

alternative month-to-month rental agreement offered to current and prospective tenants and owners. The park operator shall offer the minimum one-year rental agreement to the owner prior to installation of the home in the manufactured home park or, if the home is in the manufactured home park, prior to the expiration of the owner's existing rental agreement.

(2) The park operator shall deliver the offer to the owner by certified mail, return receipt requested, or in person. If the park operator delivers the offer to the owner in person, the owner shall complete a return showing receipt of the offer. If the owner does not accept the offer, the park operator is discharged from any obligation to make any further such offers. If the owner accepts the offer, the park operator shall, at the expiration of each successive rental agreement, offer the owner another rental agreement, for a term that is mutually agreed upon, and that contains terms essentially the same as the alternative month-to-month agreement. The park operator shall deliver subsequent rental offers by ordinary mail or personal delivery. If the park operator sells the manufactured home park to another manufactured home park operator, the purchaser is bound by the rental agreements entered into by the purchaser's predecessor.

(3) If the park operator sells the manufactured home park for a use other than as a manufactured home park, the park operator shall give each tenant and owner a written notification by certified mail, return receipt requested, or by handing it to the tenant or owner in person. If the park operator delivers the notification in person, the recipient shall complete a return showing receipt of the notification. This notification shall contain notice of the sale of the manufactured home park, and notice of the date by which the tenant or owner shall vacate. The date by which the tenant shall vacate shall be at least one hundred twenty days after receipt of the written notification, and the date by which the owner shall vacate shall be at least one hundred eighty days after receipt of the written notification.

(B) A park operator shall fully disclose in writing all fees, charges, assessments, including rental fees, and rules prior to a tenant or owner executing a rental agreement and assuming occupancy in the manufactured home park. No fees, charges, assessments, or rental fees so disclosed may be increased nor rules changed by a park operator without specifying the date of implementation of the changed fees, charges, assessments, rental fees, or rules, which date shall be not less than thirty days after written notice of the change and its effective date to all tenants or owners in the manufactured home park, and no fee, charge, assessment, or rental fee shall be increased during the term of any tenant's or owner's rental agreement. Failure on the part of the park operator to fully disclose all fees, charges, or assessments

shall prevent the park operator from collecting the undisclosed fees, charges, or assessments. If a tenant or owner refuses to pay any undisclosed fees, charges, or assessments, the refusal shall not be used by the park operator as a cause for eviction in any court.

(C) A park operator shall promulgate rules governing the rental or occupancy of a lot in the manufactured home park. The rules shall not be unreasonable, arbitrary, or capricious. A copy of the rules and any amendments to them shall be delivered by the park operator to the tenant or owner prior to signing the rental agreement. A copy of the rules and any amendments to them shall be posted in a conspicuous place upon the manufactured home park grounds.

(D) No park operator shall require an owner to purchase from the park operator any personal property. The park operator may determine by rule the style or quality of skirting, equipment for tying down homes, manufactured or mobile home accessories, or other equipment to be purchased by an owner from a vendor of the owner's choosing, provided that the equipment is readily available to the owner. Any such equipment shall be installed in accordance with the manufactured home park rules.

(E) No park operator shall charge any owner who chooses to install an electric or gas appliance in a home an additional fee solely on the basis of the installation, unless the installation is performed by the park operator at the request of the owner, nor shall the park operator restrict the installation, service, or maintenance of the appliance, restrict the ingress or egress of repairpersons to the manufactured home park for the purpose of installation, service, or maintenance of the appliance, nor restrict the making of any interior improvement in a home, if the installation or improvement is in compliance with applicable building codes and other provisions of law and if adequate utility services are available for the installation or improvement.

(F) No park operator shall require a tenant to lease or an owner to purchase a manufactured or mobile home from the park operator or any specific person as a condition of or prerequisite to entering into a rental agreement.

(G) No park operator shall require an owner to use the services of the park operator or any other specific person for installation of the manufactured or mobile home on the residential premises or for the performance of any service.

(H) No park operator shall:

(1) Deny any owner the right to sell the owner's manufactured home within the manufactured home park if the owner gives the park operator ten days' notice of the intention to sell the home;

(2) Require the owner to remove the home from the manufactured home park solely on the basis of the sale of the home;

(3) Unreasonably refuse to enter into a rental agreement with a purchaser of a home located within the operator's manufactured home park;

(4) Charge any tenant or owner any fee, charge, or assessment, including a rental fee, that is not set forth in the rental agreement or, if the rental agreement is oral, is not set forth in a written disclosure given to the tenant or owner prior to the tenant or owner entering into a rental agreement;

(5) Charge any owner any fee, charge, or assessment because of the transfer of ownership of a home or because a home is moved out of or into the manufactured home park, except a charge for the actual costs and expenses that are incurred by the park operator in moving the home out of or into the manufactured home park, or in installing the home in the manufactured home park and that have not been reimbursed by another tenant or owner.

(I) If the park operator violates any provision of divisions (A) to (H) of this section, the tenant or owner may recover actual damages resulting from the violation, and, if the tenant or owner obtains a judgment, reasonable attorneys' fees, or terminate the rental agreement.

(J) No rental agreement shall require a tenant or owner to sell, lease, or sublet the tenant's or owner's interest in the rental agreement or the manufactured or mobile home that is or will be located on the lot that is the subject of the rental agreement to any specific person or through any specific person as the person's agent.

(K) No park operator shall enter into a rental agreement with the owner of a manufactured or mobile home for the use of residential premises, if the rental agreement requires the owner of the home, as a condition to the owner's renting, occupying, or remaining on the residential premises, to pay the park operator or any other person specified in the rental agreement a fee or any sum of money based on the sale of the home, unless the owner of the home uses the park operator or other person as the owner's agent in the sale of the home.

(L) A park operator and a tenant or owner may include in a rental agreement any terms and conditions, including any term relating to rent, the duration of an agreement, and any other provisions governing the rights and obligations of the parties that are not inconsistent with or prohibited by sections 3733.09 to 3733.20 of the Revised Code or any other rule of law.

(M) Notwithstanding any other provision of the Revised Code, the owner of a manufactured or mobile home ~~that was previously titled by a dealer~~ may utilize the services of a manufactured ~~home~~ housing dealer or

broker licensed under Chapter ~~4517. 4781.~~ of the Revised Code or a person properly licensed under Chapter 4735. of the Revised Code to sell or lease the home.

Sec. ~~3733.12 4781.41.~~ (A) If a park operator fails to fulfill any obligation imposed upon ~~him~~ the park operator by section ~~3733.10 4781.38~~ of the Revised Code or by the rental agreement, or the conditions of the premises are such that the resident reasonably believes that a park operator has failed to fulfill any such obligations, or a governmental agency has found that the premises are not in compliance with building, housing, health, or safety codes which apply to any condition of the residential premises that could materially affect the health and safety of an occupant, the resident may give notice in writing to the park operator specifying the acts, omissions, or code violations that constitute noncompliance with such provisions. The notice shall be sent to the person or place where rent is normally paid.

(B) If a park operator receives the notice described in division (A) of this section and after receipt of the notice fails to remedy the condition within a reasonable time, considering the severity of the condition and the time necessary to remedy such condition, or within thirty days, whichever is sooner, and if the resident is current in rent payments due under the rental agreement, the resident may do one of the following:

(1) Deposit all rent that is due and thereafter becomes due the park operator with the clerk of court of the municipal or county court having jurisdiction in the territory in which the residential premises are located;

(2) Apply to the court for an order directing the park operator to remedy the condition. As part thereof, the resident may deposit rent pursuant to division (B)(1) of this section, and may apply for an order reducing the periodic rent due the park operator until such time as the park operator does remedy the condition, and may apply for an order to use the rent deposited to remedy the condition. In any order issued pursuant to this division, the court may require the resident to deposit rent with the clerk of court as provided in division (B)(1) of this section.

Sec. ~~3733.12 4781.42.~~ (A) Whenever a resident deposits rent with the clerk of a court as provided in section ~~3733.12 4781.41~~ of the Revised Code, the clerk shall give written notice of this fact to the park operator and to ~~his~~ the park operator's agent, if any.

(B) The clerk shall place all rent deposited with ~~him~~ the clerk in a separate rent escrow account in the name of the clerk in a bank or building and loan association domiciled in this state.

(C) The clerk shall keep in a separate docket an account of each deposit,

with the name and address of the resident, and the name and address of the park operator and of ~~his~~ the park operator's agent, if any.

(D) For ~~his~~ the clerk's costs, the clerk may charge a fee of one per cent of the amount of the rent deposited, which shall be assessed as court costs.

(E) All interest that has accrued on the rent deposited by the clerk of a county court under division (B) of this section shall be paid into the treasury of the political subdivision for which the clerk performs ~~his~~ the clerk's duties. All interest that has accrued on the rent deposited by the clerk of a municipal court under division (B) of this section shall be paid into the city treasury as defined in division (B) of section 1901.03 of the Revised Code.

Sec. ~~3733.122~~ 4781.43. (A) A park operator who receives notice that rent due ~~him~~ the park operator has been deposited with a clerk of court pursuant to section ~~3733.12~~ 4781.41 of the Revised Code, may:

(1) Apply to the clerk of court for release of the rent on the ground that the condition contained in the notice given pursuant to division (A) of section ~~3733.12~~ 4781.41 of the Revised Code has been remedied. The clerk shall forthwith release the rent, less costs, to the park operator if the resident gives written notice to the clerk that the condition has been remedied.

(2) Apply to the court for release of the rent on the grounds that the resident did not comply with the notice requirement of division (A) of section ~~3733.12~~ 4781.41 of the Revised Code, or that the resident was not current in rent payments due under the rental agreement at the time the resident initiated rent deposits with the clerk of courts under division (B)(1) of section ~~3733.12~~ 4781.41 of the Revised Code;

(3) Apply to the court for release of the rent on the grounds that there was no violation of any obligation imposed upon the park operator by section ~~3733.10~~ 4781.38 of the Revised Code or by the rental agreement, or by any building, housing, health, or safety code, or that the condition contained in the notice given pursuant to division (A) of section ~~3733.12~~ 4781.41 of the Revised Code has been remedied.

(B) The resident shall be named as a party to any action filed by the park operator under this section, and shall have the right to file an answer and counterclaim, as in other civil cases. A trial shall be held within sixty days of the date of filing of the park operator's complaint, unless for good cause shown the court grants a continuance.

(C) If the court finds that there was no violation of any obligation imposed upon the park operator by section ~~3733.10~~ 4781.38 of the Revised Code or by the rental agreement, or by any building, housing, health, or safety code, or that the condition contained in the notice given pursuant to division (A) of section ~~3733.12~~ 4781.41 of the Revised Code has been

remedied, or that the resident did not comply with the notice requirement of division (A) of section ~~3733.12~~ 4781.41 of the Revised Code, or that the resident was not current in rent payments at the time the resident initiated rent deposits with the clerk of court under division (B)(1) of section ~~3733.12~~ 4781.41 of the Revised Code, the court shall order the release to the park operator of rent on deposit with the clerk, less costs.

(D) If the court finds that the condition contained in the notice given pursuant to division (A) of section ~~3733.12~~ 4781.41 of the Revised Code was the result of an act or omission of the resident, or that the resident intentionally acted in bad faith in proceeding under section ~~3733.12~~ 4781.41 of the Revised Code, the resident shall be liable for damages caused to the park operator, and for costs, together with reasonable attorneys' fees if the resident intentionally acted in bad faith.

Sec. ~~3733.123~~ 4781.44. (A) If a park operator brings an action for the release of rent deposited with a clerk of court, the court may, during the pendency of the action, upon application of the park operator, release part of the rent on deposit for payment of the periodic interest on a mortgage on the premises, the periodic principal payments on a mortgage on the premises, the insurance premiums for the premises, real estate taxes on the premises, utility services, repairs, and other customary and usual costs of operating the premises.

(B) In determining whether to release rent for the payments described in division (A) of this section, the court shall consider the amount of rent the park operator receives from other lots, the cost of operating these lots, and the costs which may be required to remedy the condition contained in the notice given pursuant to division (A) of section ~~3733.12~~ 4781.41 of the Revised Code.

Sec. ~~3733.13~~ 4781.45. If a resident commits a material violation of the rules of the manufactured home park, of the ~~public health council~~ manufactured homes commission, or of applicable state and local health and safety codes, the park operator may deliver a written notification of the violation to the resident. The notification shall contain all of the following:

(A) A description of the violation;

(B) A statement that the rental agreement will terminate upon a date specified in the written notice not less than thirty days after receipt of the notice unless the resident remedies the violation;

(C) A statement that the violation was material and that if a second material violation of any park or ~~public health council~~ commission rule, or any health and safety code, occurs within six months after the date of this notice, the rental agreement will terminate immediately;

(D) A statement that a defense available to termination of the rental agreement for two material violations of park or ~~public health council~~ commission rules, or of health and safety codes, is that the park rule is unreasonable, or that the park or ~~public health council~~ commission rule, or health or safety code, is not being enforced against other manufactured home park residents, or that the two violations were not willful and not committed in bad faith.

If the resident remedies the condition described in the notice, whether by repair, the payment of damages, or otherwise, the rental agreement shall not terminate. The park operator may terminate the rental agreement immediately if the resident commits a second material violation of the park or ~~public health council~~ commission rules, or of applicable state and local health and safety codes, subject to the defense that the park rule is unreasonable, that the park or ~~public health council~~ commission rule, or health or safety code, is not being enforced against other manufactured home park residents, or that the two violations were not willful and not committed in bad faith.

Sec. ~~3733.14~~ 4781.46. In any action under sections ~~3733.09~~ 4781.36 to ~~3733.20~~ 4781.52 of the Revised Code, any party may recover damages for the breach of contract or the breach of any duty that is imposed by law.

Sec. ~~3733.15~~ 4781.47. (A) No provision of sections ~~3733.09~~ 4781.36 to ~~3733.20~~ 4781.52 of the Revised Code may be modified or waived by any oral or written agreement except as provided in division (F) of this section.

(B) No warrant of attorney to confess judgment shall be recognized in any rental agreement or in any other agreement between a park operator and resident for the recovery of rent or damages to the residential premises.

(C) No agreement to pay the park operator's or resident's attorney fees shall be recognized in any rental agreement for residential premises or in any other agreement between a park operator and resident.

(D) No agreement by a resident to the exculpation or limitation of any liability of the park operator arising under law or to indemnify the park operator for that liability or its related costs shall be recognized in any rental agreement or in any other agreement between a park operator and resident.

(E) A rental agreement, or the assignment, conveyance, trust deed, or security instrument of the park operator's interest in the rental agreement may not permit the receipt of rent free of the obligation to comply with section ~~3733.10~~ 4781.38 of the Revised Code.

(F) The park operator may agree to assume responsibility for fulfilling any duty or obligation imposed on a resident by section ~~3733.101~~ 4781.39 of the Revised Code.

Sec. ~~3733.16~~ 4781.48. (A) If the court as a matter of law finds a rental agreement, or any clause of it, to have been unconscionable at the time it was made, it may refuse to enforce the rental agreement or it may enforce the remainder of the rental agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(B) When it is claimed or appears to the court that the rental agreement, or any clause of it, may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

Sec. ~~3733.17~~ 4781.49. (A) No park operator of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises, or threat of any unlawful act, against a resident, or a resident whose right to possession has terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapters 1923., ~~3733.4781.~~ and 5303. of the Revised Code.

(B) No park operator of residential premises shall seize the furnishings or possessions of a resident, or of a resident whose right to possession was terminated, for the purpose of recovering rent payments, other than in accordance with an order issued by a court of competent jurisdiction.

(C) A park operator who violates this section is liable in a civil action for all damages caused to a resident, or to a resident whose right to possession has terminated, together with reasonable attorneys' fees.

