As Introduced

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H. B. No. 574

Representative Ingram
Cosponsors: Representatives Antonio, Kent

A BILL

To amend sections 5123.01, 5166.01, 5166.20, 5166.22, 5166.23, and 5166.30 of the Revised Code to permit parents and guardians to be paid for providing personal care or similar services to their children or wards enrolled in a Medicaid waiver program under certain circumstances.

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

Section 1. That sections 5123.01, 5166.01, 5166.20, 5166.22, 5166.23, and 5166.30 of the Revised Code be amended to read as follows:

Sec. 5123.01. As used in this chapter:

(A) "Chief medical officer" means the licensed physician appointed by the managing officer of an institution for persons with intellectual disabilities with the approval of the director of developmental disabilities to provide medical treatment for residents of the institution.

(B) "Chief program director" means a person with special training and experience in the diagnosis and management of

persons with developmental disabilities, certified according to division (C) of this section in at least one of the designated fields, and appointed by the managing officer of an institution for persons with intellectual disabilities with the approval of the director to provide habilitation and care for residents of the institution.

(C) "Comprehensive evaluation" means a study, including a sequence of observations and examinations, of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions if any, by a group of persons with special training and experience in the diagnosis and management of persons with developmental disabilities, which group shall include individuals who are professionally qualified in the fields of medicine, psychology, and social work, together with such other specialists as the individual case may require.

(D) "Education" means the process of formal training and instruction to facilitate the intellectual and emotional development of residents.

(E) "Habilitation" means the process by which the staff of the institution assists the resident in acquiring and maintaining those life skills that enable the resident to cope more effectively with the demands of the resident's own person and of the resident's environment and in raising the level of the resident's physical, mental, social, and vocational efficiency. Habilitation includes but is not limited to programs of formal, structured education and training.

(F) "Health officer" means any public health physician, public health nurse, or other person authorized or designated by a city or general health district.

(G) "Home and community-based services" means medicaid-funded home and community-based services specified in division (A)~~(1)~~ of section 5166.20 of the Revised Code provided under the medicaid waiver components the department of developmental disabilities administers pursuant to section 5166.21 of the Revised Code. Except as provided in section 5123.0412 of the Revised Code, home and community-based services provided under the medicaid waiver component known as the transitions developmental disabilities waiver are to be considered to be home and community-based services for the purposes of this chapter, and Chapters 5124. and 5126. of the Revised Code, only to the extent, if any, provided by the contract required by section 5166.21 of the Revised Code regarding the waiver.

(H) "ICF/IID" has the same meaning as in section 5124.01 of the Revised Code.

(I) "Indigent person" means a person who is unable, without substantial financial hardship, to provide for the payment of an attorney and for other necessary expenses of legal representation, including expert testimony.

(J) "Institution" means a public or private facility, or a part of a public or private facility, that is licensed by the appropriate state department and is equipped to provide residential habilitation, care, and treatment for persons with intellectual disabilities.

(K) "Licensed physician" means a person who holds a valid certificate issued under Chapter 4731. of the Revised Code authorizing the person to practice medicine and surgery or osteopathic medicine and surgery, or a medical officer of the government of the United States while in the performance of the officer's official duties.

(L) "Managing officer" means a person who is appointed by the director of developmental disabilities to be in executive control of an institution under the jurisdiction of the department of developmental disabilities.

(M) "Medicaid case management services" means case management services provided to an individual with a developmental disability that the state medicaid plan requires.

(N) "Intellectual disability" means a disability characterized by having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.

(O) "Person with an intellectual disability subject to institutionalization by court order" means a person eighteen years of age or older with at least a moderate level of intellectual disability and in relation to whom, because of the person's disability, either of the following conditions exists:

(1) The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community;

(2) The person needs and is susceptible to significant habilitation in an institution.

(P) "Moderate level of intellectual disability" means the condition in which a person, following a comprehensive evaluation, is found to have at least moderate deficits in overall intellectual functioning, as indicated by a full-scale intelligence quotient test score of fifty-five or below, and at

least moderate deficits in adaptive behavior, as determined in accordance with the criteria established in the fifth edition of the diagnostic and statistical manual of mental disorders published by the American psychiatric association.

