether an ICF/IID meets the quality indicators specified in division (B) of this section, the medium through which a report of the data is

to be submitted to the department, and the date by which the report of the data must be submitted to the department;

(2) Satisfactory evidence needed to determine that an ICF/IID has met the quality indicators;

(3) The method by which ICFs/IID are to be awarded points under division (B) of this section and the number of points that each quality indicator is worth based on the quality indicator's relative importance compared to the other quality indicators.

Sec. 5124.28. Notwithstanding any provision of section ~~5124.17–5124.171~~ or ~~5124.21–5124.211~~ of the Revised Code, the director of developmental disabilities may adopt rules under section 5124.03 of the Revised Code that provide for the determination of a combined maximum payment limit for indirect care costs and costs of ownership for ICFs/IID in peer group 2-B.

This section is obsolete beginning July 1, 2021.

Sec. 5124.29. Except as otherwise provided in section 5124.30 of the Revised Code, the department of developmental disabilities, in determining whether an ICF/IID's direct care costs and indirect care costs are allowable, shall place no limit on specific categories of reasonable costs other than compensation of owners, compensation of relatives of owners, and compensation of administrators.

Compensation cost limits for owners and relatives of owners shall be based on compensation costs for individuals who hold comparable positions but who are not owners or relatives of owners, as reported on ICFs/IID's cost reports. As used in this section, "comparable position" means the position that is held by the owner or the owner's relative, if that position is listed separately on the cost report form, or if the position is not listed separately, the group of positions that is listed on the cost report form and that includes the position held by the owner or the owner's relative. In the case of an owner or owner's relative who serves the ICFs/IID in a capacity such as corporate officer, proprietor, or partner for which no comparable position or group of positions is listed on the cost report form, the compensation cost limit shall be based on civil service equivalents and shall be specified in rules adopted under section 5124.03 of the Revised Code.

Compensation cost limits for administrators shall be based on compensation costs for administrators who are not owners or relatives of owners, as reported on ICFs/IID's cost reports. ~~Compensation~~ For the purpose of determining an ICF/IID's total per medicaid day payment rate under division (C) of section 5124.15 of the Revised Code, compensation cost limits for administrators of four or more ICFs/IID shall be the same as the limits for administrators of ICFs/IID with one hundred fifty or more beds.

Sec. 5124.30. Except as provided in ~~section~~ sections 5124.17 and 5124.171 of the Revised Code, the costs of goods, services, and facilities, furnished to an ICF/IID provider by a related party are includable in the allowable costs of the provider at the reasonable cost to the related party.

Sec. 5124.38. (A) The director of developmental disabilities shall establish a process under which an ICF/IID provider, or a group or association of ICF/IID providers, may seek reconsideration of medicaid payment rates established under this chapter, including a rate for direct care costs redetermined before the effective date of the rate as a result of an exception review conducted under section ~~5124.193–5124.198~~ of the Revised Code. Except as provided in divisions (B) to ~~(D)~~ (E) of this section, the only issue that a provider, group, or association may raise in the rate reconsideration is whether the rate was calculated in accordance with this chapter and the rules adopted under section

5124.03 of the Revised Code. The provider, group, or association may submit written arguments or other materials that support its position. The provider, group, or association and department shall take actions regarding the rate reconsideration within time frames specified in rules authorized by this section.

If the department determines, as a result of the rate reconsideration, that the rate established for one or more ICFs/IID is less than the rate to which the ICF/IID is entitled, the department shall increase the rate. If the department has paid the incorrect rate for a period of time, the department shall pay the provider of the ICF/IID the difference between the amount the provider was paid for that period for the ICF/IID and the amount the provider should have been paid for the ICF/IID.

(B)(1) The department, through the rate reconsideration process, may increase during a fiscal year the medicaid payment rate determined for an ICF/IID under this chapter if the provider demonstrates that the ICF/IID's actual, allowable costs have increased because of any of the following extreme circumstances:

- (a) A natural disaster;
- (b) A nonextensive renovation approved under division (E) of section ~~5124.17~~5124.171 of the Revised Code;
- (c) If the ICF/IID has an appropriate claims management program, an increase in the ICF/IID's workers' compensation experience rating of greater than five per cent;
- (d) If the ICF/IID is an inner-city ICF/IID, increased security costs;
- (e) A change of ownership that results from bankruptcy, foreclosure, or findings by the department of health of violations of medicaid certification requirements;
- (f) Other extreme circumstances specified in rules authorized by this section.

(2) An ICF/IID may qualify for a rate increase under this division only if its per diem, actual, allowable costs have increased to a level that exceeds its total rate. An increase under this division is subject to any rate limitations or maximum rates established by this chapter for specific cost centers. Any rate increase granted under this division shall take effect on the first day of the first month after the department receives the request.

(C) The department, through the rate reconsideration process, may increase an ICF/IID's rate as determined under this chapter if the department, in the department's sole discretion, determines that the rate as determined under those sections works an extreme hardship on the ICF/IID.

(D)(1) When beds certified for the medicaid program are added to an existing ICF/IID or replaced at the same site, the department, through the rate reconsideration process, may ~~increase the ICF/IID's rate for capital costs proportionately, as limited by any applicable limitation under section 5124.17 of the Revised Code, do either of the following~~ to account for the costs of the beds that are added or replaced:

(a) Subject to any applicable limitation under section 5124.17 of the Revised Code, proportionately increase the ICF/IID's per medicaid day capital component rate determined under that section;

(b) Subject to any applicable limitation under section 5124.171 of the Revised Code, proportionately increase the ICF/IID's per medicaid day payment rate for reasonable capital costs determined under that section. If

(2) If the department ~~makes this~~ grants an increase under division (D)(1)(a) or (b) of this

~~section, it the increase shall make the increase go into effect one month after the first day of the month after the department receives sufficient documentation of the costs needed to determine the amount of the increase. Any~~

~~(3) Any rate increase of an ICF/IID's per medicaid day payment rate for reasonable capital costs determined under section 5124.171 of the Revised Code that is granted under this division (D) (1)(b) of this section after June 30, 1993, shall remain in effect until the earlier of the following:~~

~~(a) The effective date of a per medicaid day payment rate for reasonable capital costs determined under section 5124.17-5124.171 of the Revised Code that includes costs incurred for a full calendar year for the bed addition or bed replacement;~~

~~(b) The date the provider of the ICF/IID begins to be paid a rate determined under division (B) of section 5124.15 of the Revised Code. The~~

~~(4) The provider of an ICF/IID that has its per medicaid day payment rate for reasonable capital costs increased under division (D)(1)(b) of this section shall report double accumulated depreciation in an amount equal to the depreciation included in the rate adjustment on its cost report for the first year of operation. During the term of any loan used to finance a project for which a the rate adjustment increase is granted under this division, if the ICF/IID is operated by the same provider, the provider, if the ICF/IID is operated by the same provider, shall subtract from the interest costs it reports on its the ICF/IID's cost report an amount equal to the difference between the following:~~

~~(1)(a) The actual, allowable interest costs for the loan during the calendar year for which the costs are being reported;~~

~~(2)(b) The actual, allowable interest costs attributable to the loan that were used to calculate the rates paid to the provider for the ICF/IID during the same calendar year.~~

~~(E) If the provider of an ICF/IID submits to the department revised assessment data for a resident of the ICF/IID under division (D) of section 5124.191 of the Revised Code and the revised assessment data results in at least a fifteen per cent increase in the ICF/IID's case-mix score determined under section 5124.193 of the Revised Code, the provider may request that the department, through the rate reconsideration process, increase the ICF/IID's per medicaid day direct care costs component rate determined under section 5124.19 of the Revised Code to account for the increase in the ICF/IID's case-mix score. If the department determines that the revised assessment data so increases the ICF/IID's case-mix score, the department shall grant the rate increase. The increase shall go into effect one month after the first day of the month after the department receives sufficient documentation needed to determine the amount of the increase.~~

~~(F) The department's decision at the conclusion of the a rate reconsideration process is not subject to any administrative proceedings under Chapter 119. or any other provision of the Revised Code.~~

~~(F)(G) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section.~~

Sec. 5124.39. (A) Except as provided in divisions (B) and (C) of this section, if the provider of an ICF/IID in peer group 1-B obtained approval from the department of developmental disabilities to become a downsized ICF/IID not later than July 1, 2018, and the ICF/IID does not become a downsized ICF/IID by that date, the department shall recoup from the provider an amount equal to

the sum of the following:

(1) The difference between the amount of the efficiency incentive payments the ICF/IID earned under sections ~~5124.17~~5124.171 and ~~5124.21~~5124.211 of the Revised Code because the provider obtained such approval and the amount of the efficiency incentive payments the ICF/IID would have earned under those sections had the provider not obtained such approval;

(2) An amount of interest on the difference determined under division (A)(1) of this section.

(B) The department shall exempt an ICF/IID provider from a recoupment otherwise required by this section if the provider voluntarily repays the department the difference determined under division (A)(1) of this section. No interest shall be charged on the amount voluntarily repaid.

(C) The department may exempt an ICF/IID provider from a recoupment otherwise required by this section if both of the following apply:

(1) The provider, on or before July 1, 2018, demonstrates to the department's satisfaction that the provider made a good faith effort to complete the downsizing by July 1, 2018, but the ICF/IID did not become a downsized ICF/IID by that date for reasons beyond the provider's control;

(2) The ICF/IID becomes a downsized ICF/IID within a period of time after July 1, 2018, that the department determines is reasonable.

(D) An ICF/IID provider subject to a recoupment under division (A) of this section or voluntarily making a repayment under division (B) of this section shall choose one of the following methods by which the recoupment or voluntary repayment shall be made:

(1) In a lump sum payment;

(2) Subject to the department's approval, in installment payments;

(3) In a single deduction from the next available medicaid payment made to the provider if that payment at least equals the total amount of the recoupment or voluntary repayment;

(4) Subject to the department's approval, in installment deductions from medicaid payments made to the provider.

(E) An ICF/IID provider may request that the director of developmental disabilities reconsider either or both of the following:

(1) A decision that the provider is subject to a recoupment under this section;

(2) A determination under this section of the amount to be recouped from the provider.

(F) The director shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section, including rules specifying how the amount of interest charged under division (A)(2) of this section is to be determined.

Sec. 5124.40. If an ICF/IID provider properly amends a cost report for an ICF/IID under section 5124.107 of the Revised Code and the amended report shows that the provider received a lower medicaid payment rate under the original cost report than the provider was entitled to receive, the department of developmental disabilities shall adjust the provider's rate for the ICF/IID prospectively to reflect the corrected information. The department shall pay the adjusted rate beginning two months after the first day of the month after the provider files the amended cost report.

If the department finds, from an exception review of resident assessment data conducted pursuant to section ~~5124.193~~5124.198 of the Revised Code after the effective date of an ICF/IID's rate for direct care costs that is based on the resident assessment data, that inaccurate resident assessment data resulted in the provider receiving a lower rate for the ICF/IID than the provider was

entitled to receive, the department prospectively shall adjust the provider's rate for the ICF/IID accordingly. The department shall make payments to the provider using the adjusted rate for the remainder of the calendar quarter for which the resident assessment data is used to determine the rate, beginning one month after the first day of the month after the exception review is completed.

Sec. 5124.41. (A) The department of developmental disabilities shall redetermine a provider's medicaid payment rate for an ICF/IID using revised information if any of the following results in a determination that the provider received a higher medicaid payment rate for the ICF/IID than the provider was entitled to receive:

(1) The provider properly amends a cost report for the ICF/IID under section 5124.107 of the Revised Code;

(2) The department makes a finding based on an audit under section 5124.109 of the Revised Code;

(3) The department makes a finding based on an exception review of resident assessment data conducted under section ~~5124.193~~ 5124.198 of the Revised Code after the effective date of the ICF/IID's rate for direct care costs that is based on the resident assessment data.