Sec. ~~3733.18~~ 4781.50. (A) Any security deposit in excess of fifty dollars or one month's periodic rent, whichever is greater, shall bear interest on the excess at the rate of five per cent per annum if the resident remains in possession of the premises for six months or more, and shall be computed and paid annually by the park operator to the resident.

(B) Upon termination of the rental agreement any property or money held by the park operator as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the park operator has suffered by reason of the resident's noncompliance with section ~~3733.104~~ 4781.39 of the Revised Code or the rental agreement. Any deduction from the security deposit shall be itemized and identified by the park operator in a written notice delivered to the resident together with the amount due, within thirty days after termination of the rental agreement and delivery of possession. The resident shall provide the park operator in writing with a forwarding address or new address to which the written notice and amount due from the park operator may be sent. If the resident fails to provide the park operator with the forwarding or new address as

required, the resident shall not be entitled to damages or attorneys' fees under division (C) of this section.

(C) If the park operator fails to comply with division (B) of this section, the resident may recover the property and money due ~~him~~ the resident, together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys' fees.

Sec. ~~3733.19~~ 4781.51. (A) Every written rental agreement for residential premises shall contain the name and address of the owner of the residential premises and the name and address of the owner's agent, if any. If the owner or the owner's agent is a corporation, partnership, limited partnership, association, trust, or other entity, the address shall be the principal place of business in the county in which the residential premises are situated or if there is no place of business in such county then its principal place of business in this state, and shall include the name of the person in charge thereof.

(B) If the rental agreement is oral, the park operator, at the commencement of the term of occupancy, shall deliver to the resident a written notice containing the information required in division (A) of this section.

(C) If the park operator fails to provide the notice of the name and address of the owner and owner's agent, if any, as required under division (A) or (B) of this section, the notices to the park operator required under division (A) of sections ~~3733.12~~ 4781.41 and ~~3733.121~~ 4781.42 of the Revised Code are waived by the park operator and the operator's agent.

(D) Every written rental agreement for residential premises shall contain the following notice in ten-point boldface type:

"YOUR RIGHTS AS A RESIDENT AND YOUR MANUFACTURED HOME PARK OPERATOR'S RIGHTS ARE PROTECTED BY SECTIONS ~~3733.09~~ 4781.36 TO ~~3733.20~~ 4781.52 OF THE REVISED CODE, WHICH REGULATE RENTAL AGREEMENTS IN MANUFACTURED HOME PARKS."

If the rental agreement is oral, the park operator, at the commencement of the term of occupancy, shall deliver the notice to the resident in writing.

Sec. ~~3733.20~~ 4781.52. No municipal corporation may adopt or continue in existence any ordinance and no township may adopt or continue in existence any resolution that is in conflict with sections ~~3733.09~~ 4781.36 to ~~3733.20~~ 4781.52 of the Revised Code, or that regulates those rights and obligations of parties to a rental agreement that are regulated by sections ~~3733.09~~ 4781.36 to ~~3733.20~~ 4781.52 of the Revised Code. Sections ~~3733.09~~ 4781.36 to ~~3733.20~~ 4781.52 of the Revised Code do not preempt any

housing, building, health, or safety codes of any municipal corporation or township.

Sec. 4781.54. There is hereby created in the state treasury the manufactured homes commission regulatory fund. The fund shall consist of fees collected under section 4781.121 of the Revised Code and fees paid under section 4781.28 of the Revised Code and shall be used for the purposes described in those sections.

Sec. 4781.99. (A) Whoever violates division (A) of section 4781.16 of the Revised Code is guilty of a minor misdemeanor on a first offense and shall be subject to a mandatory fine of one hundred dollars. On a second offense, the person is guilty of a misdemeanor of the first degree and shall be subject to a mandatory fine of one thousand dollars.

(B) Whoever violates section 4781.20 of the Revised Code is guilty of a minor misdemeanor.

(C) Whoever violates any of the following is guilty of a misdemeanor of the fourth degree:

- (1) Division (B) or (C) of section 4781.16 of the Revised Code;
- (2) Section 4781.22 of the Revised Code;
- (3) Section 4781.23 of the Revised Code;
- (4) Division (A) of section 4781.24 of the Revised Code;
- (5) Section 4781.25 of the Revised Code;
- (6) Division (A) of section 4781.35 of the Revised Code.

Sec. 4905.01. As used in this chapter:

(A) "Railroad" has the same meaning as in section 4907.02 of the Revised Code.

(B) ~~"Motor transportation company carrier"~~ "carrier" has the same meaning as in ~~sections 4905.03 and 4921.02~~ section 4923.01 of the Revised Code.

(C) ~~"Trailer Motor vehicle"~~ "Motor vehicle" and "public highway" have the same meanings as in ~~section 4921.02~~ section 4921.01 of the Revised Code.

(D) ~~"Private motor carrier" and "motor vehicle" have the same meanings as in section 4923.02 of the Revised Code.~~

~~(E)~~ "Ohio coal research and development costs" means all reasonable costs associated with a facility or project undertaken by a public utility for which a recommendation to allow the recovery of costs associated therewith has been made under division (B)(7) of section 1551.33 of the Revised Code, including, but not limited to, capital costs, such as costs of debt and equity; construction and operation costs; termination and retirement costs; costs of feasibility and marketing studies associated with the project; and the acquisition and delivery costs of Ohio coal used in the project, less any expenditures of grant moneys.

Sec. 4905.02. (A) As used in this chapter, "public utility" includes every corporation, company, copartnership, person, or association, the lessees, trustees, or receivers of the foregoing, defined in section 4905.03 of the Revised Code, including any public utility that operates its utility not for profit, except the following:

~~(A)~~(1) An electric light company that operates its utility not for profit;

~~(B)~~(2) A public utility, other than a telephone company, that is owned and operated exclusively by and solely for the utility's customers, including any consumer or group of consumers purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas exclusively by and solely for the consumer's or consumers' own intended use as the end user or end users and not for profit;

~~(C)~~(3) A public utility that is owned or operated by any municipal corporation;

~~(D)~~(4) A railroad as defined in sections 4907.02 and 4907.03 of the Revised Code;

~~(E)~~(5) Any provider, including a telephone company, with respect to its provision of any of the following:

~~(1)~~(a) Advanced services as defined in 47 C.F.R. 51.5;

~~(2)~~(b) Broadband service, however defined or classified by the federal communications commission;

~~(3)~~(c) Information service as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20);

~~(4)~~(d) Subject to division (A) of section 4927.03 of the Revised Code, internet protocol-enabled services as defined in section 4927.01 of the Revised Code;

~~(5)~~(e) Subject to division (A) of section 4927.03 of the Revised Code, any telecommunications service as defined in section 4927.01 of the Revised Code to which both of the following apply:

~~(a)~~(i) The service was not commercially available on September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

~~(b)~~(ii) The service employs technology that became available for commercial use only after September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(B)(1) "Public utility" includes a for-hire motor carrier even if the carrier is operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section.

(2) Division (A) of this section shall not be construed to relieve a private motor carrier, operated in connection with an entity described in division

(A)(1), (2), (4), or (5) of this section, from compliance with any of the following:

(a) Chapter 4923. of the Revised Code;

(b) Hazardous-material regulation under section 4921.15 of the Revised Code and division (H) of section 4921.19 of the Revised Code, or rules adopted thereunder;

(c) Rules governing unified carrier registration adopted under section 4921.11 of the Revised Code.

Sec. 4905.03. As used in this chapter:

~~(A)~~ Any ~~any~~ person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:

~~(1)(A)~~ A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state;

~~(2)(B)~~ A for-hire motor transportation company carrier, when engaged in the business of ~~carrying and~~ transporting persons or property ~~or the business of providing or furnishing such transportation service, for hire, in or by motor-propelled vehicles of any kind, including trailers, for the public in general, over any public street, road, or highway in this state~~ vehicle for compensation, except as provided when engaged in any of the operations in intrastate commerce described in divisions (B)(1) to (9) of section 4921.02 4921.01 of the Revised Code, but including the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories;

~~(3)(C)~~ An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the federal energy regulatory commission;

~~(4)(D)~~ A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other

gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission.

~~(5)~~(E) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state. Notwithstanding the above, neither the delivery nor sale of Ohio-produced natural gas by a producer or gatherer under a public utilities commission-ordered exemption, adopted before, as to producers, or after, as to producers or gatherers, January 1, 1996, or the delivery or sale of Ohio-produced natural gas by a producer or gatherer of Ohio-produced natural gas, either to a lessor under an oil and gas lease of the land on which the producer's drilling unit is located, or the grantor incident to a right-of-way or easement to the producer or gatherer, shall cause the producer or gatherer to be a natural gas company for the purposes of this section.

All rates, rentals, tolls, schedules, charges of any kind, or agreements between a natural gas company and other natural gas companies or gas companies providing for the supply of natural gas and for compensation for the same are subject to the jurisdiction of the public utilities commission. The commission, upon application made to it, may relieve any producer or gatherer of natural gas, defined in this section as a gas company or a natural gas company, of compliance with the obligations imposed by this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, so long as the producer or gatherer is not affiliated with or under the control of a gas company or a natural gas company engaged in the transportation or distribution of natural gas, or so long as the producer or gatherer does not engage in the distribution of natural gas to consumers.

Nothing in division ~~(A)~~~~(5)~~(E) of this section limits the authority of the commission to enforce sections 4905.90 to 4905.96 of the Revised Code.

~~(6)~~(F) A pipe-line company, when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state;

~~(7)~~(G) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

~~(8)~~(H) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes;

~~(9)~~(I) A messenger company, when engaged in the business of supplying messengers for any purpose;

(10)(J) A street railway company, when engaged in the business of operating as a common carrier, a railway, wholly or partly within this state, with one or more tracks upon, along, above, or below any public road, street, alleyway, or ground, within any municipal corporation, operated by any motive power other than steam and not a part of an interurban railroad, whether the railway is termed street, inclined-plane, elevated, or underground railway;

(11)(K) A suburban railroad company, when engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad;

(12)(L) An interurban railroad company, when engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipal corporations, using electricity or other motive power than steam power for the transportation of passengers, packages, express matter, United States mail, baggage, and freight. Such an interurban railroad company is included in the term "railroad" as used in section 4907.02 of the Revised Code.

(13)(M) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state.

(B) ~~"Motor propelled vehicle" means any automobile, automobile truck, motor bus, or any other self propelled vehicle not operated or driven upon fixed rails or tracks.~~

Sec. 4905.05. The jurisdiction, supervision, powers, and duties of the public utilities commission extend to every public utility and railroad, the plant or property of which lies wholly within this state and when the property of a public utility or railroad lies partly within and partly without this state to that part of such plant or property which lies within this state; to the persons or companies owning, leasing, or operating such public utilities and railroads; to the records and accounts of the business thereof done within this state; and to the records and accounts of any companies which are part of an electric utility holding company system exempt under section 3(a)(1) or (2) of the "Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 U.S.C. 79c, and the rules and regulations promulgated thereunder, insofar as such records and accounts may in any way affect or relate to the costs associated with the provision of electric utility service by any public utility operating in this state and part of such holding company system.

Nothing in this section, or section 4905.06 or 4905.46 of the Revised Code pertaining to regulation of holding companies, grants the public utilities commission authority to regulate a holding company or its subsidiaries which are organized under the laws of another state, render no public utility service in the state of Ohio, and are regulated as a public utility by the public utilities commission of another state or primarily by a federal regulatory commission, nor do these grants of authority apply to public utilities that are excepted from the definition of "public utility" under divisions (A)(1) to (C)(3) of section 4905.02 of the Revised Code.

Sec. 4905.06. The public utilities commission has general supervision over all public utilities within its jurisdiction as defined in section 4905.05 of the Revised Code, and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, orders of the commission, franchises, and charter requirements. The commission has general supervision over all other companies referred to in section 4905.05 of the Revised Code to the extent of its jurisdiction as defined in that section, and may examine such companies and keep informed as to their general condition and capitalization, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, and their compliance with all laws and orders of the commission, insofar as any of such matters may relate to the costs associated with the provision of electric utility service by public utilities in this state which are affiliated or associated with such companies. The commission, through the public utilities commissioners or inspectors or employees of the commission authorized by it, may enter in or upon, for purposes of inspection, any property, equipment, building, plant, factory, office, apparatus, machinery, device, and lines of any public utility. The power to inspect includes the power to prescribe any rule or order that the commission finds necessary for protection of the public safety. In order to assist the commission in the performance of its duties under this chapter, authorized employees of the motor carrier enforcement unit, created under section 5503.34 of the Revised Code in the division of state highway patrol, of the department of public safety may enter in or upon, for inspection purposes, any motor vehicle of any ~~motor transportation company or private motor carrier as defined in section 4923.02 of the Revised Code.~~

In order to inspect motor vehicles owned or operated by a motor

~~transportation company~~ carrier engaged in the transportation of persons, authorized employees of the motor carrier enforcement unit, division of state highway patrol, of the department of public safety may enter in or upon any property of any motor ~~transportation company, as defined in section 4921.02 of the Revised Code,~~ carrier engaged in the intrastate transportation of persons.

Sec. 4905.402. (A) As used in this section:

(1) "Control" means the possession of the power to direct the management and policies of a domestic telephone company or a holding company of a domestic telephone company, or the management and policies of a domestic electric utility or a holding company of a domestic electric utility, through the ownership of voting securities, by contract, or otherwise, but does not include the power that results from holding an official position or the possession of corporate office with the domestic company or utility or the holding company. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds the power to vote, or holds with the power to vote proxies that constitute, twenty per cent or more of the total voting power of the domestic company or utility or the holding company.

(2) "Electric utility" has the same meaning as in section 4928.07 of the Revised Code.

(3) "Holding company" excludes any securities broker performing the usual and customary broker's function.

(4) "Telephone company" means any company described in division (A)(1) of section 4905.03 of the Revised Code that is a public utility under section 4905.02 of the Revised Code and provides basic local exchange service, as defined in section 4927.01 of the Revised Code.

(B) No person shall acquire control, directly or indirectly, of a domestic telephone company or a holding company controlling a domestic telephone company or of a domestic electric utility or a holding company controlling a domestic electric utility unless that person obtains the prior approval of the public utilities commission under this section. To obtain approval the person shall file an application with the commission demonstrating that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge. The application shall contain such information as the commission may require. If the commission considers a hearing necessary, it may fix a time and place for hearing. If, after review of the application and after any necessary hearing, the commission is satisfied that approval of the application will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge, the commission shall approve the

application and make such order as it considers proper. If the commission fails to issue an order within thirty days of the filing of the application, or within twenty days of the conclusion of a hearing, if one is held, the application shall be deemed approved by operation of law.

(C) No domestic telephone company shall merge with another domestic telephone company unless the merging companies obtain the prior approval of the commission. An application seeking such approval shall be filed, processed, and decided in the manner provided for an application under division (B) of this section.

(D) The commission shall adopt such rules as it finds necessary to carry out the provisions of this section.

(E) If it appears to the commission or to any person that may be adversely affected that any person is engaged in or about to engage in any acts or practices that would violate division (B) or (C) of this section or any provision of a rule adopted under this section, the attorney general, when directed to do so by the commission, or the person claiming to be adversely affected may bring an action in any court of common pleas that has jurisdiction and venue to enjoin such acts or practices and enforce compliance. Upon a proper showing, the court shall grant, without bond, a restraining order or temporary or permanent injunction.

(F) The courts of this state have jurisdiction over every person not a resident of or domiciled or authorized to do business in this state that files, or is prohibited from acting without first filing, an application under division (B) or (C) of this section, and over all actions involving such person arising out of violations of any provision of this section or of a rule adopted under this section. The secretary of state shall be the agent for service of process for any such person in any action, suit, or proceeding arising out of such violations. Copies of all such lawful process shall be served upon the secretary of state and transmitted by certified mail, with return receipt requested, by the secretary of state to such person at the person's last known address.