(Q) "Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness, as defined in division (A) of section 5122.01 of the Revised Code.

(2) It is manifested before age twenty-two.

(3) It is likely to continue indefinitely.

(4) It results in one of the following:

(a) In the case of a person under three years of age, at least one developmental delay, as defined in rules adopted under section 5123.011 of the Revised Code, or a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay, as defined in those rules;

(b) In the case of a person at least three years of age but under six years of age, at least two developmental delays, as defined in rules adopted under section 5123.011 of the Revised Code;

(c) In the case of a person six years of age or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent

living, and, if the person is at least sixteen years of age, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

"Developmental disability" includes intellectual disability.

(R) "State institution" means an institution that is tax-supported and under the jurisdiction of the department of developmental disabilities.

(S) "Residence" and "legal residence" have the same meaning as "legal settlement," which is acquired by residing in Ohio for a period of one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code, without receiving financial assistance prior to December 31, 2017, under former Chapter 5115. of the Revised Code, or assistance from a private agency that maintains records of assistance given. A person having a legal settlement in the state shall be considered as having legal settlement in the assistance area in which the person resides. No adult person coming into this state and having a spouse or minor children residing in another state shall obtain a legal settlement in this state as long as the spouse or minor children are receiving public assistance, care, or support at the expense of the other state or its subdivisions. For the purpose of determining the legal settlement of a person who is living in a public or private institution or in a home subject to licensing by the department of job and family services, the department of mental

health and addiction services, or the department of developmental disabilities, the residence of the person shall be considered as though the person were residing in the county in which the person was living prior to the person's entrance into the institution or home. Settlement once acquired shall continue until a person has been continuously absent from Ohio for a period of one year or has acquired a legal residence in another state. A woman who marries a man with legal settlement in any county immediately acquires the settlement of her husband. The legal settlement of a minor is that of the parents, surviving parent, sole parent, parent who is designated the residential parent and legal custodian by a court, other adult having permanent custody awarded by a court, or guardian of the person of the minor, provided that:

(1) A minor female who marries shall be considered to have the legal settlement of her husband and, in the case of death of her husband or divorce, she shall not thereby lose her legal settlement obtained by the marriage.

(2) A minor male who marries, establishes a home, and who has resided in this state for one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code or assistance from a private agency that maintains records of assistance given shall be considered to have obtained a legal settlement in this state.

(3) The legal settlement of a child under eighteen years of age who is in the care or custody of a public or private child caring agency shall not change if the legal settlement of the parent changes until after the child has been in the home of the parent for a period of one year.

No person, adult or minor, may establish a legal

settlement in this state for the purpose of gaining admission to any state institution.

(T)(1) "Resident" means, subject to division (T)(2) of this section, a person who is admitted either voluntarily or involuntarily to an institution or other facility pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code subsequent to a finding of not guilty by reason of insanity or incompetence to stand trial or under this chapter who is under observation or receiving habilitation and care in an institution.

(2) "Resident" does not include a person admitted to an institution or other facility under section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code to the extent that the reference in this chapter to resident, or the context in which the reference occurs, is in conflict with any provision of sections 2945.37 to 2945.402 of the Revised Code.

(U) "Respondent" means the person whose detention, commitment, or continued commitment is being sought in any proceeding under this chapter.

(V) "Working day" and "court day" mean Monday, Tuesday, Wednesday, Thursday, and Friday, except when such day is a legal holiday.

(W) "Prosecutor" means the prosecuting attorney, village solicitor, city director of law, or similar chief legal officer who prosecuted a criminal case in which a person was found not guilty by reason of insanity, who would have had the authority to prosecute a criminal case against a person if the person had not been found incompetent to stand trial, or who prosecuted a case in which a person was found guilty.

(X) "Court" means the probate division of the court of common pleas.

(Y) "Supported living" and "residential services" have the same meanings as in section 5126.01 of the Revised Code.

Sec. 5166.01. As used in this chapter:

"209(b) option" means the option described in section 1902(f) of the "Social Security Act," 42 U.S.C. 1396a(f), under which the medicaid program's eligibility requirements for aged, blind, and disabled individuals are more restrictive than the eligibility requirements for the supplemental security income program.