(B) The department shall apply the redetermined rate to the periods when the provider received the incorrect rate to determine the amount of the overpayment. The provider shall refund the amount of the overpayment. The department may charge the provider the following amount of interest from the time the overpayment was made:

(1) If the overpayment resulted from costs reported for calendar year 1993, the interest shall be not greater than one and one-half times the current average bank prime rate.

(2) If the overpayment resulted from costs reported for a subsequent calendar year:

(a) The interest shall be not greater than two times the current average bank prime rate if the overpayment was not more than one per cent of the total medicaid payments to the provider for the fiscal year for which the incorrect information was used to determine a rate.

(b) The interest shall be not greater than two and one-half times the current average bank prime rate if the overpayment was more than one per cent of the total medicaid payments to the provider for the fiscal year for which the incorrect information was used to determine a rate.

Sec. 5124.46. All of the following are subject to an adjudication conducted in accordance with Chapter 119. of the Revised Code:

(A) Any audit disallowance that the department of developmental disabilities makes as the result of an audit under section 5124.109 of the Revised Code;

(B) Any adverse finding that results from an exception review of resident assessment data conducted for an ICF/IID under section ~~5124.193~~ 5124.198 of the Revised Code after the effective date of the ICF/IID's medicaid payment rate for direct care costs that is based on the resident assessment data;

(C) Any medicaid payment deemed an overpayment under section 5124.523 of the Revised Code;

(D) Any penalty the department imposes under section 5124.42 of the Revised Code or section 5124.523 of the Revised Code.

Sec. 5124.68. (A)(1) Except as provided in division (D) of this section, an ICF/IID ~~in peer group 1~~ with a medicaid-certified capacity exceeding eight shall not admit an individual as a resident

unless all of the following apply:

(a) The provider of the ICF/IID provides written notice about the individual's potential admission, and all information about the individual in the provider's possession, to the county board of developmental disabilities serving the county in which the individual resides at the time the notice is provided.

(b) The county board has provided to the individual and department of developmental disabilities a copy of the findings the county board makes pursuant to division (B) of this section;

(c) Not later than seven business days after the provider provides the county board the notice required by division (A)(1)(a) of this section, the department determines that the individual chooses to receive ICF/IID services from the ICF/IID after being fully informed of all available alternatives.

(2) For the purpose of division (A)(1)(a) of this section, the provider of an ICF/IID ~~in peer group 1~~ with a medicaid-certified capacity exceeding eight may provide a county board written notices about multiple individuals' potential admissions to the ICF/IID at the same time.

(B) Not later than five business days after a county board receives notice from the provider of an ICF/IID ~~in peer group 1~~ with a medicaid-certified capacity exceeding eight about an individual seeking admission to the ICF/IID, the county board shall do both of the following:

(1) Using the information included in the notification and the additional information, if any, the department specifies pursuant to division (C) of this section, evaluate the individual and counsel the individual about both of the following:

(a) The nature, extent, and timing of the services that the individual needs;

(b) The least restrictive environment in which the individual could receive the needed services.

(2) Using the form prescribed under division (C) of this section, make findings about the individual based on the evaluation and counseling and provide a copy of the findings to the individual and the department.

(C) The department shall prescribe the form to be used for the purpose of making findings pursuant to division (B)(2) of this section. The department may specify additional information that a county board is to use when evaluating and counseling individuals under division (B)(1) of this section.

(D) Division (A) of this section does not apply to an individual seeking admission to an ICF/IID ~~in peer group 1~~ with a medicaid-certified capacity exceeding eight if any of the following is the case:

(1) The individual is a medicaid recipient receiving ICF/IID services on the date immediately preceding the date the individual is admitted to the ICF/IID.

(2) The individual is a medicaid recipient returning to the ICF/IID following a temporary absence for which the ICF/IID is paid to reserve a bed for the individual pursuant to section 5124.34 of the Revised Code or during which the individual received rehabilitation services in another health care setting.

(3) The requirements of divisions (A)(1)(a) and (b) of this section are satisfied but the department fails to make the determination required by division (A)(1)(c) of this section before the deadline specified in that division.

Sec. 5705.21. (A) At any time, the board of education of any city, local, exempted village,

cooperative education, or joint vocational school district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the school district, that it is necessary to levy a tax in excess of such limitation for one of the purposes specified in division (A), (D), (F), (H), or (DD) of section 5705.19 of the Revised Code, for general permanent improvements, for the purpose of operating a cultural center, for the purpose of providing for school safety and security, or for the purpose of providing education technology, and that the question of such additional tax levy shall be submitted to the electors of the school district at a special election on a day to be specified in the resolution. In the case of a qualifying library levy for the support of a library association or private corporation, the question shall be submitted to the electors of the association library district. If the resolution states that the levy is for the purpose of operating a cultural center, the ballot shall state that the levy is "for the purpose of operating the..... (name of cultural center)."

As used in this division, "cultural center" means a freestanding building, separate from a public school building, that is open to the public for educational, musical, artistic, and cultural purposes; "education technology" means, but is not limited to, computer hardware, equipment, materials, and accessories, equipment used for two-way audio or video, and software; ~~and~~ "general permanent improvements" means permanent improvements without regard to the limitation of division (F) of section 5705.19 of the Revised Code that the improvements be a specific improvement or a class of improvements that may be included in a single bond issue; and "providing for school safety and security" includes but is not limited to providing for permanent improvements to provide or enhance security, employment of or contracting for the services of safety personnel, providing mental health services and counseling, or providing training in safety and security practices and responses.

A resolution adopted under this division shall be confined to a single purpose and shall specify the amount of the increase in rate that it is necessary to levy, the purpose of the levy, and the number of years during which the increase in rate shall be in effect. The number of years may be any number not exceeding five or, if the levy is for current expenses of the district or for general permanent improvements, for a continuing period of time.

(B)(1) The board of education of a qualifying school district, by resolution, may declare that it is necessary to levy a tax in excess of the ten-mill limitation for the purpose of paying the current expenses of partnering community schools and, if any of the levy proceeds are so allocated, of the district. A qualifying school district that is not a municipal school district may allocate all of the levy proceeds to partnering community schools. A municipal school district shall allocate a portion of the levy proceeds to the current expenses of the district. The resolution shall declare that the question of the additional tax levy shall be submitted to the electors of the school district at a special election on a day to be specified in the resolution. The resolution shall state the purpose of the levy, the rate of the tax expressed in mills per dollar of taxable value, the number of such mills to be levied for the current expenses of the partnering community schools and the number of such mills, if any, to be levied for the current expenses of the school district, the number of years the tax will be levied, and the first year the tax will be levied. The number of years the tax may be levied may be any number not exceeding ten years, or for a continuing period of time.

The levy of a tax for the current expenses of a partnering community school under this section and the distribution of proceeds from the tax by a qualifying school district to partnering community schools is hereby determined to be a proper public purpose.

(2)(a) If any portion of the levy proceeds are to be allocated to the current expenses of the qualifying school district, the form of the ballot at an election held pursuant to division (B) of this section shall be as follows:

"Shall a levy be imposed by the..... (insert the name of the qualifying school district) for the purpose of current expenses of the school district and of partnering community schools at a rate not exceeding..... (insert the number of mills) mills for each one dollar of valuation, of which..... (insert the number of mills to be allocated to partnering community schools) mills is to be allocated to partnering community schools), which amounts to..... (insert the rate expressed in dollars and cents) for each one hundred dollars of valuation, for..... (insert the number of years the levy is to be imposed, or that it will be levied for a continuing period of time), beginning..... (insert first year the tax is to be levied), which will first be payable in calendar year..... (insert the first calendar year in which the tax would be payable)?

FOR THE TAX LEVY
AGAINST THE TAX LEVY

"

(b) If all of the levy proceeds are to be allocated to the current expenses of partnering community schools, the form of the ballot shall be as follows:

"Shall a levy be imposed by the..... (insert the name of the qualifying school district) for the purpose of current expenses of partnering community schools at a rate not exceeding..... (insert the number of mills) mills for each one dollar of valuation which amounts to..... (insert the rate expressed in dollars and cents) for each one hundred dollars of valuation, for..... (insert the number of years the levy is to be imposed, or that it will be levied for a continuing period of time), beginning..... (insert first year the tax is to be levied), which will first be payable in calendar year..... (insert the first calendar year in which the tax would be payable)?

FOR THE TAX LEVY
AGAINST THE TAX LEVY

"

(3) Upon each receipt of a tax distribution by the qualifying school district, the board of education shall credit the portion allocated to partnering community schools to the partnering community schools fund. All income from the investment of money in the partnering community schools fund shall be credited to that fund.

(a) If the qualifying school district is a municipal school district, the board of education shall distribute the partnering community schools amount among the then qualifying community schools not more than forty-five days after the school district receives and deposits each tax distribution. From each tax distribution, each such partnering community school shall receive a portion of the

partnering community schools amount in the proportion that the number of its resident students bears to the aggregate number of resident students of all such partnering community schools as of the date of receipt and deposit of the tax distribution.

(b) If the qualifying school district is not a municipal school district, the board of education may distribute all or a portion of the amount in the partnering community schools fund during a fiscal year to partnering community schools on or before the first day of June of the preceding fiscal year. Each such partnering community school shall receive a portion of the amount distributed by the board from the partnering community schools fund during the fiscal year in the proportion that the number of its resident students bears to the aggregate number of resident students of all such partnering community schools as of the date the school district received and deposited the most recent tax distribution. On or before the fifteenth day of June of each fiscal year, the board of education shall announce an estimated allocation to partnering community schools for the ensuing fiscal year. The board is not required to allocate to partnering community schools the entire partnering community schools amount in the fiscal year in which a tax distribution is received and deposited in the partnering community schools fund. The estimated allocation shall be published on the web site of the school district and expressed as a dollar amount per resident student. The actual allocation to community schools in a fiscal year need not conform to the estimate published by the school district so long if the estimate was made in good faith.

Distributions by a school district under division (B)(3)(b) of this section shall be made in accordance with distribution agreements entered into by the board of education and each partnering community school eligible for distributions under this division. The distribution agreements shall be certified to the department of education each fiscal year before the thirtieth day of July. Each agreement shall provide for at least three distributions by the school district to the partnering community school during the fiscal year and shall require the initial distribution be made on or before the thirtieth day of July.

(c) For the purposes of division (B) of this section, the number of resident students shall be the number of such students reported under section 3317.03 of the Revised Code and established by the department of education as of the date of receipt and deposit of the tax distribution.

(4) To the extent an agreement whereby the qualifying school district and a community school endorse each other's programs is necessary for the community school to qualify as a partnering community school under division (B)(6)(b) of this section, the board of education of the school district shall certify to the department of education the agreement along with the determination that such agreement satisfies the requirements of that division. The board's determination is conclusive.

(5) For the purposes of Chapter 3317. of the Revised Code or other laws referring to the "taxes charged and payable" for a school district, the taxes charged and payable for a qualifying school district that levies a tax under division (B) of this section includes only the taxes charged and payable under that levy for the current expenses of the school district, and does not include the taxes charged and payable for the current expenses of partnering community schools. The taxes charged and payable for the current expenses of partnering community schools shall not affect the calculation of "state education aid" as defined in section 5751.20 of the Revised Code.

(6) As used in division (B) of this section:

(a) "Qualifying school district" means a municipal school district, as defined in section 3311.71 of the Revised Code or a school district that contains within its territory a partnering community school.