Sec. 4905.54. Every public utility or railroad and every officer of a public utility or railroad shall comply with every order, direction, and requirement of the public utilities commission made under authority of this chapter and Chapters 4901., 4903., 4907., and 4909., ~~4921., and 4923.~~ of the Revised Code, so long as they remain in force. Except as otherwise specifically provided in ~~sections 4905.83, section 4905.95, 4919.99, 4921.99, and 4923.99~~ of the Revised Code, the public utilities commission may assess a forfeiture of not more than ten thousand dollars for each violation or failure against a public utility or railroad that violates a

provision of those chapters or that after due notice fails to comply with an order, direction, or requirement of the commission that was officially promulgated. Each day's continuance of the violation or failure is a separate offense. All forfeitures collected under this section shall be credited to the general revenue fund.

Sec. 4905.57. Except as otherwise specifically provided in sections ~~4905.83, 4905.96, 4919.99, 4921.99, and 4923.99~~ of the Revised Code, actions to recover forfeitures provided for in this chapter and Chapters 4901., 4903., 4907., 4909., ~~4921., and 4923.~~ of the Revised Code shall be prosecuted in the name of the state and may be brought in the court of common pleas of any county in which the public utility ~~or~~, railroad, or motor carrier is located. Such actions shall be commenced and prosecuted by the attorney general when ~~he~~ the attorney general is directed to do so by the public utilities commission. Moneys recovered by such actions shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 4905.58. All prosecutions against a railroad or an officer, agent, or employee thereof, under Chapters 4901., 4903., 4905., 4907., and 4909.; ~~4921., and 4923.~~ and other sections of the Revised Code for penalties involving imprisonment shall be by indictment.

Sec. 4905.80. The policy of this state is to:

(A) Regulate transportation by motor carriers so as to recognize and preserve the inherent advantages of, and foster safe conditions in, that transportation and among those carriers in the public interest;

(B) Promote safe and secure service by motor carriers, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices;

(C) Improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers;

(D) Develop and preserve a highway transportation system properly adapted to the needs of commerce and the state;

(E) Cooperate with the federal government and the several states, and the authorized officials thereof, and with any organization of motor carriers in the administration and enforcement of this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code.

Sec. 4905.81. The public utilities commission shall:

(A) Supervise and regulate each motor carrier;

(B) Regulate the safety of operation of each motor carrier;

(C) Adopt reasonable safety rules applicable to the highway transportation of persons or property in interstate and intrastate commerce by motor carriers;

(D) Adopt safety rules applicable to the transportation and offering for transportation of hazardous materials in interstate and intrastate commerce by motor carriers. The rules shall not be incompatible with the requirements of the United States department of transportation.

(E) Require the filing of reports and other data by motor carriers;

(F) Adopt reasonable rules for the administration and enforcement of this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code applying to each motor carrier in this state;

(G) Supervise and regulate motor carriers in all other matters affecting the relationship between those carriers and the public to the exclusion of all local authorities, except as provided in this section. The commission, in the exercise of the jurisdiction conferred upon it by this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, may adopt rules affecting motor carriers, notwithstanding the provisions of any ordinance, resolution, license, or permit enacted, adopted, or granted by any township, municipal corporation, municipal corporation and county, or county. In case of conflict between any such ordinance, resolution, license, or permit, the order or rule of the commission shall prevail. Local subdivisions may adopt reasonable local police rules within their respective boundaries not inconsistent with those chapters and rules adopted under them.

The commission has jurisdiction to receive, hear, and determine as a question of fact, upon complaint of any party or upon its own motion, and upon not less than fifteen days' notice of the time and place of the hearing and the matter to be heard, whether any corporation, company, association, joint-stock association, person, firm, or copartnership, or their lessees, legal or personal representatives, trustees, or receivers or trustees appointed by any court, is engaged as a motor carrier. The finding of the commission on such a question is a final order that may be reviewed as provided in section 4923.15 of the Revised Code.

Sec. 4905.84. (A) As used in this section:

(1) "Telecommunications relay service" means intrastate transmission services that provide the ability for an individual who has a hearing or speech impairment to engage in a communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech impairment to communicate using voice communication services by wire or radio. "Telecommunications relay service" includes services that enable two-way communication between an individual who uses a telecommunications device for the deaf or other nonvoice terminal device and an individual who

does not use such a device.

(2) "TRS provider" means an entity selected by the public utilities commission as the provider of telecommunications relay service for this state as part of the commission's intrastate telecommunications relay service program certified pursuant to federal law.

(B) For the sole purpose of funding telecommunications relay service, the commission shall, not earlier than January 1, 2009, impose on and collect from each service provider that is required under federal law to provide its customers access to telecommunications relay service an annual assessment to pay for costs incurred by the TRS provider for providing such service in Ohio. The commission shall determine the appropriate service providers to be assessed the telecommunications relay service costs, including telephone companies as defined in division (A)(1) of section 4905.03 of the Revised Code, commercial mobile radio service providers, and providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to basic local exchange service as defined in section 4927.01 of the Revised Code.

(C) The assessment shall be allocated proportionately among the appropriate service providers using a competitively neutral formula established by the commission based on the number of retail intrastate customer access lines or their equivalent. The commission shall annually reconcile the funds collected with the actual costs of providing telecommunications relay service when it issues the assessment and shall either proportionately charge the service providers for any amounts not sufficient to cover the actual costs or proportionately credit amounts collected in excess of the actual costs. The total amount assessed from all service providers shall not exceed the total telecommunications relay service costs.

Each service provider that pays the assessment shall be permitted to recover the cost of the assessment. The method of recovery may include, but is not limited to, a customer billing surcharge.

The commission shall deposit the money collected in the telecommunications relay service fund, which is hereby created in the state treasury, and shall use the money in that fund solely to compensate the TRS provider.

(D) The commission shall take such measures as it considers necessary to protect the confidentiality of information provided to the commission pursuant to this section by service providers required to pay the assessment.

(E) The commission may assess a forfeiture of not more than one thousand dollars on any service provider failing to comply with this section.

Each day's continuance of such failure is a separate offense. The forfeiture shall be recovered in accordance with sections 4905.55 to 4905.60 of the Revised Code.

(F) The jurisdiction and authority granted to the commission by this section is limited to the administration and enforcement of this section. The commission may adopt such rules as it finds necessary to carry out this section. The commission shall adopt rules under section 111.15 of the Revised Code to establish the assessment amounts and procedures.

Sec. 4905.90. As used in sections 4905.90 to 4905.96 of the Revised Code:

(A) "Contiguous property" includes, but is not limited to, a manufactured home park as defined in section ~~3733.01~~ 4781.01 of the Revised Code; a public or publicly subsidized housing project; an apartment complex; a condominium complex; a college or university; an office complex; a shopping center; a hotel; an industrial park; and a race track.

(B) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.

(C) "Gathering lines" and the "gathering of gas" have the same meaning as in the Natural Gas Pipeline Safety Act and the rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act, including 49 C.F.R. part 192, as amended.

(D) "Intrastate pipe-line transportation" has the same meaning as in 82 Stat. 720 (1968), 49 U.S.C.A. App. 1671, as amended, but excludes the gathering of gas exempted by the Natural Gas Pipeline Safety Act.

(E) "Master-meter system" means a pipe-line system that distributes gas within a contiguous property for which the system operator purchases gas for resale to consumers, including tenants. Such pipe-line system supplies consumers who purchase the gas directly through a meter, or by paying rent, or by other means. The term includes a master-meter system as defined in 49 C.F.R. 191.3, as amended. The term excludes a pipeline within a manufactured home, mobile home, or a building.

(F) "Natural Gas Pipeline Safety Act" means the "Natural Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 U.S.C.A. App. 1671 et seq., as amended.

(G) "Operator" means any of the following:

(1) A gas company or natural gas company as defined in section 4905.03 of the Revised Code, except that division ~~(A)(5)(E)~~ of that section does not authorize the public utilities commission to relieve any producer of gas, as a gas company or natural gas company, of compliance with sections 4905.90 to 4905.96 of the Revised Code or the pipe-line safety code created

under section 4905.91 of the Revised Code;

(2) A pipe-line company, as defined in section 4905.03 of the Revised Code, when engaged in the business of transporting gas by pipeline;

(3) A public utility that is excepted from the definition of "public utility" under division ~~(B)~~(A)(2) or ~~(C)~~(3) of section 4905.02 of the Revised Code, when engaged in supplying or transporting gas by pipeline within this state;

(4) Any person that owns, operates, manages, controls, or leases any of the following:

(a) Intrastate pipe-line transportation facilities within this state;

(b) Gas gathering lines within this state which are not exempted by the Natural Gas Pipeline Safety Act;

(c) A master-meter system within this state.

"Operator" does not include an ultimate consumer who owns a service line, as defined in 49 C.F.R. 192.3, as amended, on the real property of that ultimate consumer.

(H) "Operator of a master-meter system" means a person described under division ~~(F)~~(G)(4)(c) of this section. An operator of a master-meter system is not a public utility under section 4905.02 or a gas or natural gas company under section 4905.03 of the Revised Code.

(I) "Person" means:

(1) In addition to those defined in division (C) of section 1.59 of the Revised Code, a joint venture or a municipal corporation;

(2) Any trustee, receiver, assignee, or personal representative of persons defined in division ~~(H)~~(I)(1) of this section.

(J) "Safety audit" means the public utilities commission's audit of the premises, pipe-line facilities, and the records, maps, and other relevant documents of a master-meter system to determine the operator's compliance with sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code.

(K) "Safety inspection" means any inspection, survey, or testing of a master-meter system which is authorized or required by sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code. The term includes, but is not limited to, leak surveys, inspection of regulators and critical valves, and monitoring of cathodic protection systems, where applicable.

(L) "Safety-related condition" means any safety-related condition defined in 49 C.F.R. 191.23, as amended.

(M) "Total Mcfs of gas it supplied or delivered" means the sum of the following volumes of gas that an operator supplied or delivered, measured in units per one thousand cubic feet:

- (1) Residential sales;
- (2) Commercial and industrial sales;
- (3) Other sales to public authorities;
- (4) Interdepartmental sales;
- (5) Sales for resale;
- (6) Transportation of gas.

Sec. 4907.01. As used in sections 4907.01 to 4907.63 of the Revised Code:

(A) "Public utility" has the same meaning as in section 4905.02 of the Revised Code.

(B) "Telephone company," "street railway company," and "interurban railroad company" have the same meanings as in section 4905.03 of the Revised Code.

(C) "Railroad" has the same meaning as in section 4907.02 of the Revised Code.

(D) "Public highway" has the same meaning as in ~~sections 4905.03 and 4921.02~~ section 4921.01 of the Revised Code.

Sec. 4907.02. As used in Chapters 4901., 4903., 4905., 4907., 4909., ~~4921., 4923.,~~ and 4959. of the Revised Code, "railroad" includes any corporation, company, individual, or association of individuals, or its lessees, trustees, or receivers appointed by a court, which owns, operates, manages, or controls a railroad or part of a railroad as a common carrier in this state, or which owns, operates, manages, or controls any cars or other equipment used on such a railroad, or which owns, operates, manages, or controls any bridges, terminals, union depots, sidetracks, docks, wharves, or storage elevators used in connection with such a railroad, whether owned by such railroad or otherwise, and means and includes express companies, water transportation companies, freight-line companies, sleeping car companies, and interurban railroad companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state. All duties required of, and penalties imposed upon, a railroad or an officer or agent thereof insofar as they are applicable, are required and imposed upon express companies, water transportation companies, and interurban railroad companies, and upon their officers and agents.

The public utilities commission has the power of supervision and control of express companies, water transportation companies, and interurban railroad companies to the same extent as railroads.

Sec. 4907.04. Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code do not apply to street and electric

railways engaged solely in the transportation of passengers within the limits of cities, or to other private railroads not doing business as common carriers.

Sec. 4907.08. The public utilities commission shall inquire into any neglect or violation of the laws of this state by a railroad doing business in this state, by its officers, agents, or employees, or by any person operating a railroad. The commission shall enforce Chapters 4901., 4903., 4905., 4907., 4909., ~~4921., 4923.,~~ and 4959. of the Revised Code, as well as all other laws relating to railroads, and report violations thereof to the attorney general.

If, upon complaint or otherwise, the commission has reason to believe that a railroad or any officer, agent, or employee of a railroad has violated or is violating any law of this state, or if it has reason to believe that differences have arisen between citizens of the state and any railroad operating as a common carrier within this state, it shall examine into the matter.

Sec. 4907.19. The public utilities commission shall cause blank forms to be prepared suitable for the purposes designated in Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code which shall conform as nearly as practicable to the forms prescribed by the interstate commerce commission, and, when necessary, furnish such blank forms to each railroad.

Sec. 4907.28. No railroad shall charge, demand, collect, or receive a greater or less compensation for the transportation of passengers or property, or for any service in connection therewith, than is specified in the printed schedules referred to in sections 4907.25 to 4907.27, ~~inclusive,~~ of the Revised Code, including schedules of joint rates, as being then in force. The rates, fares, and charges named in such schedules shall be the lawful rates, fares, and charges until they are changed as provided in Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code.

Sec. 4907.35. If a railroad, or an agent or officer of a railroad, by special rate, rebate, drawback, or by means of false billing, false classification, false weighing, or other device, charges, demands, collects, or receives, either directly or indirectly, from any person, firm, or corporation, a greater or less compensation for service rendered or to be rendered by such railroad for the transportation of persons or property or any service in connection therewith, than that prescribed in the published tariffs then in force, or established as provided in Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code, or a greater or less compensation than it charges, demands, collects, or receives from any other person, firm, or corporation for a like and contemporaneous service in the transportation of a

like kind of traffic, under substantially similar circumstances and conditions, the railroad is guilty of unjust discrimination, which is hereby prohibited. Upon conviction of unjust discrimination, such railroad shall forfeit and pay into the state treasury not less than one hundred nor more than five thousand dollars for each offense.

No agent or officer of a railroad shall violate this section.

Sec. 4907.37. No common carrier subject to Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code shall make or give undue or unreasonable preference or advantage to a particular person, company, firm, corporation, or locality, or to any particular description of traffic, or subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect.

Sec. 4907.43. When the tracks of a railroad and the tracks of an interurban or suburban railway cross, connect, or intersect, and such tracks are of the same gauge, the companies owning such railroads may connect such tracks so as to admit the passage of cars from one to the other with facility.

If any such railroads fail to make such connection, upon complaint of any party authorized by Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code to file complaint, the public utilities commission shall proceed to hear and determine the same in a manner provided for making investigations upon complaint.

If upon such hearing the commission finds that it is practicable and reasonably necessary to ~~accommodate~~ accommodate the public, to connect such tracks and that when so connected it will be practicable to transport cars over such railroad without endangering the equipment, tracks, or appliances of either company, the commission shall make an order requiring such railroads to make connection. Such order shall describe the terms and conditions and shall apportion the cost of making such connection between the railroads.

When such connection is made, the railroads parties to it, according to their respective powers, shall afford all reasonable and proper facilities for the interchange of traffic between their respective lines for forwarding and delivering passengers and property, and without unreasonable delay or discrimination shall transfer, switch, and deliver freight or passenger cars destined to a point on its own or connecting lines. Precedence may be given to livestock and perishable freight over other freight. Whenever a derailing device is required at the intersection of any railroads mentioned in this section, it shall be installed, maintained, and operated as required by the

commission, which may prescribe the necessary rules and regulations for such operation, and designate the companies that shall be responsible for the operation of such derailing device.

Sec. 4907.49. When two or more railroads cross a public highway or street at a dangerous crossing, the expenses incurred in the erection and maintenance of gates, bells, or other devices, and of necessary gatekeepers or ~~flagmen~~ flaggers, and apportioned by the public utilities commission as railroad expense, shall be shared equally by the railroads.

Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., and 4923.~~ of the Revised Code do not prevent the use of automatic bells or other mechanical devices by a railroad at a public crossing not declared dangerous by the public utilities commission, nor do they prevent state, county, township, or municipal officials from entering into an agreement with a railroad to pay all or part of the expense of erecting a warning device. Any funds levied and made available for highways or street purposes may be used to pay the public share of the cost under such an agreement. If a gate is erected or a ~~flagman~~ flagger is stationed and maintained by a railroad, either alone or pursuant to such an agreement, the gate or ~~flagman~~ flagger shall not be abandoned nor an automatic bell or other mechanical device substituted for the gate or ~~flagman~~ flagger, unless the commission consents to the abandonment or substitution.

Sec. 4907.57. All claims, charges, or demands against a railroad for loss of or damage to property occurring while in the custody of such railroad and unreasonable delay in transportation and delivery, for overcharges upon a shipment, or for any other service in violation of Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code, if not paid within sixty days from the date of the filing thereof with such railroad, may be submitted to the public utilities commission by a formal complaint. Such complaint shall be made upon blank forms which the commission shall provide upon demand of the claimant.

Such complaint shall be verified as petitions in civil actions and may be accompanied by the sworn statements of any witnesses who have knowledge of any fact material to the inquiry. Upon the filing of such complaint the commission shall forthwith cite the railroad to answer the complaint, and the citation shall be accompanied with a brief statement of the claim. The answer of the railroad shall be filed within three weeks from the service of the citation and shall be verified as answers in civil cases, and may be accompanied with the affidavits of any witnesses having knowledge of facts material to the inquiry.

The burden of proof shall be upon the railroad to show that loss or

damage to property was not due to its negligence. The railroad to which property is delivered for shipment shall prima facie be liable for loss or damage occurring to such property in transit notwithstanding such property may be delivered to other railroads before reaching its destination. The claim referred to in this section for loss of or damage to property may be made to any carrier over whose lines the lost or damaged property was consigned, and such claimant may at ~~his~~ the claimant's option join all of such railroads as parties defendant in ~~his~~ the complaint before said commission. The railroad shall furnish the claimant with a copy of its answer and affidavits, and within two weeks from the filing of such answers the claimant may file ~~his~~ a reply, with affidavits in support thereof, verified as replies in civil cases. At the expiration of said period of two weeks the commission shall proceed summarily to examine the complaint, answer, reply, and affidavits, and shall determine the existence and validity of the claim presented. If the commission finds in favor of the claimant it shall certify its findings to the clerk of the court of common pleas of the county in which the claimant resides or where the railroad or any of its offices is maintained.

Sec. 4907.59. Upon request of the public utilities commission, the attorney general or the prosecuting attorney of the proper county shall aid in an investigation, prosecution, hearing, or trial had under Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code, and shall institute and prosecute necessary actions or proceedings for the enforcement of such chapters and of other laws of this state relating to railroads, and for the punishment of all violations of such chapters and such other laws.

Sec. 4907.60. If a railroad fails to perform a duty enjoined upon it by Chapter 4901., 4903., 4905., 4907., 4909., ~~4921., 4923.,~~ or 4959. of the Revised Code, or does any act prohibited by any of those chapters, for which failure or act no penalty or forfeiture has been provided by law, or fails to obey a lawful requirement or order made by the public utilities commission or order of any court upon application of the commission, the railroad, except as otherwise specifically provided in ~~sections 4905.83, section 4905.95, 4919.99, 4921.99, and 4923.99~~ of the Revised Code, shall forfeit into the state treasury not less than one hundred nor more than ten thousand dollars for each violation or failure. In construing and enforcing this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by a railroad, while acting within the scope of the officer's, agent's, or other person's employment, is the act, omission, or failure of the railroad.

Sec. 4907.61. Except as otherwise specifically provided in sections ~~4905.83~~, 4905.96, ~~4919.99~~, ~~4921.99~~, and 4923.99 of the Revised Code, when the attorney general prosecutes an action for the recovery of a forfeiture provided for in Chapter 4901., 4903., 4905., 4907., 4909., 4921., 4923., or 4959. of the Revised Code, the attorney general may bring the action in the court of common pleas of Franklin county or of any county having jurisdiction of the defendant.

Sec. 4907.62. If a railroad does, causes, or permits anything prohibited by Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921.~~, ~~4923.~~, and ~~4925.~~ of the Revised Code to be done, or omits doing anything required to be done by such chapters, such railroad is liable to the person, firm, or corporation injured thereby in treble the amount of damages sustained in consequence of such violation or omission. A recovery provided by this section shall not affect a recovery by the state of the penalty prescribed for such violation.

Sec. 4909.01. As used in this chapter:

(A) "Public utility" has the same meaning as in section 4905.02 of the Revised Code.

(B) "Electric light company," "gas company," "natural gas company," "pipeline company," "water-works company," "sewage disposal system company," and "street railway company" have the same meanings as in section 4905.03 of the Revised Code.

(C) "Railroad" has the same meaning as in section 4907.02 of the Revised Code.

(D) ~~"Motor transportation company"~~ "For-hire motor carrier" has the same meaning as in ~~sections 4905.03 and 4921.02~~ section 4921.01 of the Revised Code.

Sec. 4909.02. All regulations, practices, and service of railroad companies prescribed by the public utilities commission shall be in force and be prima-facie reasonable, unless suspended or found otherwise in an action brought for that purpose pursuant to Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921.~~, and ~~4923.~~ of the Revised Code, or until changed or modified by the commission.

Sec. 4909.03. All rates, fares, charges, classifications, and joint rates of railroad companies fixed by the public utilities commission shall be in force and be prima-facie lawful for two years from the day they take effect, or until changed or modified by the commission or by an order of a competent court in an action under Chapters 4901., 4903., 4905., 4907., and 4909.; ~~4921.~~, and ~~4923.~~ of the Revised Code.

Sec. 4909.17. No rate, joint rate, toll, classification, charge, or rental, no change in any rate, joint rate, toll, classification, charge, or rental, and no

regulation or practice affecting any rate, joint rate, toll, classification, charge, or rental of a public utility shall become effective until the public utilities commission, by order, determines it to be just and reasonable, except as provided in this section and sections 4909.18, 4909.19, and 4909.191 of the Revised Code. Such sections do not apply to any rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, of railroads, street and electric railways, for-hire motor ~~transportation companies~~ carriers, and pipe line companies.

Sec. 4909.22. When passengers or property are transported over two or more connecting railroads between points in this state, and the railroad companies have made joint rates for the transportation of such passengers or property, such rates and all charges in connection therewith shall be just and reasonable. Every unjust and unreasonable charge is prohibited. A less charge by each of such railroads for its proportion of such joint rates than is made locally between the same points on their respective lines is not for that reason a violation of Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code and does not render such railroads liable to any of the penalties in such chapters.

Sec. 4909.24. Upon complaint of a person, firm, corporation, or association, of a mercantile, agricultural, or manufacturing society, or of a body politic or municipal organization, that any of the rates, fares, charges, or classifications, or any joint rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice, affecting the transportation of persons or property, or any service in connection therewith, are in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the public utilities commission may notify the railroad complained of that complaint has been made, and ten days after such notice proceed to investigate such charges as provided in Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code. Before making such investigation, the commission shall give the railroad and the complainants ten days' notice of the time and place such matters will be considered and determined, and such parties are entitled to be heard and to have process to enforce the attendance of witnesses.

A railroad may make complaint with like effect as though made by any person, firm, corporation, or association, ~~mercantile~~ mercantile, agricultural, or manufacturing society, body politic, or municipal organization.

Sec. 4909.28. If, upon an investigation under Chapters 4901., 4903., 4905., 4907., and 4909., ~~4921., 4923., and 4925.~~ of the Revised Code, the public utilities commission finds that any existing rate, fare, charge, or

classification, any joint rate, or any regulation or practice affecting the transportation of persons or property, or service in connection therewith, is unreasonable or unjustly discriminatory, or that any service is inadequate, it shall determine and by order fix a reasonable rate, fare, charge, classification, joint rate, regulation, practice, or service to be imposed, observed, and followed in the future, in place of that so found to be unreasonable, unjustly discriminatory, or inadequate. A certified copy of each such order shall be delivered to an officer or station agent of the railroad affected, and such order shall of its own force take effect and become operative thirty days after service.

All railroads to which such order applies shall make such changes in their schedules on file as are necessary to conform to such order, and no change shall thereafter be made by any railroad in any such rate, fare, or charge, or in any joint rate, without the approval of the commission.

Sec. 4911.01. As used in this chapter:

(A) "Public utility" means every one as defined in divisions (A)(1), (3), (4), (5), (6), (7), (8), (C), (D), (E), (F), (G), (H), and (13)(M) of section 4905.03 of the Revised Code, including all public utilities that operate their utilities not for profit, except the following:

- (1) Electric light companies that operate their utilities not for profit;
- (2) Public utilities, other than telephone companies, that are owned and operated exclusively by and solely for the utilities' customers;
- (3) Public utilities that are owned or operated by any municipal corporation;
- (4) Railroads as defined in sections 4907.02 and 4907.03 of the Revised Code.

(B) "Residential consumer" means urban, suburban, and rural patrons of public utilities insofar as their needs for utility services are limited to their residence.

Sec. 4921.01. As used in this chapter:

(A) "Ambulance" has the same meaning as in section 4766.01 of the Revised Code.

(B) "For-hire motor carrier" means a person engaged in the business of transporting persons or property by motor vehicle for compensation, except when engaged in any of the following in intrastate commerce:

- (1) The transportation of persons in taxicabs in the usual taxicab service;
- (2) The transportation of pupils in school busses operating to or from school sessions or school events;
- (3) The transportation of farm supplies to the farm or farm products from farm to market or to food fabricating plants;

(4) The distribution of newspapers;

(5) The transportation of crude petroleum incidental to gathering from wells and delivery to destination by pipe line;

(6) The transportation of injured, ill, or deceased persons by hearse or ambulance;

(7) The transportation of compost (a combination of manure and sand or shredded bark mulch) or shredded bark mulch;

(8) The transportation of persons in a ridesharing arrangement when any fee charged each person so transported is in such amount as to recover only the person's share of the costs of operating the motor vehicle for such purpose;

(9) The operation of motor vehicles for contractors on public road work.

"For-hire motor carrier" includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.

Divisions (B)(1) to (9) of this section shall not be construed to relieve a person from compliance with hazardous-material regulation under section 4921.15 of the Revised Code and division (H) of section 4921.19 of the Revised Code, or rules adopted thereunder, or from compliance with rules governing unified carrier registration adopted under section 4921.11 of the Revised Code.

(C) "Household goods" means personal effects and property used or to be used in a dwelling, excluding property moving from a factory or store.

(D) "Interstate commerce" means trade, traffic, or transportation in the United States that is any of the following:

(1) Between a place in a state and a place outside of that state (including a place outside of the United States);

(2) Between two places in a state through another state or a place outside of the United States;

(3) Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States.

(E) "Intrastate commerce" means any trade, traffic, or transportation in any state which is not described in the term "interstate commerce."

(F) "Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of persons or property, or any combination thereof, but does not include any vehicle, locomotive, or car operated

exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

(G) "Public highway" means any public street, road, or highway in this state, whether within or without the corporate limits of a municipal corporation.

(H) "Ridesharing arrangement" means the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of a volunteer driver, and includes ridesharing arrangements known as carpools, vanpools, and buspools.

(I) "School bus" has the same meaning as in section 4511.01 of the Revised Code.

(J) "Trailer" means any vehicle without motive power designed or used for carrying persons or property and for being drawn by a separate motor vehicle, including any vehicle of the trailer type, whether designed or used for carrying persons or property wholly on its own structure, or so designed or used that a part of its own weight or the weight of its load rests upon and is carried by such motor vehicle.

Sec. 4921.03. (A) No for-hire motor carrier may operate in intrastate commerce unless the carrier has a current and valid certificate of public convenience and necessity.

(B) The public utilities commission shall issue a certificate of public convenience and necessity to any person who does all of the following:

(1) Files with the commission, in accordance with rules adopted under section 4921.05 of the Revised Code, a complete and accurate application that shall include a certification that (a) the person understands and is in compliance with the applicable service, operation, and safety laws of this state and (b) the person meets the requirements of section 4921.09 of the Revised Code;

(2) Agrees to maintain accurate and current business and insurance information with the commission, in accordance with the commission's rules;

(3) Has paid all applicable registration fees in accordance with rules adopted under section 4921.11 of the Revised Code, all applicable taxes under section 4921.19 of the Revised Code, and any forfeitures imposed under section 4923.99 of the Revised Code.

(C) The commission shall have no power to fix, alter, or establish rates for the transportation of persons or property, nor shall the commission have the power to require or accept the filing of tariffs establishing such rates, except that the commission may accept the filing of tariffs establishing rates

for the transportation of household goods.

(D) A for-hire motor carrier may, at any time after a certificate of public convenience and necessity is granted or refused, file a new application or supplement a former application.

(E) The commission may deny issuance of a certificate of public convenience and necessity for failure to comply with this section or rules adopted under section 4921.05 of the Revised Code.

Sec. 4921.05. The public utilities commission shall adopt rules prescribing the manner and form in which a person shall apply for a certificate of public convenience and necessity under section 4921.03 of the Revised Code. The rules shall include a requirement that applications be made in writing on the blanks furnished by the commission and contain any information and certifications deemed necessary by the commission to carry out this chapter.

Sec. 4921.07. (A) The public utilities commission shall adopt rules regarding procedures and timelines by which a certificate of public convenience and necessity issued under section 4921.03 of the Revised Code may be suspended. At a minimum, the rules shall require suspension of a certificate if the for-hire motor carrier does any of the following:

(1) Fails to file a complete and accurate application for the certificate under section 4921.03 of the Revised Code;

(2) Fails to maintain accurate and current business and insurance information with the commission;

(3) Fails to maintain proper proof of insurance or proper levels of insurance under section 4921.09 of the Revised Code;

(4) Fails to pay all applicable registration fees in accordance with rules adopted under section 4921.11 of the Revised Code, all applicable taxes under section 4921.19 of the Revised Code, and any forfeitures imposed under section 4923.99 of the Revised Code;

(5) Requests to suspend the carrier's operations.

(B)(1) The commission shall adopt rules regarding procedures and timelines by which a certificate suspended under division (A) of this section may be revoked if the conditions giving rise to the suspension are not remedied.

(2) The commission shall provide the carrier with written notice indicating the nature of the deficiency, a proposed effective date of the revocation, and the means by which the deficiency may be remedied. The carrier may correct the identified deficiency or submit evidence refuting the proposed revocation within sixty days from the date of the notice. The commission may extend the sixty-day period for good cause shown. The

commission may revoke the certificate after the remedy period if the carrier has not provided sufficient evidence to remedy the deficiency.

Sec. 4921.09. (A) No certificate of public convenience and necessity shall be issued by the public utilities commission to any for-hire motor carrier until the carrier has filed with the commission a liability insurance certificate, policy, or bond satisfactory to the commission, in the sum and with the provisions the commission considers necessary adequately to protect the interests of the public, having due regard for the number of persons and amount of property affected. The certificate, policy, or bond shall insure the carrier against loss sustained by reason of death or injuries to persons and for loss or damage to property resulting from the negligence of the carrier.

(B) No certificate for the transportation of household goods shall be issued to a for-hire motor carrier pursuant to sections 4921.30 to 4921.38 of the Revised Code until it has filed with the commission a freight cargo insurance certificate, policy, or bond that the commission has determined to be adequate to protect the interests of the shipping public.