"Administrative agency" means, with respect to a home and community-based services medicaid waiver component, the department of medicaid or, if a state agency or political subdivision contracts with the department under section 5162.35 of the Revised Code to administer the component, that state agency or political subdivision.

"Care management system" means the system established under section 5167.03 of the Revised Code.

"Dual eligible individual" has the same meaning as in section 5160.01 of the Revised Code.

"Expansion eligibility group" has the same meaning as in section 5163.01 of the Revised Code.

"Federal 1915(c) waiver guidance" means the instructions, technical guide, and review criteria for home and community-based services medicaid waiver components authorized by section 1915(c) of the "Social Security Act," 42 U.S.C. 1396n(c), issued by the United States centers for medicare and medicaid services.

"Federal poverty line" has the same meaning as in section 5162.01 of the Revised Code.

"Guardian" has the same meaning as in section 2111.01 of the Revised Code.

"Home and community-based services medicaid waiver component" means a medicaid waiver component under which home and community-based services are provided as an alternative to hospital services, nursing facility services, or ICF/IID services.

"Hospital" has the same meaning as in section 3727.01 of the Revised Code.

"Hospital long-term care unit" has the same meaning as in section 5168.40 of the Revised Code.

"ICDS participant" has the same meaning as in section 5164.01 of the Revised Code.

"ICF/IID" and "ICF/IID services" have the same meanings as in section 5124.01 of the Revised Code.

"Integrated care delivery system" and "ICDS" have the same meanings as in section 5164.01 of the Revised Code.

"Level of care determination" means a determination of whether an individual needs the level of care provided by a hospital, nursing facility, or ICF/IID and whether the individual, if determined to need that level of care, would receive hospital services, nursing facility services, or ICF/IID services if not for a home and community-based services medicaid waiver component.

"Medicaid buy-in for workers with disabilities program" has the same meaning as in section 5163.01 of the Revised Code.

"Medicaid provider" has the same meaning as in section 5164.01 of the Revised Code.

"Medicaid services" has the same meaning as in section 5164.01 of the Revised Code.

"Medicaid waiver component" means a component of the medicaid program authorized by a waiver granted by the United States department of health and human services under the "Social Security Act," section 1115 or 1915, 42 U.S.C. 1315 or 1396n. "Medicaid waiver component" does not include a care management system established under section 5167.03 of the Revised Code.

"Medically fragile child" means an individual who is under eighteen years of age, has intensive health care needs, and is considered blind or disabled under section 1614(a)(2) or (3) of the "Social Security Act," 42 U.S.C. 1382c(a)(2) or (3).

"Nursing facility" and "nursing facility services" have the same meanings as in section 5165.01 of the Revised Code.

"Ohio home care waiver program" means the home and community-based services medicaid waiver component that is known as Ohio home care and was created pursuant to section 5166.11 of the Revised Code.

"Provider agreement" has the same meaning as in section 5164.01 of the Revised Code.

"Residential treatment facility" means a residential facility licensed by the department of mental health and addiction services under section 5119.34 of the Revised Code, or an institution certified by the department of job and family services under section 5103.03 of the Revised Code, that serves children and either has more than sixteen beds or is part of a campus of multiple facilities or institutions that, combined,

have a total of more than sixteen beds.

"Skilled nursing facility" has the same meaning as in section 5165.01 of the Revised Code.

"Unified long-term services and support medicaid waiver component" means the medicaid waiver component authorized by section 5166.14 of the Revised Code.

Sec. 5166.20. (A) The department of medicaid ~~may~~ shall create ~~the following:~~

~~(1) One~~ one or more medicaid waiver components under which home and community-based services are provided to individuals with developmental disabilities as an alternative to placement in ICFs/IID~~;~~

~~(2) One~~ .

(B) The department may create one or more medicaid waiver components under which home and community-based services are provided in the form of any of the following:

~~(a)~~ (1) Early intervention and supportive services for children under three years of age who have developmental delays or disabilities the department determines are significant;

~~(b)~~ (2) Therapeutic services for children who have autism;

~~(c)~~ (3) Specialized habilitative services for individuals who are eighteen years of age or older and have autism.