(b) "Partnering community school" means a community school established under Chapter 3314. of the Revised Code that is located within the territory of the qualifying school district and meets one of the following criteria:

(i) If the qualifying school district is a municipal school district, the community school is sponsored by the district or is a party to an agreement with the district whereby the district and the community school endorse each other's programs;

(ii) If the qualifying school district is not a municipal school district, the community school is sponsored by a sponsor that was rated as "exemplary" in the ratings most recently published under section 3314.016 of the Revised Code before the resolution proposing the levy is certified to the board of elections.

(c) "Partnering community schools amount" means the product obtained, as of the receipt and deposit of the tax distribution, by multiplying the amount of a tax distribution by a fraction, the numerator of which is the number of mills per dollar of taxable value of the property tax to be allocated to partnering community schools, and the denominator of which is the total number of mills per dollar of taxable value authorized by the electors in the election held under division (B) of this section, each as set forth in the resolution levying the tax. If the resolution allocates all of the levy proceeds to partnering community schools, the "partnering schools amount" equals the amount of the tax distribution.

(d) "Partnering community schools fund" means a separate fund established by the board of education of a qualifying school district for the deposit of partnering community school amounts under this section.

(e) "Resident student" means a student enrolled in a partnering community school who is entitled to attend school in the qualifying school district under section 3313.64 or 3313.65 of the Revised Code.

(f) "Tax distribution" means a distribution of proceeds of the tax authorized by division (B) of this section under section 321.24 of the Revised Code and distributions that are attributable to that tax under sections 323.156 and 4503.068 of the Revised Code or other applicable law.

(C) A resolution adopted under this section shall specify the date of holding the election, which shall not be earlier than ninety days after the adoption and certification of the resolution and which shall be consistent with the requirements of section 3501.01 of the Revised Code.

A resolution adopted under this section may propose to renew one or more existing levies imposed under division (A) or (B) of this section or to increase or decrease a single levy imposed under either such division.

If the board of education imposes one or more existing levies for the purpose specified in division (F) of section 5705.19 of the Revised Code, the resolution may propose to renew one or more of those existing levies, or to increase or decrease a single such existing levy, for the purpose of general permanent improvements.

If the resolution proposes to renew two or more existing levies, the levies shall be levied for the same purpose. The resolution shall identify those levies and the rates at which they are levied.

The resolution also shall specify that the existing levies shall not be extended on the tax lists after the year preceding the year in which the renewal levy is first imposed, regardless of the years for which those levies originally were authorized to be levied.

If the resolution proposes to renew an existing levy imposed under division (B) of this section, the rates allocated to the qualifying school district and to partnering community schools each may be increased or decreased or remain the same, and the total rate may be increased, decreased, or remain the same. The resolution and notice of election shall specify the number of the mills to be levied for the current expenses of the partnering community schools and the number of the mills, if any, to be levied for the current expenses of the qualifying school district.

A resolution adopted under this section shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. A copy of the resolution shall immediately after its passing be certified to the board of elections of the proper county in the manner provided by section 5705.25 of the Revised Code. That section shall govern the arrangements for the submission of such question and other matters concerning the election to which that section refers, including publication of notice of the election, except that the election shall be held on the date specified in the resolution. In the case of a resolution adopted under division (B) of this section, the publication of notice of that election shall state the number of the mills, if any, to be levied for the current expenses of partnering community schools and the number of the mills to be levied for the current expenses of the qualifying school district. If a majority of the electors voting on the question so submitted in an election vote in favor of the levy, the board of education may make the necessary levy within the school district or, in the case of a qualifying library levy for the support of a library association or private corporation, within the association library district, at the additional rate, or at any lesser rate in excess of the ten-mill limitation on the tax list, for the purpose stated in the resolution. A levy for a continuing period of time may be reduced pursuant to section 5705.261 of the Revised Code. The tax levy shall be included in the next tax budget that is certified to the county budget commission.

(D)(1) After the approval of a levy on the current tax list and duplicate for current expenses, for recreational purposes, for community centers provided for in section 755.16 of the Revised Code, or for a public library of the district under division (A) of this section, and prior to the time when the first tax collection from the levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy.

(2) After the approval of a levy for general permanent improvements for a specified number of years or for permanent improvements having the purpose specified in division (F) of section 5705.19 of the Revised Code, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy remaining to be collected in each year over a period of five years after the issuance of the notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance.

(3) After approval of a levy for general permanent improvements for a continuing period of

time, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected in each year over a specified period of years, not exceeding ten, after the issuance of the notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed ten years, and may have a principal payment in the year of their issuance.

(4) After the approval of a levy on the current tax list and duplicate under division (B) of this section, and prior to the time when the first tax collection from the levy can be made, the board of education may anticipate a fraction of the proceeds of the levy for the current expenses of the school district and issue anticipation notes in a principal amount not exceeding fifty per cent of the estimated proceeds of the levy to be collected during the first year of the levy and allocated to the school district. The portion of the levy proceeds to be allocated to partnering community schools under that division shall not be included in the estimated proceeds anticipated under this division and shall not be used to pay debt charges on any anticipation notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance.

(E) The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(F) The board of education of any school district that levies a tax under this section for the purpose of providing for school safety and security may report to the department of education how the district is using revenue from that tax.

Sec. 5709.121. (A) Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:

(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

(b) As a children's, science, history, or natural history museum that is open to the general public;

(c) For other charitable, educational, or public purposes.

(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.

(3) It is used by an organization described in division (D) of section 5709.12 of the Revised Code. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.

(B)(1) Property described in division (A)(1)(a) or (b) of this section shall continue to be considered as used exclusively for charitable or public purposes even if the property is conveyed through one conveyance or a series of conveyances to an entity that is not a charitable or educational institution and is not the state or a political subdivision, provided that all of the following conditions apply with respect to that property:

(a) The property was listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the tax year immediately preceding the year in which the property is conveyed through one conveyance or a series of conveyances;

(b) The property is conveyed through one conveyance or a series of conveyances to an entity that does any of the following:

(i) Leases at least forty-five per cent of the property, through one lease or a series of leases, to the entity that owned or occupied the property for the tax year immediately preceding the year in which the property is conveyed or to an affiliate of that entity;

(ii) Contracts, directly or indirectly to have renovations performed as described in division (B)(1)(d) of this section and is at least partially owned by a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of that code.

(c) The property includes improvements that are at least fifty years old;

(d) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;

(e) All or a portion of the property continues to be used for the purposes described in division (A)(1)(a) or (b) of this section after its conveyance; and

(f) The property is certified by the United States secretary of the interior as a "certified historic structure" or certified as part of a certified historic structure.

(2) Notwithstanding section 5715.27 of the Revised Code, an application for exemption from taxation of property described in division (B)(1) of this section may be filed by either the owner of the property or an occupant.

(C) For purposes of this section, an institution that meets all of the following requirements is conclusively presumed to be a charitable institution:

(1) The institution is a nonprofit corporation or association, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(2) The institution is exempt from federal income taxation under section 501(a) of the Internal Revenue Code;

(3) The majority of the institution's board of directors are appointed by the mayor or legislative authority of a municipal corporation or a board of county commissioners, or a combination thereof;

(4) The primary purpose of the institution is to assist in the development and revitalization of downtown urban areas.

(D) For purposes of division (A)(1)(b) of this section, the status of a museum as open to the general public shall be conclusive if the museum is accredited by the American alliance of museums or a successor organization.

(E)(1) Qualifying real property owned by an institution that meets all of the following

requirements shall be considered as used exclusively for charitable purposes, and the institution shall be considered a charitable institution for purposes of this section and section 5709.12 of the Revised Code:

(a) The institution is an organization described under section 501(c)(3) of the Internal Revenue Code and exempt from federal income taxation under section 501(a) of the Internal Revenue Code.

(b) The institution's primary purpose is to acquire, develop, lease, or otherwise provide suitable housing to individuals with developmental disabilities.

(c) The institution receives at least a portion of its funding from one or more county boards of developmental disabilities to assist in the institution's primary purpose described in division (E)(1)(b) of this section.

(2) As used in division (E) of this section, "qualifying real property" means real property that is used primarily in one of the following manners:

(a) The property is used by the institution described in division (E)(1) of this section for the purpose described in division (E)(1)(b) of this section.

(b) The property is leased or otherwise provided by the institution described in division (E)(1) of this section to individuals with developmental disabilities and used by those individuals as housing.

(c) The property is leased or otherwise provided by the institution described in division (E)(1) of this section to another charitable institution, and that charitable institution uses the property exclusively for charitable purposes.

Sec. 5709.17. The following property shall be exempted from taxation:

(A) Real estate held or occupied by an association or corporation, organized or incorporated under the laws of this state relative to soldiers' memorial associations or monumental building associations and that, in the opinion of the trustees, directors, or managers thereof, is necessary and proper to carry out the object intended for such association or corporation;

(B) Real estate and tangible personal property held or occupied by a qualifying veterans' organization that qualifies for exemption from taxation under section 501(c)(19) or 501(c)(23) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and is incorporated under the laws of this state or the United States and used primarily for meetings and administration of the qualifying veterans' organization or for providing, on a not-for-profit basis, programs and supportive services to past or present members of the armed forces of the United States and their families, except real estate held by such an organization for the production of rental income in excess of thirty-six thousand dollars in a tax year, before accounting for any cost or expense incurred in the production of such income. For the purposes of this division, rental income includes only income arising directly from renting the real estate to others for consideration.

As used in this division, "qualifying veterans' organization" means an organization that is incorporated under the laws of this state or the United States and that meets either of the following requirements:

(1) The organization qualifies for exemption from taxation under section 501(c)(19) or 501(c)(23) of the Internal Revenue Code.

(2) The organization meets the criteria for exemption under section 501(c)(19) of the Internal

Revenue Code and regulations adopted pursuant thereto, but is exempt from taxation under section 501(c)(4) of the Internal Revenue Code.

(C) Tangible personal property held by a corporation chartered under 112 Stat. 1335, 36 U.S.C.A. 40701, described in section 501(c)(3) of the Internal Revenue Code, and exempt from taxation under section 501(a) of the Internal Revenue Code shall be exempt from taxation if it is property obtained as described in 112 Stat. 1335-1341, 36 U.S.C.A. Chapter 407.

(D) Real estate held or occupied by a fraternal organization and used primarily for meetings of and the administration of the fraternal organization or for providing, on a not-for-profit basis, educational or health services, except real estate held by such an organization for the production of rental income in excess of thirty-six thousand dollars in a tax year before accounting for any cost or expense incurred in the production of such income. As used in this division, "rental income" has the same meaning as in division (B) of this section, and "fraternal organization" means a domestic fraternal society, order, or association operating under the lodge, council, or grange system that qualifies for exemption from taxation under section 501(c)(5), 501(c)(8), or 501(c)(10) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended; that provides financial support for charitable purposes, as defined in division (B)(12) of section 5739.02 of the Revised Code; and that operates under a state governing body that has been operating in this state for at least eighty-five years.

Sec. 5735.01. As used in this chapter:

(A) "Motor vehicles" includes all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances which are powered by internal combustion engines or motors.

(B) "Motor fuel" means gasoline, diesel fuel, kerosene, or any other liquid motor fuel, including, but not limited to, liquid petroleum gas or liquid natural gas, but excluding substances prepackaged and sold in containers of five gallons or less.

(C) "Kerosene" means all grades of kerosene, including, but not limited to, the two grades of kerosene, no. 1-K and no. 2-K, commonly known as K-1 kerosene and K-2 kerosene, respectively, described in the American Society for Testing Materials Standard D-3699, in effect on January 1, 1999, and aviation grade kerosene.