(C) The Commission shall adopt rules to achieve the purposes of this section that are not incompatible with the requirements of the United States department of transportation. The rules shall at a minimum address all of the following:

(1) The minimum levels of financial responsibility for each type of for-hire motor carrier;

(2) The form and type of documents to be filed with the commission;

(3) The manner by which documents may be filed with the commission;

(4) The timelines for filing documents with the commission.

(D) If a certificate, policy, or bond required under division (A) of this section is canceled during its term or lapses for any reason, both of the following apply:

(1) All operations under the certificate of public convenience and necessity shall cease immediately, and further operations shall not be conducted until a replacement is filed with the commission under division (D)(2) of this section.

(2) The commission shall require the company to replace the certificate, policy, or bond with another that fully complies with the requirements of this section.

The certificate of public convenience and necessity shall be reinstated only after a satisfactory insurance certificate, policy, or bond has been filed with the commission.

(E) To ensure minimum standards of protection of consumers'

household goods, the commission may adopt rules, not incompatible with the requirements of the United States department of transportation, governing requirements for cargo insurance for for-hire motor carriers engaged in the transportation of household goods over a public highway in this state.

Sec. 4921.11. The public utilities commission shall adopt rules applicable to registration pursuant to the unified carrier registration plan, codified as 49 U.S.C. 14504a, and the rules, procedures, and fee schedules adopted thereunder, in accordance with division (G) of section 4921.19 of the Revised Code.

Sec. 4921.13. (A) The public utilities commission shall adopt rules applicable to the filing of annual update forms and the payment of taxes by for-hire motor carriers. The rules shall not be incompatible with the requirements of the United States department of transportation. The rules shall at a minimum address all of the following:

(1) The information and certifications that must be provided to the commission on an annual update form, including a certification that the carrier continues to be in compliance with the applicable laws of this state.

(2) Documentation and information that must be provided regarding proof of financial responsibility;

(3) The form and manner in which taxes may be paid under section 4921.19 of the Revised Code.

(B) The rules may address any other information that the commission determines is necessary to carry out this section.

(C) A for-hire motor carrier shall not be issued a tax receipt under division (C) of section 4921.19 of the Revised Code until all of the following have been satisfied:

(1) A complete and accurate annual update form has been filed with the commission;

(2) Proof of financial responsibility remains in effect;

(3) All applicable registration fees in accordance with rules adopted under section 4921.11 of the Revised Code, all applicable taxes under section 4921.19 of the Revised Code, and any forfeitures imposed under section 4923.99 of the Revised Code have been paid in full.

Sec. 4921.15. (A) As used in sections 4921.15, 4921.16, and 4921.19 of the Revised Code:

(1) "Uniform registration" has the same meaning as "registration" as used in the final report submitted to the United States secretary of transportation, pursuant to subsection (c) of section 22 of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49

U.S.C.A. App. 1819.

(2) "Uniform permit" has the same meaning as "permit" as used in the final report submitted to the United States secretary of transportation, pursuant to subsection (c) of section 22 of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C.A. App. 1819.

(B)(1) The public utilities commission may adopt rules applicable to the uniform registration and uniform permitting of persons engaged in the highway transportation of hazardous materials into, through, or within this state. The rules shall include rules staggering the registration date for those persons and reducing or extending, by no more than one year, the permit renewal period for those persons.

(2) For the purpose of minimizing filing requirements regarding any background investigation required for the issuance of a uniform permit as a carrier of hazardous wastes, the commission shall accept from any applicant for the permit any refiling of information the applicant has filed with the office of the attorney general under section 3734.42 of the Revised Code or any reference to that information if the refiled or referenced information is on file with the office of the attorney general, is accurate and timely for the commission's purposes under this section, and is supplemented by any additional information the commission requires. The office of the attorney general, as necessary for a background investigation, shall make accessible to the commission any information referenced or refiled in an application for a uniform permit as a carrier of hazardous wastes that the attorney general determines may be disclosed in accordance with section 3734.42 of the Revised Code. Nothing in sections 4921.15, 4921.16, and division (H) of section 4921.19 of the Revised Code affects any limitations under section 3734.42 of the Revised Code on the disclosure of that information.

(C) The commission, as necessary to implement the rules adopted under division (B) of this section, may enter into agreements, contracts, arrangements, or declarations with other states and with the national repository, established pursuant to the final report submitted to the United States secretary of transportation, pursuant to subsection (c) of section 22 of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C.A. App. 1819. The agreements, contracts, arrangements, or declarations shall include, but not be limited to, the determination of a base state, the collection of uniform registration fees, the frequency of distribution of uniform registration fees, procedures for dispute resolution, and protection of trade secrets and confidential business information.

(D) No person shall knowingly falsify or fail to submit any data, reports, records, or other information required to be submitted to the commission pursuant to this section or a rule adopted under it. For purposes of this division, a person acts knowingly if either of the following applies:

(1) The person has actual knowledge of the facts giving rise to the violation.

(2) A reasonable person acting in the circumstances and exercising due care would have such knowledge.

(E) After notice and opportunity for a hearing, the commission, pursuant to criteria set forth in rules adopted under division (B) of this section, may suspend, revoke, or deny the uniform permit as a carrier of hazardous materials of any person that has obtained or applied for such a uniform permit from the commission pursuant to rules adopted under that division, or the commission may order the suspension of the transportation of hazardous materials into, through, or within this state by a carrier that has obtained a uniform permit from another state that has a reciprocity agreement with the commission pursuant to division (C) of this section.

(F)(1) The proceedings specified in division (E) of this section are subject to and governed by Chapter 4903. of the Revised Code, except as otherwise provided in this section. The court of appeals of Franklin county has exclusive original jurisdiction to review, modify, or vacate any order of the commission suspending, revoking, or denying a uniform permit as a carrier of hazardous materials of any person that has obtained or applied for a uniform permit from the commission pursuant to rules adopted under division (B) of this section, or any order of the commission suspending the transportation of hazardous materials into, through, or within this state by a carrier that has obtained a uniform permit from another state that has a reciprocity agreement with the commission under division (C) of this section. The court of appeals shall hear and determine those appeals in the same manner and under the same standards as the Ohio supreme court hears and determines appeals under Chapter 4903. of the Revised Code. The judgment of the court of appeals is final and conclusive unless reversed, vacated, or modified on appeal. Such appeals may be taken either by the commission or the person to whom the order was issued and shall proceed as in the case of appeals in civil actions as provided in Chapter 2505. of the Revised Code.

(2) Section 4903.11 of the Revised Code does not apply to appeals of any order of the commission suspending, revoking, or denying a uniform permit of a person that has obtained or applied for a uniform permit from the commission pursuant to rules adopted under division (B) of this section, or

of any order of the commission suspending the transportation of hazardous materials into, through, or within this state by a carrier that has obtained a uniform permit from another state that has a reciprocity agreement with the commission pursuant to division (C) of this section. Any person to whom such an order is issued who wishes to contest the order shall file, within sixty days after the entry of the order upon the journal of the commission, a notice of appeal, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairperson of the commission or, in the event of the chairperson's absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. On appeal, the court shall reverse, vacate, or modify the order if, upon consideration of the record, the court is of the opinion that the order was unlawful or unreasonable.

Sec. 4921.16. (A) Information submitted to the public utilities commission as part of a uniform registration application, pursuant to rules adopted under division (B) of section 4921.15 of the Revised Code, is a public record and is subject to section 149.43 of the Revised Code.

(B) Except for information related to corporate structure and personnel, information that is submitted to the commission as part of a uniform permit application, pursuant to rules adopted under division (B) of section 4921.15 of the Revised Code, is a public record and is subject to section 149.43 of the Revised Code. Information that is related to corporate structure and personnel that is submitted to the commission as part of a uniform permit application, pursuant to rules adopted under division (B) of section 4921.15 of the Revised Code, is not a public record and is not subject to section 149.43 of the Revised Code. Except as provided in division (D) of this section, the commission shall not disclose to any person any information that is related to corporate structure and personnel that is submitted as part of a uniform permit application.

(C) Information that is submitted for any background investigation for an application for a uniform permit as a carrier of hazardous wastes is not a public record and is not subject to section 149.43 of the Revised Code. Except as provided in division (D) of this section, the commission shall not disclose to any person any information submitted for any background investigation for such an application.

(D) The commission may disclose to its authorized employees and to any federal agencies, state agencies of this state or another state, local government agencies of this state or another state, or the national repository established pursuant to the final report submitted to the United States secretary of transportation, pursuant to subsection (c) of section 22 of the

"Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C.A. App. 1819, any information submitted to the commission as part of a uniform permit application that is related to corporate structure and personnel or submitted for any background investigation for an application for a uniform permit as a carrier of hazardous wastes if all of the following conditions are met:

(1) The commission enters into a confidentiality agreement with the employee, agency, or national repository under which that employee or entity agrees not to disclose to any third party any information related to corporate structure or personnel or any information submitted as part of a background investigation unless the third party enters into a confidentiality agreement with the commission consistent with this division.

(2) The employee, agency, or national repository certifies to the commission that it is not required by any state or federal law to disclose any information related to corporate structure or personnel or any information submitted as part of a background investigation.

(3) The federal agency, state or local government agency of another state, or national repository irrevocably consents in writing to the jurisdiction of the courts of this state and service of process in this state, including, without limitation, summonses and subpoenas, for any civil proceeding arising out of an intentional disclosure of information in violation of this division.

(E) Any person who intentionally discloses information in violation of division (D) of this section is liable to the owner of the information for civil damages caused by the disclosure.

Sec. 4921.19. (A) Every for-hire motor carrier operating in this state shall, at the time of the issuance of a certificate of public convenience and necessity under section 4921.03 of the Revised Code, pay to the public utilities commission, for and on behalf of the treasurer of state, the following taxes:

(1) For each motor vehicle used for transporting persons, thirty dollars;

(2) For each commercial tractor, as defined in section 4501.01 of the Revised Code, used for transporting property, thirty dollars;

(3) For each other motor vehicle transporting property, twenty dollars.

(B) Every for-hire motor carrier operating in this state solely in intrastate commerce shall, annually between the first day of May and the thirtieth day of June, pay to the commission, for and on behalf of the treasurer of state, the following taxes:

(1) For each motor vehicle used for transporting persons, thirty dollars;

(2) For each commercial tractor, as defined in section 4501.01 of the

Revised Code, used for transporting property, thirty dollars;

(3) For each other motor vehicle transporting property, twenty dollars.

(C) After a for-hire motor carrier has paid the applicable taxes under division (B) of this section and all requirements under division (C) of section 4921.13 of the Revised Code have been met, the commission shall issue the carrier a tax receipt. The carrier shall carry a copy of the tax receipt in each motor vehicle operated by the carrier. The carrier shall maintain the original copy of the tax receipt at the carrier's primary place of business.

(D) A trailer used by a for-hire motor carrier shall not be taxed under this section.

(E) The annual tax levied by division (B) of this section does not apply in those cases where the commission finds that the movement of agricultural commodities or foodstuffs produced therefrom requires a temporary and seasonal use of vehicular equipment for a period of not more than ninety days. In such event, the tax on the vehicular equipment shall be twenty-five per cent of the annual tax levied by division (B) of this section. If any vehicular equipment is used in excess of the ninety-day period, the annual tax levied by this section shall be paid.

(F) All taxes levied by division (B) of this section shall be reckoned as from the beginning of the quarter in which the tax receipt is issued or as from when the use of equipment under any existing tax receipt began.

(G) The fees for unified carrier registration pursuant to section 4921.11 of the Revised Code shall be identical to those established by the unified carrier registration act board as approved by the federal motor carrier safety administration for each year.

(H)(1) The fees for uniform registration and a uniform permit as a carrier of hazardous materials pursuant to section 4921.15 of the Revised Code shall consist of the following:

(a) A processing fee of fifty dollars;

(b) An apportioned per-truck registration fee, which shall be calculated by multiplying the percentage of a registrant's activity in this state times the percentage of the registrant's business that is hazardous-materials-related, times the number of vehicles owned or operated by the registrant, times a per-truck fee determined by order of the commission following public notice and an opportunity for comment.

(i) The percentage of a registrant's activity in this state shall be calculated by dividing the number of miles that the registrant travels in this state under the international registration plan, pursuant to section 4503.61 of the Revised Code, by the number of miles that the registrant travels nationwide under the international registration plan. Registrants that operate

solely within this state shall use one hundred per cent as their percentage of activity. Registrants that do not register their vehicles through the international registration plan shall calculate activity in the state in the same manner as that required by the international registration plan.

(ii) The percentage of a registrant's business that is hazardous-materials-related shall be calculated, for less-than-truckload shipments, by dividing the weight of all the registrant's hazardous materials shipments by the total weight of all shipments in the previous year. The percentage of a registrant's business that is hazardous-materials-related shall be calculated, for truckload shipments, by dividing the number of shipments for which placarding, marking of the vehicle, or manifesting, as appropriate, was required by regulations adopted under sections 4 to 6 of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C. App. 1804, by the total number of the registrant's shipments that transported any kind of goods in the previous year. A registrant that transports both less-than-truckload and truckload shipments of hazardous materials shall calculate the percentage of business that is hazardous-materials-related on a proportional basis.

(iii) A registrant may utilize fiscal year, or calendar year, or other current company accounting data, or other publicly available information, in calculating the percentages required by divisions (H)(1)(b)(i) and (ii) of this section.

(2) The commission, after notice and opportunity for a hearing, may assess each carrier a fee for any background investigation required for the issuance, for the purpose of section 3734.15 of the Revised Code, of a uniform permit as a carrier of hazardous wastes and fees related to investigations and proceedings for the denial, suspension, or revocation of a uniform permit as a carrier of hazardous materials. The fees shall not exceed the reasonable costs of the investigations and proceedings. The fee for a background investigation for a uniform permit as a carrier of hazardous wastes shall be six hundred dollars plus the costs of obtaining any necessary information not included in the permit application, to be calculated at the rate of thirty dollars per hour, not exceeding six hundred dollars, plus any fees payable to obtain necessary information.

(I) The application fee for a certificate for the transportation of household goods issued pursuant to sections 4921.30 to 4921.38 of the Revised Code shall be based on the certificate holder's gross revenue, in the prior year, for the intrastate transportation of household goods. The commission shall establish, by order, ranges of gross revenue and the fee for each range. The fees shall be set in amounts sufficient to carry out the

purposes of sections 4921.30 to 4921.38 and 4923.99 of the Revised Code and, to the extent necessary, the commission shall make changes to the fee structure to ensure that neither over nor under collection of the fees occurs. The fees shall also take into consideration the revenue generated from the assessment of forfeitures under section 4923.99 of the Revised Code regarding the consumer protection provisions applicable to for-hire motor carriers engaged in the transportation of household goods.

(J) The fees and taxes provided under this section shall be in addition to taxes, fees, and charges fixed and exacted by other sections of the Revised Code, except the assessments required by section 4905.10 of the Revised Code, but all fees, license fees, annual payments, license taxes, or taxes or other money exactions, except the general property tax, assessed, charged, fixed, or exacted by local authorities such as municipal corporations, townships, counties, or other local boards, or the officers of such subdivisions are illegal and, are superseded by sections 4503.04 and 4905.03 and Chapter 4921. of the Revised Code. On compliance with sections 4503.04 and 4905.03 and Chapter 4921. of the Revised Code, all local ordinances, resolutions, by laws, and rules in force shall cease to be operative as to the persons in compliance, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with sections 4503.04 and 4905.03 and Chapter 4921. of the Revised Code.

Sec. 4921.21. (A) As used in this section, "adjusted credit amount" means the aggregate amount credited to the public utilities transportation safety fund, less the sum of all of the following:

(1) The fees collected by the public utilities commission, in accordance with the unified carrier registration plan under section 4921.11 of the Revised Code, that exceed the federal certification of revenue for each year of the plan;

(2) The fees collected by the commission on behalf of other states under division (C) of section 4921.15 of the Revised Code;

(3) The forfeitures collected by the commission under section 4923.99 of the Revised Code for violations of rules adopted under division (A)(2) of section 4923.04 of the Revised Code.