~~(B)~~ (C) At least one of the medicaid waiver components created pursuant to division (A) of this section shall permit a parent or guardian of a medicaid recipient who is under nineteen years of age and enrolled in the component to be paid for providing to the recipient personal care or similar services, as

defined in the federal 1915(c) waiver guidance, that are covered by the component if all of the following requirements are met:

(1) The parent or guardian is employed by or under contract with a home health agency that has a provider agreement to provide home and community-based services under the medicaid waiver component.

(2) The parent or guardian is listed as currently eligible to work in a long-term care facility on the department of health's nurse aide registry established under section 3721.32 of the Revised Code.

(3) The personal care or similar services that the parent or guardian provides to the recipient are extraordinary care according to the federal 1915(c) waiver guidance.

(4) The recipient has been assessed as needing the personal care or similar services to avoid needing ICF/IID services.

(D) No medicaid waiver component created pursuant to division ~~(A)~~ (B)(2)~~(b)~~ or ~~(c)~~ (3) of this section shall provide services that are available under another medicaid waiver component. No medicaid waiver component created pursuant to division ~~(A)~~ (B)(2)~~(b)~~ of this section shall provide services to an individual that the individual is eligible to receive through an individualized education program as defined in section 3323.01 of the Revised Code.

~~(C)~~ (E) The director of developmental disabilities and director of health may request that the department of medicaid create one or more medicaid waiver components under this section.

~~(D)~~ (F) Before creating a medicaid waiver component under

this section, the department of medicaid shall seek, accept, and consider public comments.

Sec. 5166.22. (A) Subject to division (B) of this section, when the department of developmental disabilities allocates enrollment numbers to a county board of developmental disabilities for home and community-based services specified in division (A)~~(1)~~ of section 5166.20 of the Revised Code and provided under any of the medicaid waiver components that the department administers under section 5166.21 of the Revised Code, the department shall consider all of the following:

(1) The number of individuals with developmental disabilities placed on the county board's waiting list established for the services pursuant to section 5126.042 of the Revised Code;

(2) The implementation component required by division (A)(3) of section 5126.054 of the Revised Code of the county board's plan approved under section 5123.046 of the Revised Code;

(3) Anything else the department considers necessary to enable the county board to provide the services to individuals placed on the county board's waiting list established for the services pursuant to section 5126.042 of the Revised Code.

(B) Division (A) of this section applies to home and community-based services provided under the medicaid waiver component known as the transitions developmental disabilities waiver only to the extent, if any, provided by the contract required by section 5166.21 of the Revised Code regarding the component.

Sec. 5166.23. (A) Subject to division (D) of this section,

the medicaid director shall adopt rules under section 5166.02 of the Revised Code establishing the payment amounts or the methods by which the payment amounts are to be determined for home and community-based services specified in division (A)~~(1)~~ of section 5166.20 of the Revised Code and provided under the components of the medicaid program that the department of developmental disabilities administers under section 5166.21 of the Revised Code. With respect to these rules, all of the following apply:

(1) The rules shall establish procedures for the department of developmental disabilities to follow in arranging for the initial and ongoing collection of cost information from a comprehensive, statistically valid sample of persons and government entities providing the services at the time the information is obtained.

(2) The rules shall establish procedures for the collection of consumer-specific information through an assessment instrument the department of developmental disabilities shall provide to the department of medicaid.

(3) With the information collected pursuant to divisions (A)(1) and (2) of this section, an analysis of that information, and other information the director determines relevant, the rules shall establish payment standards that do all of the following:

(a) Assure that payment amounts are consistent with efficiency, economy, and quality of care;

(b) Consider the intensity of consumer resource need;

(c) Recognize variations in different geographic areas regarding the resources necessary to assure the health and welfare of consumers;

(d) Recognize variations in environmental supports available to consumers.

(B) As part of the process of adopting rules authorized by this section, the director shall consult with the director of developmental disabilities, representatives of county boards of developmental disabilities, persons who provide the home and community-based services, and other persons and government entities the director identifies.

(C) The medicaid director and director of developmental disabilities shall review the rules authorized by this section at times they determine are necessary to ensure that the payment amounts or the methods by which the payment amounts are to be determined continue to meet the payment standards established under division (A)(3) of this section.

(D) This section applies to home and community-based services provided under the medicaid waiver component known as the transitions developmental disabilities waiver only to the extent, if any, provided by the contract required by section 5166.21 of the Revised Code regarding the component.