(D) "Diesel fuel" means any liquid fuel capable of use in discrete form or as a blend component in the operation of engines of the diesel type, including transmix when mixed with diesel fuel.

(E) "Gasoline" means any of the following:

- (1) All products, commonly or commercially known or sold as gasoline;
- (2) Any blend stocks or additives, including alcohol, that are sold for blending with gasoline, other than products typically sold in containers of five gallons or less;
- (3) Transmix when mixed with gasoline, unless certified, as required by the tax commissioner, for withdrawal from terminals for reprocessing at refineries;
- (4) Alcohol that is offered for sale or sold for use as, or commonly and commercially used as, a fuel for internal combustion engines.

Gasoline does not include diesel fuel, commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed, sold, or used exclusively for purposes other than as a motor fuel for a motor vehicle or vessel. The blending of any of the products listed in the

preceding sentence, regardless of name or characteristics, is conclusively presumed to have been done to produce gasoline, unless the product obtained by the blending is entirely incapable for use as fuel to operate a motor vehicle. An additive, blend stock, or alcohol is presumed to be sold for blending unless a certification is obtained as required by the tax commissioner.

(F) "Public highways" means lands and lots over which the public, either as user or owner, generally has a right to pass, even though the same are closed temporarily by the authorities for the purpose of construction, reconstruction, maintenance, or repair.

(G) "Waters within the boundaries of this state" means all streams, lakes, ponds, marshes, water courses, and all other bodies of surface water, natural or artificial, which are situated wholly or partially within this state or within its jurisdiction, except private impounded bodies of water.

(H) "Person" includes individuals, partnerships, firms, associations, corporations, receivers, trustees in bankruptcy, estates, joint-stock companies, joint ventures, the state and its political subdivisions, and any combination of persons of any form.

(I)(1) "Motor fuel dealer" means any person who satisfies any of the following:

(a) The person imports from another state or foreign country or acquires motor fuel by any means into a terminal in this state;

(b) The person imports motor fuel from another state or foreign country in bulk lot vehicles for subsequent sale and distribution in this state from bulk lot vehicles;

(c) The person refines motor fuel in this state;

(d) The person acquires motor fuel from a motor fuel dealer for subsequent sale and distribution by that person in this state from bulk lot vehicles;

(e) The person possesses an unrevoked permissive motor fuel dealer's license.

(2) Any person who obtains dyed diesel fuel for use other than the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state, but later uses that motor fuel for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state, is deemed a motor fuel dealer as regards any unpaid motor fuel taxes levied on the motor fuel so used.

(J) As used in section 5735.05 of the Revised Code only:

(1) With respect to gasoline, "received" or "receipt" shall be construed as follows:

(a) Gasoline produced at a refinery in this state or delivered to a terminal in this state is deemed received when it is disbursed through a loading rack at that refinery or terminal;

(b) Except as provided in division (J)(1)(a) of this section, gasoline imported into this state or purchased or otherwise acquired in this state by any person is deemed received within this state by that person when the gasoline is withdrawn from the container in which it was transported;

(c) Gasoline delivered or disbursed by any means from a terminal directly to another terminal is not deemed received.

(2) With respect to motor fuel other than gasoline, "received" or "receipt" means distributed or sold for use or used to generate power for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state. All diesel fuel that is not dyed diesel fuel, regardless of its use, shall be considered as used to generate power for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state when the fuel is sold or distributed to a person other than a licensed motor fuel dealer or to a person licensed under

section 5735.026 of the Revised Code.

(K) Motor fuel used for the operation of licensed motor vehicles employed in the maintenance, construction, or repair of public highways is deemed to be used for the operation of motor vehicles upon the public highways.

(L) "Licensed motor fuel dealer" means any dealer possessing an unrevoked motor fuel dealer's license issued by the tax commissioner as provided in section 5735.02 of the Revised Code.

(M) "Licensed retail dealer" means any retail dealer possessing an unrevoked retail dealer's license issued by the tax commissioner as provided in section 5735.022 of the Revised Code.

(N) "Refinery" means a facility used to produce motor fuel and from which motor fuel may be removed by pipeline, by vessel, or at a rack.

(O) "Retail dealer" means any person that sells or distributes motor fuel at a retail service station located in this state.

(P) "Retail service station" means a location from which motor fuel is sold to the general public and is dispensed or pumped directly into motor vehicle fuel tanks for consumption.

(Q) "Transit bus" means a motor vehicle that is operated for public transit or paratransit service on a regular and continuing basis within the state by or for a county, a municipal corporation, a county transit board pursuant to sections 306.01 to 306.13 of the Revised Code, a regional transit authority pursuant to sections 306.30 to 306.54 of the Revised Code, or a regional transit commission pursuant to sections 306.80 to 306.90 of the Revised Code. Public transit or paratransit service may include fixed route, demand-responsive, or subscription bus service transportation, but does not include shared-ride taxi service, carpools, vanpools, jitney service, school bus transportation, or charter or sightseeing services.

(R) "Export" means to obtain motor fuel in this state for sale or other distribution outside this state. For the purposes of this division, motor fuel delivered outside this state by or for the seller constitutes an export by the seller, and motor fuel delivered outside this state by or for the purchaser constitutes an export by the purchaser.

(S) "Import" means motor fuel delivered into this state from outside this state. Motor fuel delivered into this state from outside this state by or for the seller constitutes an import by the seller. Motor fuel delivered into this state from outside this state by or for the purchaser constitutes an import by the purchaser.

(T) "Terminal" means a motor fuel storage or distribution facility that ~~has been assigned a terminal control number by the internal revenue service, that is supplied by pipeline or marine vessel; and from which motor fuel may be removed at a rack.~~

(U) ~~"Terminal operator" means a person that owns, operates, or otherwise controls a terminal~~Consumer" means a buyer of motor fuel for purposes other than resale in any form.

(V) "Bulk lot vehicle" means railroad tank cars, transport tank trucks, and tank wagons with a capacity of at least 1,400 gallons.

(W) "Licensed permissive motor fuel dealer" means any person possessing an unrevoked permissive motor fuel dealer's license issued by the tax commissioner under section 5735.021 of the Revised Code.

(X) "Licensed terminal operator" means any person possessing an unrevoked terminal operator's license issued by the tax commissioner under section 5735.026 of the Revised Code.

(Y) "Licensed exporter" means any person possessing an unrevoked exporter's license issued by the tax commissioner under section 5735.026 of the Revised Code.

(Z) "Dyed diesel fuel" means diesel fuel satisfying the requirements of 26 U.S.C. 4082.

(AA) "Gross gallons" means U.S. gallons without temperature or barometric adjustments.

(BB) "Bulk plant" means a motor fuel storage and distribution facility, other than a terminal, from which motor fuel may be withdrawn by railroad car, transport trucks, tank wagons, or marine vessels.

(CC) "Transporter" means either of the following:

(1) A railroad company, street, suburban, or interurban railroad company, a pipeline company, or water transportation company that transports motor fuel, either in interstate or intrastate commerce, to points in this state;

(2) A person that transports motor fuel by any manner to a point in this state.

(DD) "Exporter" means either of the following:

(1) A person that is licensed to collect and remit motor fuel taxes in a specified state of destination;

(2) A person that is statutorily prohibited from obtaining a license to collect and remit motor fuel taxes in a specified state of destination, and is licensed to sell or distribute tax-paid motor fuel in the specified state of destination.

(EE) "Report" means a report or return required to be filed under this chapter and may be used interchangeably with, and for all purposes has the same meaning as, "return."

(FF) "Aviation fuel" means aviation gasoline or aviation grade kerosene or any other fuel that is used in aircraft.

(GG) "Aviation gasoline" means fuel specifically compounded for use in reciprocating aircraft engines.

(HH) "Aviation grade kerosene" means any kerosene type jet fuel covered by ASTM Specification D1655 or meeting specification MIL-DTL-5624T (Grade JP-5) or MTL-DTL-83133E (Grade JP-8).

(II) "Aviation fuel dealer" means a person that acquires aviation fuel from a supplier or from another aviation fuel dealer for subsequent sale to a person other than an end user.

Sec. 5735.024. (A) No aviation fuel dealer shall purchase aviation fuel for ~~consumption~~ resale in this state without first being registered ~~licensed~~ as an aviation fuel dealer by the tax commissioner to engage in such activities.

(B) The failure to register with the commissioner as an aviation fuel dealer does not relieve a person from the requirement to file returns under this title.

(C) No person shall make a false or fraudulent statement on the application required by this section.

(D) Each aviation fuel dealer shall file a report with the commissioner on or before the ~~twenty-third last~~ last day of each month for the preceding month. The commissioner shall adopt rules pursuant to Chapter 119. of the Revised Code specifying the information that shall be required to be included in the report.

(E) If an aviation fuel dealer files a false monthly report of the information required by the commissioner or fails to file a monthly report as required by this section, the commissioner may

revoke the license of the aviation fuel dealer and notify the aviation fuel dealer in writing of such revocation by certified mail sent to the last known address of the aviation fuel dealer appearing in the files of the commissioner.

Sec. 5735.04. If a motor fuel dealer files a false monthly report of the information required under section 5735.06 of the Revised Code, fails to file a monthly report as required by that section or section 5735.024 of the Revised Code, or fails to pay the full amount of the tax as required by the motor fuel laws of the state or as may be agreed upon by the tax commissioner and the motor fuel dealer, ~~or fails to file an inventory report as required by section 5735.061 (B) of the Revised Code~~, the commissioner may revoke the license of the motor fuel dealer, and notify the motor fuel dealer in writing of such revocation by certified mail sent to the last known address of the motor fuel dealer appearing on the files of the commissioner.

The commissioner may cancel any license issued to any motor fuel dealer, and the cancellation shall become effective at the time that may be determined by the commissioner. The commissioner also may cancel the license of any motor fuel dealer upon sixty days' notice mailed to the last known address of the motor fuel dealer if the commissioner, upon investigation, finds that the person to whom the license has been issued is no longer engaged in the receipt, use, or sale of motor fuel as a motor fuel dealer, and has not been so engaged for the period of six months prior to the cancellation. No license shall be canceled upon the request of any motor fuel dealer unless the motor fuel dealer, prior to the date of cancellation, has paid to the state all motor fuel taxes payable or assumed by the motor fuel dealer under the laws of the state, together with all penalties and fines accruing by reason of any failure of the motor fuel dealer to make accurate reports of receipts of motor fuel or to pay the taxes and penalties.

If the license of any motor fuel dealer is canceled by the commissioner as provided in this section, and if the motor fuel dealer has paid to the state all motor fuel taxes due and payable by the motor fuel dealer under the laws of the state, or assumed by the motor fuel dealer upon the receipt, sale, or use of motor fuel, together with all penalties accruing by reason of any failure on the part of the motor fuel dealer to make accurate reports or to pay the tax and penalties, then the commissioner shall cancel and surrender the bond theretofore filed by the motor fuel dealer.

Sec. 5747.01. Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter that is not otherwise defined in this section has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes or if not used in a comparable context in those laws, has the same meaning as in section 5733.40 of the Revised Code. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

As used in this chapter:

(A) "Adjusted gross income" or "Ohio adjusted gross income" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:

(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.

(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.

(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.

(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.

(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter. "Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b)(i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by reason of a prior accumulation distribution. Any undistributed net income included in the adjusted gross income of a beneficiary shall reduce the undistributed net income of the trust commencing with the earliest years of the accumulation period.

(7) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross income for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

(8) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent that the interest or interest equivalent is included in federal adjusted gross income.

(9) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent that the loss has been deducted or the gain has been included in computing federal adjusted gross income.