(B)(1) There is hereby created in the state treasury the public utilities transportation safety fund. The fees collected in accordance with the unified carrier registration plan under section 4921.11 of the Revised Code, the fees collected under section 4921.15 of the Revised Code, the taxes and fees remitted under section 4921.19 of the Revised Code, the forfeitures imposed under section 4923.99 of the Revised Code, except as provided in division

(B)(2) of this section, and the fines collected under section 4163.07 of the Revised Code shall be deposited into the state treasury to the credit of the public utilities transportation safety fund, until the adjusted credit amount in a fiscal year is equal to the total amount appropriated from the fund for the fiscal year. Once this point of parity is reached, any additional fees, taxes, forfeitures, or fines received during the fiscal year shall be credited to the general revenue fund, except as provided in division (B)(2) of this section, and except for both of the following:

(a) The fees collected in accordance with the unified carrier registration plan under section 4921.11 of the Revised Code, that exceed the federal certification of revenue for each year of the plan;

(b) The fees collected on behalf of other states under division (C) of section 4921.15 of the Revised Code.

(2) The first eight hundred thousand dollars of forfeitures collected under section 4923.99 of the Revised Code, for violations of rules adopted under division (A)(2) of section 4923.04 of the Revised Code, during each fiscal year shall be credited to the public utilities transportation safety fund. Any forfeitures in excess of that amount shall be deposited into the general revenue fund. In each fiscal year, the commission shall distribute moneys from these forfeitures credited to the public utilities transportation safety fund for the purposes of emergency response planning and the training of safety, enforcement, and emergency services personnel in proper techniques for the management of hazardous materials releases that occur during transportation or otherwise. For these purposes, fifty per cent of all such moneys credited to the public utilities transportation safety fund shall be distributed to Cleveland state university, forty-five per cent shall be distributed to other educational institutions, state agencies, regional planning commissions, and political subdivisions, and five per cent shall be retained by the commission for the administration of this section and for training employees. However, if, in any such period, moneys from these forfeitures credited to the public utilities transportation safety fund equal an amount less than four hundred thousand dollars, the commission shall distribute, to the extent of the aggregate amount of those moneys, two hundred thousand dollars to Cleveland state university and the remainder to other educational institutions, state agencies, regional planning commissions, and political subdivisions.

(C) The purpose of the public utilities transportation safety fund shall be for defraying all expenses incident to maintaining the nonrailroad transportation activities of the commission.

(D) There is hereby created in the state treasury the federal commercial

vehicle transportation systems fund. The fund shall consist of money received from the United States department of transportation's commercial vehicle intelligent transportation systems infrastructure deployment program. The public utilities commission shall use the fund to deploy the Ohio commercial vehicle information systems networks project and to improve safety of motor carrier operations through electronic exchange of data.

(E) There is hereby created in the state treasury the motor carrier safety fund. The fund shall consist of money received from the United States department of transportation for motor carrier safety. The commission shall use the fund to administer the state's motor carrier safety assistance program and associated grants, including the motor carrier safety assistance program basic grant, the incentive grant, the high priority grants, the new entrant safety assurance grant, the safety data improvement grant, or their equivalents.

(F) If the director of budget and management determines there is not sufficient money in the public utilities transportation safety fund, the director shall transfer money from the general revenue fund to the public utilities transportation safety fund in an amount up to the difference between the balance of the public utilities transportation safety fund and the appropriations from that fund. If the director subsequently determines during the fiscal year that the balance of the public utilities transportation safety fund exceeds the amount needed to support the appropriations from the fund, the director shall transfer the excess money, up to the amount of the original transfer, to the general revenue fund.

Sec. 4921.25. Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, that is engaged in the towing of motor vehicles is subject to regulation by the public utilities commission as a for-hire motor carrier under this chapter. Such an entity is not subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow motor vehicles.

Sec. 4921.30. Except as otherwise provided in sections 4921.32 to 4921.38 of the Revised Code, a for-hire motor carrier engaged in the transportation of household goods in intrastate commerce:

(A) Is subject to Chapter 4921. of the Revised Code and to all other provisions of the Revised Code applicable to a for-hire motor carrier, including sections 4506.22, 4511.78, 5502.01, 5503.02, and 5503.34 of the Revised Code;

(B) Is not a public utility as defined in section 4911.01 of the Revised

Code.

Sec. 4921.32. Notwithstanding any provision of this chapter or Chapters 4901. to 4909. and 4923. of the Revised Code to the contrary:

(A) Not later than six months after the effective date of this section, the public utilities commission, in accordance with sections 4921.30 to 4921.38 of the Revised Code, shall establish by order a certification system for for-hire motor carriers engaged in the transportation of household goods in intrastate commerce.

(B) Beginning on the effective date of the order of the commission as initially issued under division (A) of this section, no for-hire motor carrier shall engage in the transportation of household goods in intrastate commerce without first holding a current and valid certificate for the transportation of household goods issued by the commission pursuant to sections 4921.30 to 4921.38 of the Revised Code.

Sec. 4921.34. (A) The public utilities commission shall approve an application for a certificate for the transportation of household goods under sections 4921.30 to 4921.38 of the Revised Code and shall issue a certificate, provided the applicant pays the applicable application fee under division (I) of section 4921.19 of the Revised Code and submits to the commission a completed application, on a form prescribed by the commission, that is substantially the same as the application prescribed by the commission pursuant to section 4921.05 of the Revised Code, and includes a certification of all of the following by responsible officials of the applicant:

(1) The applicant's workers' compensation coverage is current pursuant to Chapter 4123. of the Revised Code.

(2) The applicant's unemployment compensation coverage is current pursuant to Chapter 4141. of the Revised Code.

(3) The applicant's financial responsibility is in accordance with rules adopted by the commission under section 4921.09 of the Revised Code.

(B) The commission shall not approve any application that does not contain the proper certifications required by this section. The commission may revoke a certificate issued under division (A) of this section if, after at least fifteen days' advance notice to the certificate holder of the basis for such action and providing the holder with an opportunity for a hearing, the commission finds that the holder is not in compliance with this chapter, or rules adopted or orders issued under it.

(C) A certificate issued under division (A) of this section is valid for one year and is renewable annually.

Sec. 4921.36. Each holder of a certificate for the transportation of

household goods shall do all of the following:

(A) Make its current certificate available for public inspection during normal business hours;

(B) Present each of its customers with information, written in plain and clear language and pursuant to a form prescribed by the public utilities commission, outlining a consumer's rights;

(C) Include its certificate number on all advertising, written estimates, and contracts, pursuant to rules adopted by the commission.

Sec. 4921.38. In accordance with sections 4921.30 to 4921.36 of the Revised Code, the public utilities commission may adopt rules regarding any of the following:

(A) Providing for binding estimates by for-hire motor carriers engaged in the transportation of household goods in intrastate commerce;

(B) Providing for guaranteed-not-to-exceed estimates by those carriers;

(C) Requiring those carriers to include their certificate number in all advertising, written estimates, and contracts related to the transportation of household goods in intrastate commerce;

(D) As are necessary and proper to carry out this chapter with respect to those carriers;

(E) Providing for the enforcement of the consumer protection provisions of Title 49 of the United States Code related to the delivery and transportation of household goods in interstate commerce, as permitted by 49 U.S.C. 14710.

Sec. 4923.01. As used in this chapter:

(A) "Ambulance," "interstate commerce," "intrastate commerce," "motor vehicle," "public highway," "ridesharing arrangement," and "school bus" have the same meanings as in section 4921.01 of the Revised Code.

(B) "For-hire motor carrier" means a person engaged in the business of transporting persons or property by motor vehicle for compensation, except when engaged in any of the following in intrastate commerce:

(1) The transportation of persons in taxicabs in the usual taxicab service;

(2) The transportation of pupils in school busses operating to or from school sessions or school events;

(3) The transportation of farm supplies to the farm or farm products from farm to market or to food fabricating plants;

(4) The distribution of newspapers;

(5) The transportation of crude petroleum incidental to gathering from wells and delivery to destination by pipe line;

(6) The transportation of injured, ill, or deceased persons by hearse or ambulance;

(7) The transportation of compost (a combination of manure and sand or shredded bark mulch) or shredded bark mulch;

(8) The transportation of persons in a ridesharing arrangement when any fee charged each person so transported is in such amount as to recover only the person's share of the costs of operating the motor vehicle for such purpose;

(9) The operation of motor vehicles for contractors on public road work.

"For-hire motor carrier" includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.

Divisions (B)(1) to (9) of this section shall not be construed to relieve a person from compliance with rules adopted under division (A)(2) of section 4923.04 of the Revised Code, division (E) of section 4923.06 of the Revised Code, division (B) of section 4923.07 of the Revised Code, and section 4923.11 of the Revised Code, or from compliance with rules regarding commercial driver's licenses adopted under division (A)(1) of section 4923.04 of the Revised Code.

(C) "Motor carrier" means both a for-hire motor carrier and a private motor carrier.

(D) "Private motor carrier" means a person who is not a for-hire motor carrier but is engaged in the business of transporting persons or property by motor vehicle, except as provided in section 4923.02 of the Revised Code. "Private motor carrier" includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.

Sec. 4923.02. (A) As used in this chapter, "private motor carrier" does not include a person when engaged in any of the following in intrastate commerce:

(1) The transportation of persons in taxicabs in the usual taxicab service;

(2) The transportation of pupils in school busses operating to or from school sessions or school events;

(3) The transportation of farm supplies to the farm or farm products from farm to market or to food fabricating plants;

(4) The distribution of newspapers;

(5) The transportation of crude petroleum incidental to gathering from wells and delivery to destination by pipe line;

(6) The transportation of injured, ill, or deceased persons by hearse or ambulance;

(7) The transportation of compost (a combination of manure and sand or shredded bark mulch) or shredded bark mulch;

(8) The transportation of persons in a ridesharing arrangement when any fee charged each person so transported is in such amount as to recover only the person's share of the costs of operating the motor vehicle for such purpose;

(9) The operation of motor vehicles for contractors on public road work.

(B) The public utilities commission may grant a motor carrier operating in intrastate commerce a temporary exemption from some or all of the provisions of this chapter and the rules adopted under it, when either of the following applies:

(1) The governor of this state has declared an emergency.

(2) The chairperson of the commission or the chairperson's designee has declared a transportation-specific emergency.

(C) The commission may adopt rules not incompatible with the requirements of the United States department of transportation to provide exemptions to motor carriers operating in intrastate commerce not otherwise identified in divisions (A) and (B) of this section.

(D) Divisions (A) to (C) of this section shall not be construed to relieve a person from compliance with either of the following:

(1) Rules adopted under division (A)(2) of section 4923.04 of the Revised Code, division (E) of section 4923.06 of the Revised Code, division (B) of section 4923.07 of the Revised Code, and section 4923.11 of the Revised Code;

(2) Rules regarding commercial driver's licenses adopted under division (A)(1) of section 4923.04 of the Revised Code.

Sec. 4923.04. (A)(1) The public utilities commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce.

(2) The commission shall adopt rules applicable to the highway transportation and offering for transportation of hazardous materials by motor carriers, and persons engaging in the highway transportation and offering for transportation of hazardous materials, operating in interstate or intrastate commerce.

(B) The rules adopted under division (A) of this section shall not be incompatible with the requirements of the United States department of transportation.

(C) To achieve the purposes of this chapter and to assist the commission

in the performance of any of its powers or duties, the commission, either through the public utilities commissioners or employees authorized by it, may do either or both of the following:

(1) Apply for, and any judge of a court of record of competent jurisdiction may issue, an appropriate search warrant;

(2) Examine under oath, at the offices of the commission, any officer, agent, or employee of any person subject to this chapter. The commission, by subpoena, also may compel the attendance of a witness for the purpose of the examination and, by subpoena duces tecum, may compel the production of all books, contracts, records, and documents that relate to the transportation and offering for transportation of hazardous materials.

Sec. 4923.06. (A) The public utilities commission may, through the commission's inspectors or other authorized employees, enter in or upon any motor vehicle of any motor carrier, or any person engaging in the transportation of hazardous material or hazardous waste, to inspect the motor vehicle or driver subject to rules adopted under section 4923.04 of the Revised Code.

(B) In order to assist the commission in performing its duties under this section, authorized employees of the state highway patrol of the department of public safety may conduct inspections of motor vehicles and drivers.

(C) Inspectors and employees authorized to conduct inspections under divisions (A) and (B) of this section may, under the direction of the commission, stop motor vehicles to inspect those vehicles and drivers to enforce compliance with rules adopted under section 4923.04 of the Revised Code.

(D) Inspectors and employees authorized to conduct inspections under divisions (A) and (B) of this section shall conduct inspections consistent with the North American standard inspection procedure of the commercial vehicle safety alliance and the standards of the United States department of transportation. The inspectors and employees may declare drivers and motor vehicles out-of-service consistent with this procedure and these standards.

(E) The commission may adopt rules to carry out this section that are not incompatible with the requirements of the United States department of transportation.

Sec. 4923.07. (A) The public utilities commission may, through the commission's inspectors or other authorized employees, enter in or upon the premises and motor vehicles of any motor carrier, or any person engaging in the transportation of hazardous material or hazardous waste, to examine any records, documents, or property for the purpose of assessing the safety, performance, and management controls associated with the carrier or

person.

(B) The commission may adopt rules to carry out this section that are not incompatible with the requirements of the United States department of transportation.

Sec. 4923.09. The public utilities commission shall cooperate with and permit the use of the services, records, and facilities of the commission as fully as practicable by appropriate officers of the United States department of transportation, other federal agencies or commissions, and appropriate commissions of other states in the enforcement and administration of state and federal laws relating to highway transportation by motor vehicles. The commission may enter into cooperative agreements with the United States department of transportation and any other federal agency or commission to enforce the safety laws and rules of this state and of the United States concerning highway transportation by motor vehicles. All grants-in-aid, cash, and reimbursements received by the commission pursuant to those cooperative agreements shall be deposited to the credit of the motor carrier safety fund created under section 4921.21 of the Revised Code.

Sec. 4923.11. The public utilities commission may adopt rules applicable to the highway routing of hazardous materials into, through, or within this state. Rules adopted under this section shall not be incompatible with requirements of the United States department of transportation.

Sec. 4923.15. Proceedings of the public utilities commission for the assessment of forfeitures for violations of Chapters 4921. and 4923. of the Revised Code are subject to and governed by section 4923.99 of the Revised Code. In all other respects in which the commission has power and authority under Chapters 4921. and 4923. of the Revised Code, applications and complaints may be made and filed with the commission, processes may be issued, hearings may be held, opinions, orders, and decisions may be made and filed, petitions for rehearing may be filed and acted upon, and all proceedings before the supreme court of this state may be considered and disposed of by that court in the manner, under the conditions, subject to the limitations, and with the effect specified in the sections of the Revised Code governing the supervision of public utilities by the commission.

Sec. 4923.99. (A)(1) Whoever violates Chapter 4921. or 4923. of the Revised Code is liable to the state for a forfeiture of not more than twenty-five thousand dollars for each day of each violation. The public utilities commission, after providing reasonable notice and the opportunity for a hearing in accordance with the procedural rules adopted under section 4901.13 of the Revised Code, shall assess, by order, a forfeiture upon a person whom the commission determines, by a preponderance of the

evidence, committed the violation. In determining the amount of the forfeiture for a violation discovered during a driver or motor-vehicle inspection under section 4923.06 of the Revised Code, the commission shall, to the extent practicable, not act in a manner incompatible with the requirements of the United States department of transportation, and, to the extent practicable, shall utilize a system comparable to the recommended civil-penalty procedure adopted by the commercial vehicle safety alliance. In determining the amount of the forfeiture for a violation discovered during a compliance review of a motor carrier under section 4923.07 of the Revised Code, the commission shall, to the extent practicable, not act in a manner incompatible with the civil-penalty guidelines of the United States department of transportation.