Sec. 5166.30. (A) As used in sections 5166.30 to 5166.3010 of the Revised Code:

(1) "Adult" means an individual at least eighteen years of age.

(2) "Appropriate director" means the following:

(a) The medicaid director in the context of both of the following:

(i) The Ohio home care waiver program, unless it is terminated pursuant to section 5166.12 of the Revised Code;

(ii) The integrated care delivery system medicaid waiver component authorized by section 5166.16 of the Revised Code.

(b) The director of aging in the context of the medicaid-funded component of the PASSPORT program, unless it is terminated pursuant to division (C) of section 173.52 of the Revised Code.

(3) "Authorized representative" means the following:

(a) In the case of a consumer who is a minor, the consumer's parent, custodian, or guardian;

(b) In the case of a consumer who is an adult, an individual selected by the consumer pursuant to section 5166.3010 of the Revised Code to act on the consumer's behalf for purposes regarding home care attendant services.

(4) "Authorizing health care professional" means a health care professional who, pursuant to section 5166.307 of the Revised Code, authorizes a home care attendant to assist a consumer with self-administration of medication, nursing tasks, or both.

(5) "Consumer" means an individual to whom all of the following apply:

(a) The individual is enrolled in a participating medicaid waiver component.

(b) The individual has a medically determinable physical impairment to which both of the following apply:

(i) It is expected to last for a continuous period of not less than twelve months.

(ii) It causes the individual to require assistance with

activities of daily living, self-care, and mobility, including either assistance with self-administration of medication or the performance of nursing tasks, or both.

(c) In the case of an individual who is an adult, the individual is mentally alert and is, or has an authorized representative who is, capable of selecting, directing the actions of, and dismissing a home care attendant.

(d) In the case of an individual who is a minor, the individual has an authorized representative who is capable of selecting, directing the actions of, and dismissing a home care attendant.

(6) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(7) "Custodian" has the same meaning as in section 2151.011 of the Revised Code.

(8) "Gastrostomy tube" means a percutaneously inserted catheter that terminates in the stomach.

(9) ~~"Guardian" has the same meaning as in section 2111.01 of the Revised Code.~~

~~(10)~~ "Health care professional" means a physician or registered nurse.

~~(11)~~ (10) "Home care attendant" means an individual holding a valid provider agreement in accordance with section 5166.301 of the Revised Code that authorizes the individual to provide home care attendant services to consumers.

~~(12)~~ (11) "Home care attendant services" means all of the following as provided by a home care attendant:

(a) Personal care aide services;

(b) Assistance with the self-administration of medication;

(c) Assistance with nursing tasks.

~~(13)~~ (12) "Jejunostomy tube" means a percutaneously inserted catheter that terminates in the jejunum.

~~(14)~~ (13) "Medication" means a drug as defined in section 4729.01 of the Revised Code.

~~(15)~~ (14) "Minor" means an individual under eighteen years of age.

~~(16)~~ (15) "Participating medicaid waiver component" means all of the following:

(a) The medicaid-funded component of the PASSPORT program, unless it is terminated pursuant to division (C) of section 173.52 of the Revised Code;

(b) The Ohio home care waiver program, unless it is terminated pursuant to section 5166.12 of the Revised Code;

(c) The integrated care delivery system medicaid waiver component authorized by section 5166.16 of the Revised Code.

~~(17)~~ (16) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

~~(18)~~ (17) "Practice of nursing as a registered nurse," "practice of nursing as a licensed practical nurse," and "registered nurse" have the same meanings as in section 4723.01 of the Revised Code. "Registered nurse" includes an advanced practice registered nurse, as defined in section 4723.01 of the Revised Code.

~~(19)~~ (18) "Schedule II," "schedule III," "schedule IV," and "schedule V" have the same meanings as in section 3719.01 of the Revised Code.

(B) Participating medicaid waiver components may cover home care attendant services in accordance with sections 5166.30 to 5166.3010 of the Revised Code and rules adopted under section 5166.02 of the Revised Code.

Section 2. That existing sections 5123.01, 5166.01, 5166.20, 5166.22, 5166.23, and 5166.30 of the Revised Code are hereby repealed.