(10) Deduct or add amounts, as provided under section 5747.70 of the Revised Code, related to contributions to variable college savings program accounts made or tuition units purchased pursuant to Chapter 3334. of the Revised Code.

(11)(a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division (A)(11)(a) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to,

benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division (A)(11)(a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of the plan's cost. The deduction allowed under division (A)(11)(a) of this section shall be the net of any related premium refunds, related premium reimbursements, or related insurance premium dividends received during the taxable year.

(b) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income during the taxable year, the amount the taxpayer paid during the taxable year, not compensated for by any insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, and dependents, to the extent the expenses exceed seven and one-half per cent of the taxpayer's federal adjusted gross income.

(c) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income, any amount included in federal adjusted gross income under section 105 or not excluded under section 106 of the Internal Revenue Code solely because it relates to an accident and health plan for a person who otherwise would be a "qualifying relative" and thus a "dependent" under section 152 of the Internal Revenue Code but for the fact that the person fails to meet the income and support limitations under section 152(d)(1)(B) and (C) of the Internal Revenue Code.

(d) For purposes of division (A)(11) of this section, "medical care" has the meaning given in section 213 of the Internal Revenue Code, subject to the special rules, limitations, and exclusions set forth therein, and "qualified long-term care" has the same meaning given in section 7702B(c) of the Internal Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) of this section, "dependent" includes a person who otherwise would be a "qualifying relative" and thus a "dependent" under section 152 of the Internal Revenue Code but for the fact that the person fails to meet the income and support limitations under section 152(d)(1)(B) and (C) of the Internal Revenue Code.

(12)(a) Deduct any amount included in federal adjusted gross income solely because the amount represents a reimbursement or refund of expenses that in any year the taxpayer had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable United States department of the treasury regulations. The deduction otherwise allowed under division (A) (12)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer deducted under this section in any taxable year.

(b) Add any amount not otherwise included in Ohio adjusted gross income for any taxable year to the extent that the amount is attributable to the recovery during the taxable year of any amount deducted or excluded in computing federal or Ohio adjusted gross income in any taxable year.

(13) Deduct any portion of the deduction described in section 1341(a)(2) of the Internal Revenue Code, for repaying previously reported income received under a claim of right, that meets both of the following requirements:

(a) It is allowable for repayment of an item that was included in the taxpayer's adjusted gross income for a prior taxable year and did not qualify for a credit under division (A) or (B) of section 5747.05 of the Revised Code for that year;

(b) It does not otherwise reduce the taxpayer's adjusted gross income for the current or any other taxable year.

(14) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division (A)(14) of this section does not apply to medical savings account deposits and earnings otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.

(15)(a) Add an amount equal to the funds withdrawn from a medical savings account during the taxable year, and the net investment earnings on those funds, when the funds withdrawn were used for any purpose other than to reimburse an account holder for, or to pay, eligible medical expenses, in accordance with section 3924.66 of the Revised Code;

(b) Add the amounts distributed from a medical savings account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.

(16) Add any amount claimed as a credit under section 5747.059 or 5747.65 of the Revised Code to the extent that such amount satisfies either of the following:

(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

(17) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (A)(17) of this section.

(18) Beginning in taxable year 2001 but not for any taxable year beginning after December 31, 2005, if the taxpayer is married and files a joint return and the combined federal adjusted gross income of the taxpayer and the taxpayer's spouse for the taxable year does not exceed one hundred thousand dollars, or if the taxpayer is single and has a federal adjusted gross income for the taxable year not exceeding fifty thousand dollars, deduct amounts paid during the taxable year for qualified tuition and fees paid to an eligible institution for the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer, who is a resident of this state and is enrolled in or attending a program that culminates in a degree or diploma at an eligible institution. The deduction may be claimed only to the extent that qualified tuition and fees are not otherwise deducted or excluded for any taxable year from federal or Ohio adjusted gross income. The deduction may not be claimed for educational expenses for which the taxpayer claims a credit under section 5747.27 of the Revised Code.

(19) Add any reimbursement received during the taxable year of any amount the taxpayer deducted under division (A)(18) of this section in any previous taxable year to the extent the amount is not otherwise included in Ohio adjusted gross income.

(20)(a)(i) Subject to divisions (A)(20)(a)(iii), (iv), and (v) of this section, add five-sixths of the amount of depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code, including the taxpayer's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to a pass-through entity in which the taxpayer has a direct or

indirect ownership interest.

(ii) Subject to divisions (A)(20)(a)(iii), (iv), and (v) of this section, add five-sixths of the amount of qualifying section 179 depreciation expense, including the taxpayer's proportionate or distributive share of the amount of qualifying section 179 depreciation expense allowed to any pass-through entity in which the taxpayer has a direct or indirect ownership interest.

(iii) Subject to division (A)(20)(a)(v) of this section, for taxable years beginning in 2012 or thereafter, if the increase in income taxes withheld by the taxpayer is equal to or greater than ten per cent of income taxes withheld by the taxpayer during the taxpayer's immediately preceding taxable year, "two-thirds" shall be substituted for "five-sixths" for the purpose of divisions (A)(20)(a)(i) and (ii) of this section.

(iv) Subject to division (A)(20)(a)(v) of this section, for taxable years beginning in 2012 or thereafter, a taxpayer is not required to add an amount under division (A)(20) of this section if the increase in income taxes withheld by the taxpayer and by any pass-through entity in which the taxpayer has a direct or indirect ownership interest is equal to or greater than the sum of (I) the amount of qualifying section 179 depreciation expense and (II) the amount of depreciation expense allowed to the taxpayer by subsection (k) of section 168 of the Internal Revenue Code, and including the taxpayer's proportionate or distributive shares of such amounts allowed to any such pass-through entities.

(v) If a taxpayer directly or indirectly incurs a net operating loss for the taxable year for federal income tax purposes, to the extent such loss resulted from depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code and by qualifying section 179 depreciation expense, "the entire" shall be substituted for "five-sixths of the" for the purpose of divisions (A)(20)(a)(i) and (ii) of this section.

The tax commissioner, under procedures established by the commissioner, may waive the add-backs related to a pass-through entity if the taxpayer owns, directly or indirectly, less than five per cent of the pass-through entity.

(b) Nothing in division (A)(20) of this section shall be construed to adjust or modify the adjusted basis of any asset.

(c) To the extent the add-back required under division (A)(20)(a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be situated to the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

(d) For the purposes of division (A)(20)(a)(v) of this section, net operating loss carryback and carryforward shall not include the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount.

(e) For the purposes of divisions (A)(20) and (21) of this section:

(i) "Income taxes withheld" means the total amount withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year.

(ii) "Increase in income taxes withheld" means the amount by which the amount of income

taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year.

(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to a taxpayer under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.

(21)(a) If the taxpayer was required to add an amount under division (A)(20)(a) of this section for a taxable year, deduct one of the following:

(i) One-fifth of the amount so added for each of the five succeeding taxable years if the amount so added was five-sixths of qualifying section 179 depreciation expense or depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code;

(ii) One-half of the amount so added for each of the two succeeding taxable years if the amount so added was two-thirds of such depreciation expense;

(iii) One-sixth of the amount so added for each of the six succeeding taxable years if the entire amount of such depreciation expense was so added.

(b) If the amount deducted under division (A)(21)(a) of this section is attributable to an add-back allocated under division (A)(20)(c) of this section, the amount deducted shall be situated to the same location. Otherwise, the add-back shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

(c) No deduction is available under division (A)(21)(a) of this section with regard to any depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount to the extent that such depreciation results in or increases a federal net operating loss carryback or carryforward. If no such deduction is available for a taxable year, the taxpayer may carry forward the amount not deducted in such taxable year to the next taxable year and add that amount to any deduction otherwise available under division (A)(21)(a) of this section for that next taxable year. The carryforward of amounts not so deducted shall continue until the entire addition required by division (A)(20)(a) of this section has been deducted.

(d) No refund shall be allowed as a result of adjustments made by division (A)(21) of this section.

(22) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as reimbursement for life insurance premiums under section 5919.31 of the Revised Code.

(23) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as a death benefit paid by the adjutant general under section 5919.33 of the Revised Code.

(24) Deduct, to the extent included in federal adjusted gross income and not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, military pay and allowances received by the taxpayer during the taxable year for active duty service in the United States army, air force, navy, marine corps, or coast guard or reserve components thereof or the national guard. The deduction may not be claimed for military pay and

allowances received by the taxpayer while the taxpayer is stationed in this state.

(25) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year and not otherwise compensated for by any other source, the amount of qualified organ donation expenses incurred by the taxpayer during the taxable year, not to exceed ten thousand dollars. A taxpayer may deduct qualified organ donation expenses only once for all taxable years beginning with taxable years beginning in 2007.

For the purposes of division (A)(25) of this section:

(a) "Human organ" means all or any portion of a human liver, pancreas, kidney, intestine, or lung, and any portion of human bone marrow.

(b) "Qualified organ donation expenses" means travel expenses, lodging expenses, and wages and salary forgone by a taxpayer in connection with the taxpayer's donation, while living, of one or more of the taxpayer's human organs to another human being.

(26) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, amounts received by the taxpayer as retired personnel pay for service in the uniformed services or reserve components thereof, or the national guard, or received by the surviving spouse or former spouse of such a taxpayer under the survivor benefit plan on account of such a taxpayer's death. If the taxpayer receives income on account of retirement paid under the federal civil service retirement system or federal employees retirement system, or under any successor retirement program enacted by the congress of the United States that is established and maintained for retired employees of the United States government, and such retirement income is based, in whole or in part, on credit for the taxpayer's uniformed service, the deduction allowed under this division shall include only that portion of such retirement income that is attributable to the taxpayer's uniformed service, to the extent that portion of such retirement income is otherwise included in federal adjusted gross income and is not otherwise deducted under this section. Any amount deducted under division (A)(26) of this section is not included in a taxpayer's adjusted gross income for the purposes of section 5747.055 of the Revised Code. No amount may be deducted under division (A)(26) of this section on the basis of which a credit was claimed under section 5747.055 of the Revised Code.

(27) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year from the military injury relief fund created in section 5902.05 of the Revised Code.

(28) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received as a veterans bonus during the taxable year from the Ohio department of veterans services as authorized by Section 2r of Article VIII, Ohio Constitution.

(29) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

(30) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, Ohio college opportunity or federal Pell grant amounts received by the taxpayer or the taxpayer's spouse or dependent pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 1070a, et seq., and used to pay room or board furnished by the

educational institution for which the grant was awarded at the institution's facilities, including meal plans administered by the institution. For the purposes of this division, receipt of a grant includes the distribution of a grant directly to an educational institution and the crediting of the grant to the enrollee's account with the institution.

(31)(a) For taxable years beginning in 2015, deduct from the portion of an individual's adjusted gross income that is business income, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the lesser of the following amounts:

(i) Seventy-five per cent of the individual's business income;

(ii) Ninety-three thousand seven hundred fifty dollars for each spouse if spouses file separate returns under section 5747.08 of the Revised Code or one hundred eighty-seven thousand five hundred dollars for all other individuals.

(b) For taxable years beginning in 2016 or thereafter, deduct from the portion of an individual's adjusted gross income that is business income, to the extent not otherwise deducted or excluded in computing federal adjusted gross income for the taxable year, one hundred twenty-five thousand dollars for each spouse if spouses file separate returns under section 5747.08 of the Revised Code or two hundred fifty thousand dollars for all other individuals.

(32) Deduct, as provided under section 5747.78 of the Revised Code, contributions to ABLE savings accounts made in accordance with sections 113.50 to 113.56 of the Revised Code.