The attorney general, upon the written request of the commission, shall bring a civil action in the court of common pleas of Franklin county to collect a forfeiture assessed under this section. The commission shall account for the forfeitures collected under this section and pay them to the treasurer of state under section 4921.21 of the Revised Code.

(2) The attorney general, upon the written request of the commission, shall bring an action for injunctive relief in the court of common pleas of Franklin county against any person who has violated or is violating any order issued by the commission to secure compliance with any provision of Chapter 4921. or 4923. of the Revised Code. The court of common pleas of Franklin county has jurisdiction to and may grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated or is violating any such order. The court shall give precedence to such an action over all other cases.

(B) The amount of any forfeiture may be compromised at any time prior to collection of the forfeiture. The commission shall adopt rules governing the manner in which the amount of a forfeiture may be established by agreement prior to the hearing on the forfeiture before the commission.

(C) The proceedings of the commission specified in division (A) of this section are subject to and governed by Chapter 4903. of the Revised Code, except as otherwise specifically provided in this section. The court of appeals of Franklin county has exclusive, original jurisdiction to review, modify, or vacate an order of the commission issued to secure compliance with any provision of Chapter 4921. or 4923. of the Revised Code. The court of appeals shall hear and determine those appeals in the same manner, and under the same standards, as the supreme court hears and determines appeals under Chapter 4903. of the Revised Code. The judgment of the court of appeals is final and conclusive unless reversed, vacated, or modified

on appeal. Such appeals may be taken either by the commission or the person to whom the compliance order or forfeiture assessment was issued and shall proceed as in the case of appeals in civil actions as provided in the rules of appellate procedure and Chapter 2505. of the Revised Code.

(D) Section 4903.11 of the Revised Code does not apply to an appeal of an order issued to secure compliance with Chapter 4921. or 4923. of the Revised Code or an order issued under division (A)(1) of this section assessing a forfeiture. Any person to whom any such order is issued who wishes to contest a compliance order, the fact of the violation, or the amount of the forfeiture shall file a notice of appeal, setting forth the order appealed from and the errors complained of, within sixty days after the entry of the order upon the journal of the commission. The notice of appeal shall be served, unless waived, upon the chairperson of the commission or, in the event of the chairperson's absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. An order issued by the commission to secure compliance with Chapter 4921. or 4923. of the Revised Code or an order issued under division (A)(1) of this section assessing a forfeiture shall be reversed, vacated, or modified on appeal if, upon consideration of the record, the court is of the opinion that the order was unlawful or unreasonable.

(E) Only for such violations that constitute violations of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C.A. App. 1804 and 1805, or regulations adopted under the act, the commission, in determining liability, shall use the same standard of culpability for civil forfeitures under this section as that set forth for civil penalties under section 12 of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C.A. App. 1809. The commission shall consider the assessment considerations for civil penalties specified in regulations adopted under the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C. 1801.

Sec. 4927.01. (A) As used in this chapter:

(1) "Basic local exchange service" means residential-end-user access to and usage of telephone-company-provided services over a single line or small-business-end-user access to and usage of telephone-company-provided services over the primary access line of service, which in the case of residential and small-business access and usage is not part of a bundle or package of services, that does both of the following:

(a) Enables a customer to originate or receive voice communications within a local service area as that area exists on September 13, 2010, the

effective date of the amendment of this section by S.B. 162 of the 128th general assembly;

(b) Consists of all of the following services:

(i) Local dial tone service;

(ii) For residential end users, flat-rate telephone exchange service;

(iii) Touch tone dialing service;

(iv) Access to and usage of 9-1-1 services, where such services are available;

(v) Access to operator services and directory assistance;

(vi) Provision of a telephone directory in any reasonable format for no additional charge and a listing in that directory, with reasonable accommodations made for private listings;

(vii) Per call, caller identification blocking services;

(viii) Access to telecommunications relay service; and

(ix) Access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.

(2) "Bundle or package of services" means one or more telecommunications services or other services offered together as one service option at a single price.

(3) "Carrier access" means access to and usage of telephone company-provided facilities that enable end user customers originating or receiving voice grade, data, or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks and includes special access.

(4) "Federal poverty level" means the income level represented by the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.

(5) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a) On February 8, 1996, provided telephone exchange service in such area; and

(b)(i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. 69.601(b); or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in division (A)(5)(b)(i) of this section.

(6) "Internet protocol-enabled services" means any services,

capabilities, functionalities, or applications that are provided using internet protocol or a successor protocol to enable an end user to send or receive communications in internet protocol format or a successor format, regardless of how any particular such service is classified by the federal communications commission, and includes voice over internet protocol service.

(7) "Local exchange carrier" means any person engaged in the provision of telephone exchange service, or the offering of access to telephone exchange service or facilities for the purpose of originating or terminating telephone toll service.

(8) "Local service area" means the geographic area that may encompass more than one exchange area and within which a telephone customer, by paying the rate for basic local exchange service, may complete calls to other telephone customers without being assessed long distance toll charges.

(9) "Small business" means a nonresidential service customer with three or fewer service access lines.

(10) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(11) "Telecommunications carrier" has the same meaning as in the "Telecommunications Act of 1996," 110 Stat. 60, 47 U.S.C. 153.

(12) "Telecommunications service" means the offering of telecommunications for a fee directly to the public; or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(13) "Telephone company" means a company described in division (A)(4) of section 4905.03 of the Revised Code that is a public utility under section 4905.02 of the Revised Code.

(14) "Telephone exchange service" means telecommunications service that is within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and that is covered by the exchange service charge; or comparable service provided through a system of switches, transmission equipment, or other facilities, or combination thereof, by which a customer can originate and terminate a telecommunications service.

(15) "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with customers for exchange service.

(16) "Voice over internet protocol service" means a service that uses a

broadband connection from an end user's location and enables real-time, two-way, voice communications that originate or terminate from the user's location using internet protocol or a successor protocol, including, but not limited to, any such service that permits an end user to receive calls from and terminate calls to the public switched network.

(17) "Wireless service" means federally licensed commercial mobile service as defined in the "Telecommunications Act of 1996," 110 Stat. 61, 151, 153, 47 U.S.C. 332(d) and further defined as commercial mobile radio service in 47 C.F.R. 20.3. Under division (A)(17) of this section, commercial mobile radio service is specifically limited to mobile telephone, mobile cellular telephone, paging, personal communications services, and specialized mobile radio service provided by a common carrier in this state and excludes fixed wireless service.

(18) "Wireless service provider" means a facilities-based provider of wireless service to one or more end users in this state.

(B) The definitions of this section shall be applied consistent with the definitions in the "Telecommunications Act of 1996," 110 Stat. 56, 47 U.S.C. 151 et seq., as amended, and with federal decisions interpreting those definitions.

Sec. 4929.01. As used in this chapter:

(A) "Alternative rate plan" means a method, alternate to the method of section 4909.15 of the Revised Code, for establishing rates and charges, under which rates and charges may be established for a commodity sales service or ancillary service that is not exempt pursuant to section 4929.04 of the Revised Code or for a distribution service. Alternative rate plans may include, but are not limited to, methods that provide adequate and reliable natural gas services and goods in this state; minimize the costs and time expended in the regulatory process; tend to assess the costs of any natural gas service or goods to the entity, service, or goods that cause such costs to be incurred; afford rate stability; promote and reward efficiency, quality of service, or cost containment by a natural gas company; provide sufficient flexibility and incentives to the natural gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges; or establish revenue decoupling mechanisms. Alternative rate plans also may include, but are not limited to, automatic adjustments based on a specified index or changes in a specified cost or costs.

(B) "Ancillary service" means a service that is ancillary to the receipt or delivery of natural gas to consumers, including, but not limited to, storage, pooling, balancing, and transmission.

(C) "Commodity sales service" means the sale of natural gas to consumers, exclusive of any distribution or ancillary service.

(D) "Comparable service" means any regulated service or goods whose availability, quality, price, terms, and conditions are the same as or better than those of the services or goods that the natural gas company provides to a person with which it is affiliated or which it controls, or, as to any consumer, that the natural gas company offers to that consumer as part of a bundled service that includes both regulated and exempt services or goods.

(E) "Consumer" means any person or association of persons purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas, including industrial consumers, commercial consumers, and residential consumers, but not including natural gas companies.

(F) "Distribution service" means the delivery of natural gas to a consumer at the consumer's facilities, by and through the instrumentalities and facilities of a natural gas company, regardless of the party having title to the natural gas.

(G) "Natural gas company" means a natural gas company, as defined in section 4905.03 of the Revised Code, that is a public utility as defined in section 4905.02 of the Revised Code and excludes a retail natural gas supplier.

(H) "Person," except as provided in division (N) of this section, has the same meaning as in section 1.59 of the Revised Code, and includes this state and any political subdivision, agency, or other instrumentality of this state and includes the United States and any agency or other instrumentality of the United States.

(I) "Billing or collection agent" means a fully independent agent, not affiliated with or otherwise controlled by a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, to the extent that the agent is under contract with such supplier or aggregator solely to provide billing and collection for competitive retail natural gas service on behalf of the supplier or aggregator.

(J) "Competitive retail natural gas service" means any retail natural gas service that may be competitively offered to consumers in this state as a result of revised schedules approved under division (C) of section 4929.29 of the Revised Code, a rule or order adopted or issued by the public utilities commission under Chapter 4905. of the Revised Code, or an exemption granted by the commission under sections 4929.04 to 4929.08 of the Revised Code.

(K) "Governmental aggregator" means either of the following:

(1) A legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting exclusively under section 4929.26 or 4929.27 of the Revised Code as an aggregator for the provision of competitive retail natural gas service;

(2) A municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.

(L)(1) "Mercantile customer" means a customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. "Mercantile customer" excludes a customer for which a declaration under division (L)(2) of this section is in effect pursuant to that division.

(2) A not-for-profit customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside this state may file a declaration under division (L)(2) of this section with the public utilities commission. The declaration shall take effect upon the date of filing, and by virtue of the declaration, the customer is not a mercantile customer for the purposes of this section and sections 4929.20 to 4929.29 of the Revised Code or the purposes of a governmental natural gas aggregation or arrangement or other contract entered into after the declaration's effective date for the supply or arranging of the supply of natural gas to the customer to a location within this state. The customer may file a rescission of the declaration with the commission at any time. The rescission shall not affect any governmental natural gas aggregation or arrangement or other contract entered into by the customer prior to the date of the filing of the rescission and shall have effect only with respect to any subsequent such aggregation or arrangement or other contract. The commission shall prescribe rules under section 4929.10 of the Revised Code specifying the form of the declaration or a rescission and procedures by which a declaration or rescission may be filed.

(M) "Retail natural gas service" means commodity sales service, ancillary service, natural gas aggregation service, natural gas marketing service, or natural gas brokerage service.

(N) "Retail natural gas supplier" means any person, as defined in section 1.59 of the Revised Code, that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of a

competitive retail natural gas service to consumers in this state that are not mercantile customers. "Retail natural gas supplier" includes a marketer, broker, or aggregator, but excludes a natural gas company, a governmental aggregator as defined in division (K)(1) or (2) of this section, an entity described in division ~~(B)(A)(2)~~ or ~~(C)(3)~~ of section 4905.02 of the Revised Code, or a billing or collection agent, and excludes a producer or gatherer of gas to the extent such producer or gatherer is not a natural gas company under section 4905.03 of the Revised Code.

(O) "Revenue decoupling mechanism" means a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of system throughput or volumetric sales.

Sec. 4929.02. (A) It is the policy of this state to, throughout this state:

(1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;

(2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;

(4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods;

(5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods;

(6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;

(7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code;

(8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;

(9) Ensure that the risks and rewards of a natural gas company's offering

of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section;

(10) Facilitate the state's competitiveness in the global economy;

(11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation;

(12) Promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation.

(B) The public utilities commission and the office of the consumers' counsel shall follow the policy specified in this section in exercising their respective authorities relative to sections 4929.03 to 4929.30 of the Revised Code.

(C) Nothing in Chapter 4929. of the Revised Code shall be construed to alter the public utilities commission's construction or application of division (A)(5)(E) of section 4905.03 of the Revised Code.

Sec. 4929.041. (A) As used in this section, "regulatory exemption" means an exemption from all provisions of Chapter 4905. of the Revised Code with the exception of sections 4905.10, 4905.35, and 4905.90 to 4905.96 of the Revised Code, Chapters 4909., 4933., and 4935. of the Revised Code, with the exception of section 4935.03 of the Revised Code, and from any rule or order issued under the exempted provisions of those chapters.

(B) The public utilities commission, upon the an application of filed under section 4909.18 of the Revised Code by a natural gas company in substantial compliance with the policy specified in section 4929.02 of the Revised Code, shall exempt grant a regulatory exemption, by order, any investment for either or both of the following:

(1) Any investments in gathering lines or storage or gathering facilities placed into service on or after January 1, 2010, and also any service of the natural gas company related to those gathering lines or storage facilities from all provisions of Chapter 4905. of the Revised Code with the exception of sections 4905.10, 4905.35, and 4905.90 to 4905.96 of the Revised Code, Chapters 4909., 4933., and 4935. of the Revised Code, with the exception of section 4935.03 of the Revised Code, and from any rule or order issued under the exempted provisions of those chapters;

(2) Any investments in gathering facilities placed into service before January 1, 2010, and also any service of the natural gas company related to those facilities.

(C)(1) A natural gas company requesting a regulatory exemption under

division (B)(2) of this section shall identify in the application both of the following:

(a) The valuation of the investments to be exempted, as determined under division (A)(1) of section 4909.15 of the Revised Code, in the rate case proceeding that established the company's rates in effect at the time of the filing of the application requesting the regulatory exemption;

(b) The valuation of all nonexempt investments placed into service after the date certain used in the rate case proceeding described in division (C)(1)(a) of this section, excluding investments for which deferral or recovery is authorized under section 4909.18, 4929.05, or 4929.111 of the Revised Code.

(2) The commission shall compare the valuations identified in divisions (C)(1)(a) and (b) of this section.

(a) If the valuation identified in division (C)(1)(a) of this section exceeds the valuation identified in division (C)(1)(b) of this section, the commission shall, in addition to the adjustments needed to implement the regulatory exemption, reduce the gross annual revenues to which the utility is entitled under division (B) of section 4909.15 of the Revised Code by applying the rate of return, as determined under division (A)(2) of section 4909.15 of the Revised Code in the rate case proceeding in which the regulatory exemption is being sought, to the difference in the two valuations.

(b) If the valuation identified in division (C)(1)(a) of this section does not exceed the valuation identified in division (C)(1)(b) of this section, the commission shall make no adjustments beyond those needed to implement the regulatory exemption.

(3) If the company, after a regulatory exemption has been granted under division (B)(2) of this section, subsequently places into service investments that perform the function that had been provided by the exempt investments prior to the granting of the regulatory exemption, the company shall not be authorized to recover revenues related to the investments placed into service greater than those consistent with the value of the exempt assets as would be determined under division (A)(1) of section 4909.15 of the Revised Code in the company's next rate case.

~~(B)(D)~~(1) Subject to division ~~(C)~~(E) of this section, a natural gas company subject to an a regulatory exemption order issued under division (A) of this section shall, to the maximum extent practicable, keep separate the company's operations, resources, and employees, and the associated books and records, involved in the provision or marketing of a company-provided service related to an investment exempted under the

regulatory exemption ~~order~~ from the operations, resources, and employees, and the associated books and records, involved in the provision or marketing of any company-provided service not exempted under the regulatory exemption ~~order~~ or any other section of the Revised Code.