(B) "Business income" means income, including gain or loss, arising from transactions, activities, and sources in the regular course of a trade or business and includes income, gain, or loss from real property, tangible property, and intangible property if the acquisition, rental, management, and disposition of the property constitute integral parts of the regular course of a trade or business operation. "Business income" includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill.

(C) "Nonbusiness income" means all income other than business income and may include, but is not limited to, compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards.

(D) "Compensation" means any form of remuneration paid to an employee for personal services.

(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.

(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(G) "Individual" means any natural person.

(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(I) "Resident" means any of the following, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:

(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised

Code;

(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I)(2) of this section.

(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.

For the purposes of division (I)(3) of this section:

(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:

(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I)(3)(e)(i) or (ii) of this section;

(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year;

(iii) A person who was domiciled in this state for the purposes of this chapter when the trust document or instrument or part of the trust document or instrument became irrevocable, but only if at least one of the trust's qualifying beneficiaries is a resident domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year. If a trust document or instrument became irrevocable upon the death of a person who at the time of death was domiciled in this state for purposes of this chapter, that person is a person described in division (I)(3)(a)(iii) of this section.

(b) A trust is irrevocable to the extent that the transferor is not considered to be the owner of the net assets of the trust under sections 671 to 678 of the Internal Revenue Code.

(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e)(2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code.

(d) For the purposes of division (I)(3)(a) of this section, the extent to which a trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred directly or indirectly, in whole or part, to the trust by any of the sources enumerated in that division shall be ascertained by multiplying the fair market value of the trust's assets, net of related liabilities, by the qualifying ratio, which shall be computed as follows:

(i) The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time, net of any related liabilities, from sources enumerated in division (I)(3)(a) of this section. The denominator of the qualifying ratio is the fair market value of all the trust's assets at that time, net of any related liabilities.

(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be

computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the qualifying ratio last computed without regard to the subsequent transfer, and (2) the fair market value of the subsequently transferred assets at the time transferred, net of any related liabilities, from sources enumerated in division (I)(3)(a) of this section. The denominator of the revised qualifying ratio is the fair market value of all the trust's assets immediately after the subsequent transfer, net of any related liabilities.

(iii) Whether a transfer to the trust is by or from any of the sources enumerated in division (I)(3)(a) of this section shall be ascertained without regard to the domicile of the trust's beneficiaries.

(e) For the purposes of division (I)(3)(a)(i) of this section:

(i) A trust is described in division (I)(3)(e)(i) of this section if the trust is a testamentary trust and the testator of that testamentary trust was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(ii) A trust is described in division (I)(3)(e)(ii) of this section if the transfer is a qualifying transfer described in any of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an irrevocable inter vivos trust, and at least one of the trust's qualifying beneficiaries is domiciled in this state for purposes of this chapter during all or some portion of the trust's current taxable year.

(f) For the purposes of division (I)(3)(e)(ii) of this section, a "qualifying transfer" is a transfer of assets, net of any related liabilities, directly or indirectly to a trust, if the transfer is described in any of the following:

(i) The transfer is made to a trust, created by the decedent before the decedent's death and while the decedent was domiciled in this state for the purposes of this chapter, and, prior to the death of the decedent, the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.

(ii) The transfer is made to a trust to which the decedent, prior to the decedent's death, had directly or indirectly transferred assets, net of any related liabilities, while the decedent was domiciled in this state for the purposes of this chapter, and prior to the death of the decedent the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.

(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the transferor and either the decedent or the estate of the decedent at any time prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(iv) The transfer is made to a trust on account of a contractual relationship existing directly or indirectly between the transferor and another person who at the time of the decedent's death was domiciled in this state for purposes of this chapter.

(v) The transfer is made to a trust on account of the will of a testator who was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an individual who, for purposes of the taxes levied under Chapter 5731. of the Revised Code, was domiciled in this state at the time of the individual's death.

(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state.

(J) "Nonresident" means an individual or estate that is not a resident. An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year.

(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.

(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required.

(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter.

(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code.

(O) "Dependents" means dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been permitted to claim had the taxpayer filed a federal income tax return.

(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are performed in more than one county, the county in which the major portion of the services are performed.

(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:

(1) "Subdivision" means any county, municipal corporation, park district, or township.

(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a charter adopted pursuant to the Ohio Constitution.

(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.

(S) "Taxable income" or "Ohio taxable income" applies only to estates and trusts, and means federal taxable income, as defined and used in the Internal Revenue Code, adjusted as follows:

(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section:

(a) The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to beneficiaries for the taxable year;

(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.

(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section;

(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;

(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S)(1)(a) or (b) of this section;

(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the targeted jobs credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

(6) Deduct any interest or interest equivalent, net of related expenses deducted in computing federal taxable income, on public obligations and purchase obligations, but only to the extent that such net amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

(7) Add any loss or deduct any gain resulting from sale, exchange, or other disposition of public obligations to the extent that such loss has been deducted or such gain has been included in computing either federal taxable income or income of the S portion of an electing small business trust for the taxable year;

(8) Except in the case of the final return of an estate, add any amount deducted by the taxpayer on both its Ohio estate tax return pursuant to section 5731.14 of the Revised Code, and on its federal income tax return in determining federal taxable income;

(9)(a) Deduct any amount included in federal taxable income solely because the amount represents a reimbursement or refund of expenses that in a previous year the decedent had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable treasury regulations. The deduction otherwise allowed under division (S)(9)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer or decedent deducted under this section in any taxable year.

(b) Add any amount not otherwise included in Ohio taxable income for any taxable year to the extent that the amount is attributable to the recovery during the taxable year of any amount deducted or excluded in computing federal or Ohio taxable income in any taxable year, but only to the extent such amount has not been distributed to beneficiaries for the taxable year.

(10) Deduct any portion of the deduction described in section 1341(a)(2) of the Internal Revenue Code, for repaying previously reported income received under a claim of right, that meets both of the following requirements:

(a) It is allowable for repayment of an item that was included in the taxpayer's taxable income or the decedent's adjusted gross income for a prior taxable year and did not qualify for a credit under division (A) or (B) of section 5747.05 of the Revised Code for that year.

(b) It does not otherwise reduce the taxpayer's taxable income or the decedent's adjusted

gross income for the current or any other taxable year.

(11) Add any amount claimed as a credit under section 5747.059 or 5747.65 of the Revised Code to the extent that the amount satisfies either of the following:

(a) The amount was deducted or excluded from the computation of the taxpayer's federal taxable income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction in the taxpayer's federal taxable income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

(12) Deduct any amount, net of related expenses deducted in computing federal taxable income, that a trust is required to report as farm income on its federal income tax return, but only if the assets of the trust include at least ten acres of land satisfying the definition of "land devoted exclusively to agricultural use" under section 5713.30 of the Revised Code, regardless of whether the land is valued for tax purposes as such land under sections 5713.30 to 5713.38 of the Revised Code. If the trust is a pass-through entity investor, section 5747.231 of the Revised Code applies in ascertaining if the trust is eligible to claim the deduction provided by division (S)(12) of this section in connection with the pass-through entity's farm income.

Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S)(12) of this section is allowed only to the extent that the trust has not distributed such farm income. Division (S)(12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter.

(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income.

(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A)(20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S)(14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter.

(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.

(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity.

(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.

(Y) "Month" means a calendar month.

(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year.

(AA)(1) "Eligible institution" means a state university or state institution of higher education

as defined in section 3345.011 of the Revised Code, or a private, nonprofit college, university, or other post-secondary institution located in this state that possesses a certificate of authorization issued by the chancellor of higher education pursuant to Chapter 1713. of the Revised Code or a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.

(2) "Qualified tuition and fees" means tuition and fees imposed by an eligible institution as a condition of enrollment or attendance, not exceeding two thousand five hundred dollars in each of the individual's first two years of post-secondary education. If the individual is a part-time student, "qualified tuition and fees" includes tuition and fees paid for the academic equivalent of the first two years of post-secondary education during a maximum of five taxable years, not exceeding a total of five thousand dollars. "Qualified tuition and fees" does not include:

(a) Expenses for any course or activity involving sports, games, or hobbies unless the course or activity is part of the individual's degree or diploma program;

(b) The cost of books, room and board, student activity fees, athletic fees, insurance expenses, or other expenses unrelated to the individual's academic course of instruction;

(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program.

(BB)(1) "Modified business income" means the business income included in a trust's Ohio taxable income after such taxable income is first reduced by the qualifying trust amount, if any.

(2) "Qualifying trust amount" of a trust means capital gains and losses from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, a qualifying investee to the extent included in the trust's Ohio taxable income, but only if the following requirements are satisfied:

(a) The book value of the qualifying investee's physical assets in this state and everywhere, as of the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, is available to the trust.

(b) The requirements of section 5747.011 of the Revised Code are satisfied for the trust's taxable year in which the trust recognizes the gain or loss.

Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be.

(3) "Modified nonbusiness income" means a trust's Ohio taxable income other than modified business income, other than the qualifying trust amount, and other than qualifying investment income, as defined in section 5747.012 of the Revised Code, to the extent such qualifying investment income is not otherwise part of modified business income.

(4) "Modified Ohio taxable income" applies only to trusts, and means the sum of the amounts described in divisions (BB)(4)(a) to (c) of this section:

(a) The fraction, calculated under section 5747.013, and applying section 5747.231 of the Revised Code, multiplied by the sum of the following amounts:

(i) The trust's modified business income;

(ii) The trust's qualifying investment income, as defined in section 5747.012 of the Revised Code, but only to the extent the qualifying investment income does not otherwise constitute modified business income and does not otherwise constitute a qualifying trust amount.

(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount, and the denominator of which is the sum of the book value of the qualifying investee's total physical assets everywhere on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount. If, for a taxable year, the trust recognizes a qualifying trust amount with respect to more than one qualifying investee, the amount described in division (BB)(4)(b) of this section shall equal the sum of the products so computed for each such qualifying investee.

(c)(i) With respect to a trust or portion of a trust that is a resident as ascertained in accordance with division (I)(3)(d) of this section, its modified nonbusiness income.

(ii) With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the amount of its modified nonbusiness income satisfying the descriptions in divisions (B)(2) to (5) of section 5747.20 of the Revised Code, except as otherwise provided in division (BB)(4)(c)(ii) of this section. With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the trust's portion of modified nonbusiness income recognized from the sale, exchange, or other disposition of a debt interest in or equity interest in a section 5747.212 entity, as defined in section 5747.212 of the Revised Code, without regard to division (A) of that section, shall not be allocated to this state in accordance with section 5747.20 of the Revised Code but shall be apportioned to this state in accordance with division (B) of section 5747.212 of the Revised Code without regard to division (A) of that section.

If the allocation and apportionment of a trust's income under divisions (BB)(4)(a) and (c) of this section do not fairly represent the modified Ohio taxable income of the trust in this state, the alternative methods described in division (C) of section 5747.21 of the Revised Code may be applied in the manner and to the same extent provided in that section.

(5)(a) Except as set forth in division (BB)(5)(b) of this section, "qualifying investee" means a person in which a trust has an equity or ownership interest, or a person or unit of government the debt obligations of either of which are owned by a trust. For the purposes of division (BB)(2)(a) of this section and for the purpose of computing the fraction described in division (BB)(4)(b) of this section, all of the following apply:

(i) If the qualifying investee is a member of a qualifying controlled group on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, then "qualifying investee" includes all persons in the qualifying controlled group on such last day.

(ii) If the qualifying investee, or if the qualifying investee and any members of the qualifying controlled group of which the qualifying investee is a member on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, separately or cumulatively own, directly or indirectly, on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount, more than fifty per cent of the equity of a pass-through entity, then the qualifying investee and the other members are deemed to own the proportionate share of the

pass-through entity's physical assets which the pass-through entity directly or indirectly owns on the last day of the pass-through entity's calendar or fiscal year ending within or with the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount.

(iii) For the purposes of division (BB)(5)(a)(iii) of this section, "upper level pass-through entity" means a pass-through entity directly or indirectly owning any equity of another pass-through entity, and "lower level pass-through entity" means that other pass-through entity.

An upper level pass-through entity, whether or not it is also a qualifying investee, is deemed to own, on the last day of the upper level pass-through entity's calendar or fiscal year, the proportionate share of the lower level pass-through entity's physical assets that the lower level pass-through entity directly or indirectly owns on the last day of the lower level pass-through entity's calendar or fiscal year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year. If the upper level pass-through entity directly and indirectly owns less than fifty per cent of the equity of the lower level pass-through entity on each day of the upper level pass-through entity's calendar or fiscal year in which or with which ends the calendar or fiscal year of the lower level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower pass-through entity is not available to the upper level pass-through entity, then solely for purposes of ascertaining if a gain or loss constitutes a qualifying trust amount, the upper level pass-through entity shall be deemed as owning no equity of the lower level pass-through entity for each day during the upper level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's calendar or fiscal year. Nothing in division (BB)(5)(a)(iii) of this section shall be construed to provide for any deduction or exclusion in computing any trust's Ohio taxable income.

(b) With respect to a trust that is not a resident for the taxable year and with respect to a part of a trust that is not a resident for the taxable year, "qualifying investee" for that taxable year does not include a C corporation if both of the following apply:

(i) During the taxable year the trust or part of the trust recognizes a gain or loss from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, the C corporation.

(ii) Such gain or loss constitutes nonbusiness income.

(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.

(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.

(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.

(EE)(1) For the purposes of division (EE) of this section:

(a) "Qualifying person" means any person other than a qualifying corporation.

(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:

(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable

year;

(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.

(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.

(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:

(1) "Trust" does not include a qualified pre-income tax trust.

(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election as described in division (FF)(3) of this section.

(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, directly, indirectly, or constructively through related interests, five per cent or more of the ownership or equity interests. The trustee shall notify the tax commissioner in writing of the election on or before April 15, 2006. The election, if timely made, shall be effective on and after January 1, 2006, and shall apply for all tax periods and tax years until revoked by the trustee of the trust.

(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements:

(a) The document or instrument creating the trust was executed by the grantor before January 1, 1972;

(b) The trust became irrevocable upon the creation of the trust; and

(c) The grantor was domiciled in this state at the time the trust was created.

(GG) "Uniformed services" has the same meaning as in 10 U.S.C. 101.

(HH) "Taxable business income" means the amount by which an individual's business income that is included in federal adjusted gross income exceeds the amount of business income the individual is authorized to deduct under division (A)(31) of this section for the taxable year.

SECTION 2. That existing sections 3350.15, 5124.01, 5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 5124.192, 5124.193, 5124.195, 5124.21, 5124.23, 5124.28, 5124.29, 5124.30, 5124.38, 5124.39, 5124.40, 5124.41, 5124.46, 5124.68, 5705.21, 5709.121, 5709.17, 5735.01, 5735.024, 5735.04, and 5747.01 and sections 5124.155 and 5124.194 of the Revised Code are hereby repealed.

SECTION 3. That the amendment by this act of section 5709.121 of the Revised Code applies to tax year 2018 and thereafter and the tax years at issue in any application for exemption from taxation or any appeal from such an application pending before the Tax Commissioner, the Board of Tax Appeals, any Court of Common Pleas or Court of Appeals, or the Supreme Court on the effective date of this section and to the property that is the subject of any such application or appeal. That amendment is remedial in nature and the purpose thereof is to clarify the intent of the General Assembly that real property described in division (E) of section 5709.121 of the Revised Code, as amended by this act, is exempt from taxation.

That the amendment by this act of section 5709.17 of the Revised Code applies to tax years ending on or after the effective date of this act.

SECTION 4. The amendment by this act of section 5747.01 of the Revised Code is intended to clarify the law as it existed prior to the amendment of that section by this act.

SECTION 5. All items in this section are hereby appropriated as designated out of any moneys in the state treasury to the credit of the designated fund. The appropriations made in this act are for the biennium ending June 30, 2020. The appropriations made in this act are in addition to any other appropriations made for the FY 2019-FY 2020 biennium.

COT CENTRAL OHIO TECHNICAL COLLEGE

Higher Education Improvement Fund (Fund 7034)

C36924	Boys and Girls Club of Newark	\$750,000
TOTAL	Higher Education Improvement Fund	\$750,000
TOTAL ALL FUNDS		\$750,000

SECTION 6. Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in this act shall be accounted for as though made in the capital appropriations act of the 132nd General Assembly.

The appropriations made in this act are subject to all provisions of the capital appropriations act of the 132nd General Assembly that are generally applicable to such appropriations.

SECTION 7. That Section 261.168 of Am. Sub. H.B. 49 of the 132nd General Assembly be amended to read as follows:

Sec. 261.168. MODIFICATIONS AND CAP FOR FISCAL YEAR—YEARS 2019, 2020, AND 2021 ICF/IID MEDICAID RATES DETERMINED UNDER CURRENT-THE FORMULA BEING PHASED OUT

(A) As used in this section:

(1) "Change of operator," "cost report year," "entering operator," "exiting operator," "ICF/IID," "ICF/IID services," "Medicaid days," "peer group 1-B," "peer group 2-B," "peer group 3-B," "provider," and "provider agreement" have the same meanings as in section 5124.01 of the Revised Code.

(2) "Formula being phased out" means the formula specified in division (C) of section 5124.15 of the Revised Code.

(3) "Franchise permit fee" means the fee imposed by sections 5168.60 to 5168.71 of the Revised Code.

(B)(1) This section applies to each ICF/IID that is in peer group 1-B or peer group 2-B and to

which ~~any either~~ of the following ~~apply~~, as applicable to a fiscal year, ~~applies~~:

~~(a) The In the context of determining an ICF/IID's total Medicaid payment rate for fiscal year 2019 under the formula being phased out, either of the following is the case:~~

~~(i) The provider of the ICF/IID has a valid Medicaid provider agreement for the ICF/IID on June 30, 2018, and a valid Medicaid provider agreement for the ICF/IID during fiscal year 2019;~~

~~(b)-(ii) The ICF/IID undergoes a change of operator that takes effect during fiscal year 2019, the exiting operator has a valid Medicaid provider agreement for the ICF/IID on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF/IID during fiscal year 2019.~~

~~(c) The ICF/IID is a new ICF/IID for which the provider obtains an initial provider agreement during fiscal year 2019.~~

~~(b) In the context of determining an ICF/IID's total Medicaid payment rate for fiscal year 2020, either of the following is the case:~~

~~(i) The provider of the ICF/IID has a valid Medicaid provider agreement for the ICF/IID on June 30, 2019, and a valid Medicaid provider agreement for the ICF/IID during fiscal year 2020;~~

~~(ii) The ICF/IID undergoes a change of operator that takes effect during fiscal year 2020, the exiting operator has a valid Medicaid provider agreement for the ICF/IID on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF/IID during fiscal year 2020.~~

~~(c) In the context of determining an ICF/IID's total Medicaid payment rate for fiscal year 2021, either of the following is the case:~~

~~(i) The provider of the ICF/IID has a valid Medicaid provider agreement for the ICF/IID on June 30, 2020, and a valid Medicaid provider agreement for the ICF/IID during fiscal year 2021;~~

~~(ii) The ICF/IID undergoes a change of operator that takes effect during fiscal year 2021, the exiting operator has a valid Medicaid provider agreement for the ICF/IID on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF/IID during fiscal year 2021.~~

~~(2) This section does not apply to an either of the following:~~

~~(a) An ICF/IID in peer group 3-B;~~

~~(b) An ICF/IID for which the provider obtains an initial provider agreement during a fiscal year for which modifications to the formula being phased out are made under this section.~~

~~(3) Notwithstanding anything to the contrary in Chapter 5124. of the Revised Code, the Department of Developmental Disabilities shall follow this section in determining the rates to be paid under this section for ICF/IID services provided during fiscal year 2019 by ICFs/IID subject to this section.~~

~~(C)(1) Except as otherwise provided in this section and the section of this act titled "FISCAL YEAR 2019 ICF/IID MEDICAID RATES DETERMINED UNDER NEW FORMULA," the provider of an ICF/IID to which this section applies shall be paid, for ICF/IID services the ICF/IID provides during fiscal year 2019, the total per Medicaid day rate determined for the ICF/IID under division (C)(2) or (3) of this section.~~

~~(2) Except in the case of a new ICF/IID, Notwithstanding Chapter 5124. of the Revised Code, the following modifications shall be made when determining under the formula being phased out the~~

fiscal year ~~years 2019, 2020, and 2021~~ total per Medicaid day rate ~~payment rates~~ for an ICF/IID to which this section applies shall be the ICF/IID's total per Medicaid day rate determined for the ICF/IID in accordance with Chapter 5124. of the Revised Code for the fiscal year with the following modifications:

~~(a)-(1)~~ The ICF/IID's efficiency incentive for capital costs, as determined under division (F) of section ~~5124.17-5124.171~~ of the Revised Code, shall be reduced by 50%.

~~(b)-(2)~~ In place of the maximum cost per case-mix unit established for the ICF/IID's peer group under division (C) of section ~~5124.19-5124.195~~ of the Revised Code, the ICF/IID's maximum costs per case-mix unit shall be the amount the Department determined for the ICF/IID's peer group for fiscal year 2016 in accordance with division (E) of Section 259.160 of Am. Sub. H.B. 64 of the 131st General Assembly.

~~(c)-(3)~~ In place of the inflation adjustment otherwise calculated under division (D) of section ~~5124.19-5124.195~~ of the Revised Code for the purpose of division (A)(1)(b) of that section, an inflation adjustment of 1.014 shall be used.

~~(d)-(4)~~ In place of the efficiency incentive otherwise calculated under division (B)(2) of section ~~5124.21-5124.211~~ of the Revised Code, the ICF/IID's efficiency incentive for indirect care costs shall be the following:

~~(i)-(a)~~ In the case of an ICF/IID in peer group 1-~~B~~, not more than \$3.69;

~~(ii)-(b)~~ In the case of an ICF/IID in peer group 2-~~B~~, not more than \$3.19.

~~(e)-(5)~~ In place of the maximum rate for indirect care costs established for the ICF/IID's peer group under division (C) of section ~~5124.21-5124.211~~ of the Revised Code, the maximum rate for indirect care costs for the ICF/IID's peer group shall be an amount the Department shall determine in accordance with division ~~(E)-(D)~~ of this section.

~~(f)-(6)~~ In place of the inflation adjustment otherwise calculated under division (D)(1) of section ~~5124.21-5124.211~~ of the Revised Code for the purpose of division (B)(1) of that section only, an inflation adjustment of 1.014 shall be used.

~~(g)-(7)~~ In place of the inflation adjustment otherwise made under section ~~5124.23-5124.231~~ of the Revised Code, the ICF/IID's desk-reviewed, actual, allowable, per Medicaid day other protected costs, excluding the franchise permit fee, from ~~calendar-~~the applicable cost report year 2017 shall be multiplied by 1.014.

~~(h)~~ After all of the modifications specified in divisions (C)(2)(a) to (g) of this section have been made, the ICF/IID's total per Medicaid day rate shall be increased by a direct support personnel payment equal to 3.04% of the ICF/IID's desk-reviewed, actual, allowable, per Medicaid day direct care costs from calendar year 2017.

(3) The fiscal year 2019 initial total per Medicaid day rate for a new ICF/IID to which this section applies shall be the ICF/IID's initial total per Medicaid day rate determined for the ICF/IID in accordance with section 5124.151 of the Revised Code for the fiscal year with the following modifications:

(a) In place of the amount determined under division (B)(1) of section 5124.151 of the Revised Code, the new ICF/IID's initial per Medicaid day rate for capital costs shall be the median rate for all ICFs/IID determined under section 5124.17 of the Revised Code with the modification made under division (C)(2)(a) of this section.

~~(b) In place of the amount determined under division (B)(2)(a) of section 5124.151 of the Revised Code, if there are no cost or resident assessment data for the new ICF/IID, the new ICF/IID's initial per Medicaid day rate for direct care costs shall be determined as follows:~~

~~(i) Determine the median of the costs per case-mix units of each peer group;~~

~~(ii) Multiply the median determined under division (C)(3)(b)(i) of this section by the median annual average case-mix score for the new ICF/IID's peer group for calendar year 2017;~~

~~(iii) Multiply the product determined under division (C)(3)(b)(ii) of this section by 1.014.~~

~~(c) In place of the amount determined under division (B)(3) of section 5124.151 of the Revised Code, the new ICF/IID's initial per Medicaid day rate for indirect care costs shall be the amount of the maximum rate for indirect costs determined for the ICF/IID's peer group under division (E) of this section.~~

~~(d) In place of the amount determined under division (B)(4) of section 5124.151 of the Revised Code, the new ICF/IID's initial per Medicaid day rate for other protected costs shall be 115% of the median rate for ICFs/IID determined under section 5124.23 of the Revised Code with the modification made under division (C)(2)(g) of this section.~~

~~(e) After all of the modifications specified in divisions (C)(3)(a) to (d) of this section have been made, the new ICF/IID's initial total per Medicaid day rate shall be increased by the median direct support personnel payment made under division (C)(2)(h) of this section.~~

~~(D) A new ICF/IID's initial total modified per Medicaid day rate for fiscal year 2019 as determined under division (C)(3) of this section shall be adjusted at the applicable time specified in division (D) of section 5124.151 of the Revised Code. If the adjustment affects the ICF/IID's rate for ICF/IID services provided during fiscal year 2019, the modifications specified in division (C)(2) of this section apply to the adjustment.~~

~~(E) In determining the amount of the maximum rate for indirect costs for the purposes purpose of divisions (C)(2)(e) and division (C)(3)(e) (5) of this section, the Department shall strive to the greatest extent possible to do both of the following:~~

~~(1) Avoid rate reductions under division (F)(E)(1) of this section;~~

~~(2) Have the amount so determined result in payment of all desk-reviewed, actual, allowable indirect care costs for the same percentage of Medicaid days for ICFs/IID in peer group 1-B as for ICFs/IID in peer group 2-B as of July 1, 2018 the first day of the fiscal year for which the determination is made, based on May 2018-Medicaid days from the calendar year in which the fiscal year begins.~~

~~(F)(E)(1) If the mean total per Medicaid day rate for all ICFs/IID to which this section applies, as determined under division (C) of this section as of July 1, 2018, the first day of a fiscal year for which a rate is determined under this section and weighted by May 2018-Medicaid days from the calendar year in which the fiscal year begins, is other than the amount determined under division (F)(E)(2) of this section, the Department shall adjust, for the fiscal year-2019 for which the rate is determined, the total per Medicaid day rate for each ICF/IID to which this section applies by a percentage that is equal to the percentage by which the mean total per Medicaid day rate is greater or less than the amount determined under division (F)(E)(2) of this section.~~

~~(2) The amount to be used for the purpose of division (F)(E)(1) of this section shall be not less than \$290.10. The Department, in its sole discretion, may use a larger amount for the purpose of~~

that division. In determining whether to use a larger amount, the Department may consider any of the following:

(a) The reduction in the total Medicaid-certified capacity of all ICFs/IID that occurs in the fiscal year 2018 immediately preceding the fiscal year for which the determination is made, and the reduction that is projected to occur in the fiscal year 2019 for which the determination is made, as a result of either of the following:

(i) A downsizing pursuant to a plan approved by the Department under section 5123.042 of the Revised Code;

(ii) A conversion of beds to providing home and community-based services under the Individual Options waiver pursuant to section 5124.60 or 5124.61 of the Revised Code.

(b) The increase in Medicaid payments made for ICF/IID services provided during the fiscal year 2018 immediately preceding the fiscal year for which the determination is made, and the increase that is projected to occur in the fiscal year 2019 for which the determination is made, as a result of the modifications to the payment rates made under section 5124.101 of the Revised Code;

(c) The total reduction in the number of ICF/IID beds that occurs pursuant to section 5124.67 of the Revised Code;

(d) Other factors the Department determines to be relevant.

~~(G) If the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated, the Department shall reduce the amount it pays ICF/IID providers under this section as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.~~

SECTION 8. That existing Section 261.168 of Am. Sub. H.B. 49 of the 132nd General Assembly is hereby repealed.

SECTION 9. That Section 261.169 of Am. Sub. H.B. 49 of the 132nd General Assembly is hereby repealed.

SECTION 10. (A) As used in this section, "ICF/IID" and "ICF/IID services" have the same meanings as in section 5124.01 of the Revised Code.

(B) The Department of Developmental Disabilities may establish a pilot program that does both of the following:

(1) Requires ICFs/IID to submit to the Department data regarding their ability to meet proposed quality indicators during the last six months of calendar year 2018;

(2) Provides for ICFs/IID that submit the data to receive an incentive payment in the form of an add-on to their total Medicaid payment rates for ICF/IID services provided during fiscal year 2020.

(C) An incentive payment add-on paid under the pilot program is not part of an ICF/IID's total per medicaid day payment rate.

SECTION 11. It is the General Assembly's intent to enact legislation that goes into effect on or after July 1, 2021, and does both of the following:

(A) Repeals the following sections that become obsolete on that date: sections 5124.171, 5124.195, 5124.196, 5124.197, 5124.198, 5124.199, 5124.211, 5124.231, and 5124.28 of the Revised Code;

(B) Amends other sections of the Revised Code as necessary to reflect the repeal of the sections listed in division (A) of this section.

SECTION 12. All of the following go into effect on the later of July 1, 2018, or the earliest time permitted by law:

(A) The amendment by this act of sections 5124.01, 5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 5124.192, 5124.193, 5124.195, 5124.21, 5124.23, 5124.28, 5124.29, 5124.30, 5124.38, 5124.39, 5124.40, 5124.41, 5124.46, and 5124.68 of the Revised Code;

(B) The amendment by this act, for the purpose of adopting new section numbers as indicated in parentheses, of sections 5124.17 (5124.171), 5124.19 (5124.195), 5124.191 (5124.196), 5124.192 (5124.197), 5124.193 (5124.198), 5124.195 (5124.199), 5124.21 (5124.211), and 5124.23 (5124.231) of the Revised Code;

(C) The new enactment by this act of sections 5124.17, 5124.19, 5124.191, 5124.192, 5124.193, 5124.194, 5124.21, and 5124.23 of the Revised Code;

(D) The enactment by this act of section 5124.24 of the Revised Code;

(E) The repeal by this act of sections 5124.155 and 5124.194 of the Revised Code;

(F) Sections 6 through 10 of this act.

SECTION 13. (A) The Governor may execute a deed(s) in the name of the State conveying to the City of Columbus, Ohio, or an alternate purchaser(s) and the purchaser's(s') heirs and assigns or successors and assigns, all of the State's right, title, and interest in the following described real estate:

Situated in the County of Franklin in the State of Ohio, and in the Township of Perry and bounded and described as follows:

Beginning at a stake on the South line of Lot Number One (1) of Brown's Subdivision and 101.84 poles East from the Southeast corner, thence North 2 deg. 45 minutes East 91.04 poles to a stake on the North line of said Lot Number One (1) thence with said North line South 88 deg. East 101.43 poles to a stake at the Northeast corner of Lot Number One (1), thence with the East line of said Lot South 2 deg. 45 minutes West 91.58 poles to a stake at the Southeast corner of said Lot from which a sugar tree 8 inches in diameter bears South 87 deg. East 17 feet distant, thence on the South line North 87 deg. 45 minutes West 101.43 poles to a stake, thence North 2 deg. 45 minutes East 91.04 poles to the place of beginning, containing 57.78 acres, being the East half of Lot Number One (1) of Brown's survey of lands in the fourth quarter of Township 2, Range 19, United States Military Lands. Being the same premises conveyed by Esther A. Matters and Harvey E. Matters her husband, to William F. Lane and Maud Lane by deed recorded in Deed Book 575, page 495, Recorder's Office, Franklin County, Ohio.

Subject to all easements and restrictions contained in former deeds of record.

The foregoing legal description may be corrected or modified by the Department of Administrative Services to a final form if such corrections or modifications are needed to facilitate the sale(s) of all or a part of the above described property and recordation of the deed(s).

(B)(1) The conveyance(s) includes improvements situated on the real estate, and is/are subject to all easements, covenants, conditions, and restrictions of record; all legal highways and public rights-of-way; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable. The real estate shall be conveyed in an "as-is, where-is, with all faults" condition.

(2) The deed(s) for the conveyance(s) of the subject real estate described in division (A) of this section may contain restrictions, exceptions, reservations, reversionary interests, and other terms and conditions specified in the real estate purchase agreement(s) entered into by the parties, and/or the resolution(s) adopted by the Board of Trustees of the Ohio State University approving the sale(s).

(3) Subsequent to the conveyance(s), any restrictions, exceptions, reservations, reversionary interests, or other terms and conditions contained in the deed(s) may be released by the State or the Ohio State University without the necessity of further legislation.

(4) The above referenced property is known as Franklin County Parcel Number 590-159023.

(C)(1) Not later than July 31, 2018, the Ohio State University may enter into a real estate purchase agreement with the City of Columbus, Ohio, to convey the real estate described in division (A) of this section.

(2) If the Ohio State University and the City of Columbus do not enter into a real estate purchase agreement by July 31, 2018, the real estate described in division (A) of this section may be sold via real estate purchase agreement or agreements to one or more purchasers, as determined by the Board of Trustees of the Ohio State University, as an entire tract or in multiple tracts.

(D) Consideration for the conveyance(s) of the real estate described in division (A) of this section shall be a purchase price and any terms and conditions acceptable to the Board of Trustees of the Ohio State University.

(E) All costs associated with the purchase(s), the closing(s), and the conveyance(s) of the real estate described in division (A) of this section shall be paid in the manner provided for in the real estate purchase agreement(s).

(F) The net proceeds of the sale(s) shall be deposited into university accounts for purposes to be determined by the Board of Trustees of the Ohio State University.

(G) Subsequent to the effective date of this section, the Department of Administrative Services shall request the Auditor of State, with the assistance of the Attorney General, to prepare a deed(s) for the conveyance(s) of the real estate described in division (A) of this section. The deed(s) shall state the consideration and shall be executed by the Governor in the name of the State, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the City of Columbus or other purchaser(s). The City of Columbus or other purchaser(s) shall present the deed(s) for recording in the Office of the Franklin County Recorder.

(H) This section expires five years after its effective date.

SECTION 14. This act is hereby declared to be an emergency measure necessary for the

immediate preservation of the public peace, health, and safety. The reason for such necessity is to enable taxpayers to avoid making adjustments to the medical expense deduction on their 2017 tax returns that increase costs of compliance. Therefore, this act shall go into immediate effect.

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 _____