(2) An order granting regulatory exemption ~~order issued under division (A) of this section~~ shall prescribe a functional separation plan for compliance with division ~~(B)~~(D)(1) of this section.

~~(C)~~(E)(1) No natural gas company subject to ~~an a regulatory~~ exemption ~~order issued under division (A) of this section~~ may use the company's storage ~~facilities and or gathering lines~~ facilities associated with the regulatory exemption ~~order~~ to provide a commodity sales service that is unregulated or subject to an exemption order issued under section 4929.04 of the Revised Code.

(2) Upon application to the commission by a natural gas company and upon a finding of good cause shown, the commission may, by order, waive the prohibition described in division ~~(C)~~(E)(1) of this section. The natural gas company shall bear the burden of proof that the waiver is just and reasonable, which shall constitute good cause.

~~(D)~~(F) The commission shall have continuous jurisdiction to enforce any terms that it imposes in ~~an a regulatory~~ exemption ~~order issued under division (A) of this section~~. Whenever the commission is of the opinion, after hearing had upon complaint or upon its own initiative or complaint, served as provided in section 4905.26 of the Revised Code, that ~~an a regulatory~~ exemption ~~order issued under division (A) of this section~~ has adversely affected the quality, adequacy, or sufficiency of service provided by the company subject to the regulatory exemption ~~order~~, the commission may alter, amend, or suspend the regulatory exemption ~~order~~.

Sec. 4929.042. A natural gas company shall notify the public utilities commission in writing before converting the use of any gathering facilities described in division (B)(2) of section 4929.041 of the Revised Code.

Sec. 4933.18. (A) In a prosecution for a theft offense, as defined in section 2913.01 of the Revised Code, that involves alleged tampering with a gas, electric, steam, or water meter, conduit, or attachment of a utility that has been disconnected by the utility, proof that a meter, conduit, or attachment of a utility has been tampered with is prima-facie evidence that the person who is obligated to pay for the service rendered through the meter, conduit, or attachment and is in possession or control of the meter, conduit, or attachment at the time the tampering occurred has caused the tampering with intent to commit a theft offense.

In a prosecution for a theft offense, as defined in section 2913.01 of the

Revised Code, that involves the alleged reconnection of a gas, electric, steam, or water meter, conduit, or attachment of a utility that has been disconnected by the utility, proof that a meter, conduit, or attachment disconnected by a utility has been reconnected without the consent of the utility is prima-facie evidence that the person in possession or control of the meter, conduit, or attachment at the time of the reconnection has reconnected the meter, conduit, or attachment with intent to commit a theft offense.

(B) As used in this section:

(1) "Utility" means any electric light company, gas company, natural gas company, pipe-line company, water-works company, or heating or cooling company, as defined by division ~~(A)(3), (4), (5), (6), (7)(C), (D), (E), (F), (G), or (8)(H)~~ of section 4905.03 of the Revised Code, its lessees, trustees, or receivers, or any similar utility owned or operated by a political subdivision.

(2) "Tamper" means to interfere with, damage, or by-pass a utility meter, conduit, or attachment with the intent to impede the correct registration of a meter or the proper functions of a conduit or attachment so as to reduce the amount of utility service that is registered on the meter.

Sec. 4933.19. Each electric light company, gas company, natural gas company, pipe-line company, water-works company, or heating or cooling company, as defined by division ~~(A)(3), (4), (5), (6), (7), (C), (D), (E), (F), (G), or (8)(H)~~ of section 4905.03 of the Revised Code, or its lessees, trustees, or receivers, and each similar utility owned or operated by a political subdivision shall notify its customers, on an annual basis, that tampering with or bypassing a meter constitutes a theft offense that could result in the imposition of criminal sanctions.

Sec. 4939.01. As used in sections 4939.01 to 4939.08 of the Revised Code:

(A) "Cable operator," "cable service," and "franchise" have the same meanings as in the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522.

(B) "Occupy or use" means, with respect to a public way, to place a tangible thing in a public way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

(C) "Person" means any natural person, corporation, or partnership and also includes any governmental entity.

(D) "Public utility" means any company described in section 4905.03 of the Revised Code except in divisions ~~(A)(2)(B)~~ and ~~(9)(I)~~ of that section, which company also is a public utility as defined in section 4905.02 of the Revised Code; and includes any electric supplier as defined in section 4933.81 of the Revised Code.

(E) "Public way" means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, and any other land dedicated or otherwise designated for a compatible public use, which, on or after ~~the effective date of this section~~ July 2, 2002, is owned or controlled by a municipal corporation. "Public way" excludes a private easement.

(F) "Public way fee" means a fee levied to recover the costs incurred by a municipal corporation and associated with the occupancy or use of a public way.

Sec. 4953.04. No union terminal company or corporation shall engage in the business of a for-hire motor transportation service carrier, as defined in ~~sections 4905.03, 4921.02, and 4923.02~~ 4921.01 of the Revised Code, over any public highway in this state, without obtaining authority from the public utilities commission, and complying with all laws governing every corporation or company when engaged or proposing to engage in ~~such the business of a for-hire motor transportation service carrier~~.

Sec. 4961.03. Any railroad company owning or operating a railroad in this state may own, control, operate, or manage motor vehicles for the purpose of transporting persons or property, or both, upon the public highways for hire, subject to ~~sections 4921.02 to 4921.32, inclusive, Chapters 4921. and 4923.~~ of the Revised Code. Any railroad company may also own and operate equipment for and engage in the business of aerial transportation. Any railroad company may acquire, own, and hold capital stock and securities of corporations organized for or engaged in the businesses authorized in this section and may operate the properties, or any part thereof, of such corporations, and may enter into working arrangements and agreements with such corporations.

Sec. 4965.54. Any common carrier, railroad, or ~~transportation company~~ motor carrier receiving property at a point within this state for transportation to a point within this state, shall issue a receipt or bill of lading for such property and is liable to the lawful holder of it for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property is delivered or over whose line such property passes. No contract, receipt, rule, or regulation shall

exempt such common carrier, railroad, or ~~transportation company~~ motor carrier from the liability imposed by this section. This section does not deprive any holder of such receipt or bill of lading of any remedy or right of action which ~~he~~ the holder has under existing law.

The common carrier, railroad, or ~~transportation company~~ motor carrier issuing such receipt or bill of lading may recover from the common carrier, railroad, or ~~transportation company~~ motor carrier on whose line the loss, damage, or injury was sustained the amount of such loss, damage, or injury it is required to pay the owners of such property as is evidenced by any receipt, judgment, or transcript thereof.

As used in this section, "motor carrier" has the same meaning as in section 4923.01 of the Revised Code.

Sec. 5101.01. (A) As used in the Revised Code, the "department of public welfare" and the "department of human services" mean the department of job and family services and the "director of public welfare" and the "director of human services" mean the director of job and family services. Whenever the department or director of public welfare or the department or director of human services is referred to or designated in any statute, rule, contract, grant, or other document, the reference or designation shall be deemed to refer to the department or director of job and family services, as the case may be.

(B) As used in this chapter ~~of the Revised Code~~:

(1) References ~~to counties or to a county~~ ~~departments~~ department of job and family services include ~~the~~ a joint county department of job and family services established under section 329.40 of the Revised Code.

(2) References to ~~boards~~ a board of county commissioners include ~~boards~~ the board of directors of ~~the~~ a joint county department of job and family services established under section 329.40 of the Revised Code.

Sec. 5101.46. (A) As used in this section:

(1) "Title XX" means Title XX of the "Social Security Act," 88 Stat. 2337 (1974), 42 U.S.C.A. 1397, as amended.

(2) "Respective local agency" means, with respect to the department of job and family services, a county department of job and family services; with respect to the department of mental health, a board of alcohol, drug addiction, and mental health services; and with respect to the department of developmental disabilities, a county board of developmental disabilities.

(3) "Federal poverty guidelines" means the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size

equal to the size of the family of the person whose income is being determined.

(B) The departments of job and family services, mental health, and developmental disabilities, with their respective local agencies, shall administer the provision of social services funded through grants made under Title XX. The social services furnished with Title XX funds shall be directed at the following goals:

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

(4) Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care;

(5) Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

(C)(1) All federal funds received under Title XX shall be appropriated as follows:

(a) Seventy-two and one-half per cent to the department of job and family services;

(b) Twelve and ninety-three ~~one-hundredths~~ one-hundredths per cent to the department of mental health;

(c) Fourteen and fifty-seven ~~one-hundredths~~ one-hundredths per cent to the department of developmental disabilities.

(2) Each of the state departments shall, subject to the approval of the controlling board, develop a formula for the distribution of the Title XX funds appropriated to the department to its respective local agencies. The formula developed by each state department shall take into account all of the following for each of its respective local agencies:

(a) The total population of the area that is served by the respective local agency;

(b) The percentage of the population in the area served that falls below the federal poverty guidelines;

(c) The respective local agency's history of and ability to utilize Title XX funds.

(3) Each of the state departments shall expend for state administrative

costs not more than three per cent of the Title XX funds appropriated to the department.

Each state department shall establish for each of its respective local agencies the maximum percentage of the Title XX funds distributed to the respective local agency that the respective local agency may expend for local administrative costs. The percentage shall be established by rule and shall comply with federal law governing the use of Title XX funds. The rules shall be adopted in accordance with section 111.15 of the Revised Code as if they were internal management rules.

(4) The department of job and family services shall expend for the training of the following not more than two per cent of the Title XX funds appropriated to the department:

(a) Employees of county departments of job and family services;

(b) Providers of services under contract with the state departments' respective local agencies;

(c) Employees of a public children services agency directly engaged in providing Title XX services.

(D) The department of job and family services shall prepare ~~a biennial~~ an annual comprehensive Title XX social services plan on the intended use of Title XX funds. The department shall develop a method for obtaining public comment during the development of the plan and following its completion.

For each ~~state~~ federal fiscal year, the department of job and family services shall prepare a report on the actual use of Title XX funds. The department shall make the annual report available for public inspection.

The departments of mental health and developmental disabilities shall prepare and submit to the department of job and family services the portions of each ~~biennial~~ annual plan and ~~annual~~ report that apply to services for mental health and mental retardation and developmental disabilities. Each respective local agency of the three state departments shall submit information as necessary for the preparation of ~~biennial~~ annual plans and ~~annual~~ reports.

(E) Each county department of job and family services shall adopt a county profile for the administration and provision of Title XX social services in the county. In developing its county profile, the county department shall take into consideration the comments and recommendations received from the public by the county family services planning committee pursuant to section 329.06 of the Revised Code. As part of its preparation of the county profile, the county department may prepare a local needs report analyzing the need for Title XX social services.

The county department shall submit the county profile to the board of county commissioners for its review. Once the county profile has been approved by the board, the county department shall file a copy of the county profile with the department of job and family services. The department shall approve the county profile if the department determines the profile provides for the Title XX social services to meet the goals specified in division (B) of this section.

(F) Any of the three state departments and their respective local agencies may require that an entity under contract to provide social services with Title XX funds submit to an audit on the basis of alleged misuse or improper accounting of funds. If an audit is required, the social services provider shall reimburse the state department or respective local agency for the cost it incurred in conducting the audit or having the audit conducted.

If an audit demonstrates that a social services provider is responsible for one or more adverse findings, the provider shall reimburse the appropriate state department or its respective local agency the amount of the adverse findings. The amount shall not be reimbursed with Title XX funds received under this section. The three state departments and their respective local agencies may terminate or refuse to enter into a Title XX contract with a social services provider if there are adverse findings in an audit that are the responsibility of the provider.

(G) Except with respect to the matters for which each of the state departments must adopt rules under division (C)(3) of this section, the department of job and family services may adopt any rules it considers necessary to implement and carry out the purposes of this section. Rules governing financial and operational matters of the department or matters between the department and county departments of job and family services shall be adopted as internal management rules in accordance with section 111.15 of the Revised Code. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants shall be adopted in accordance with Chapter 119. of the Revised Code.

Sec. 5101.60. As used in sections 5101.60 to 5101.71 of the Revised Code:

(A) "Abuse" means the infliction upon an adult by self or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish.

(B) "Adult" means any person sixty years of age or older within this state who is handicapped by the infirmities of aging or who has a physical or mental impairment which prevents the person from providing for the

person's own care or protection, and who resides in an independent living arrangement. An "independent living arrangement" is a domicile of a person's own choosing, including, but not limited to, a private home, apartment, trailer, or rooming house. An "independent living arrangement" includes ~~an adult care~~ a residential facility licensed pursuant to Chapter 5119.22 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults, but does not include other institutions or facilities licensed by the state or facilities in which a person resides as a result of voluntary, civil, or criminal commitment.

(C) "Caretaker" means the person assuming the responsibility for the care of an adult on a voluntary basis, by contract, through receipt of payment for care, as a result of a family relationship, or by order of a court of competent jurisdiction.

(D) "Court" means the probate court in the county where an adult resides.

(E) "Emergency" means that the adult is living in conditions which present a substantial risk of immediate and irreparable physical harm or death to self or any other person.

(F) "Emergency services" means protective services furnished to an adult in an emergency.

(G) "Exploitation" means the unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain.

(H) "In need of protective services" means an adult known or suspected to be suffering from abuse, neglect, or exploitation to an extent that either life is endangered or physical harm, mental anguish, or mental illness results or is likely to result.

(I) "Incapacitated person" means a person who is impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning the person's self or resources, with or without the assistance of a caretaker. Refusal to consent to the provision of services shall not be the sole determinative that the person is incapacitated. "Reasonable decisions" are decisions made in daily living which facilitate the provision of food, shelter, clothing, and health care necessary for life support.

(J) "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.

(K) "Neglect" means the failure of an adult to provide for self the goods

or services necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services.

(L) "Peace officer" means a peace officer as defined in section 2935.01 of the Revised Code.

(M) "Physical harm" means bodily pain, injury, impairment, or disease suffered by an adult.

(N) "Protective services" means services provided by the county department of job and family services or its designated agency to an adult who has been determined by evaluation to require such services for the prevention, correction, or discontinuance of an act of as well as conditions resulting from abuse, neglect, or exploitation. Protective services may include, but are not limited to, case work services, medical care, mental health services, legal services, fiscal management, home health care, homemaker services, housing-related services, guardianship services, and placement services as well as the provision of such commodities as food, clothing, and shelter.

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

Sec. 5101.61. (A) As used in this section:

(1) "Senior service provider" means any person who provides care or services to a person who is an adult as defined in division (B) of section 5101.60 of the Revised Code.

(2) "Ambulatory health facility" means a nonprofit, public or proprietary freestanding organization or a unit of such an agency or organization that:

(a) Provides preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished to an outpatient or ambulatory patient, by or under the direction of a physician or dentist in a facility which is not a part of a hospital, but which is organized and operated to provide medical care to outpatients;

(b) Has health and medical care policies which are developed with the advice of, and with the provision of review of such policies, an advisory committee of professional personnel, including one or more physicians, one or more dentists, if dental care is provided, and one or more registered nurses;

(c) Has a medical director, a dental director, if dental care is provided, and a nursing director responsible for the execution of such policies, and has physicians, dentists, nursing, and ancillary staff appropriate to the scope of services provided;

(d) Requires that the health care and medical care of every patient be

under the supervision of a physician, provides for medical care in a case of emergency, has in effect a written agreement with one or more hospitals and other centers or clinics, and has an established patient referral system to other resources, and a utilization review plan and program;

(e) Maintains clinical records on all patients;

(f) Provides nursing services and other therapeutic services in accordance with programs and policies, with such services supervised by a registered professional nurse, and has a registered professional nurse on duty at all times of clinical operations;

(g) Provides approved methods and procedures for the dispensing and administration of drugs and biologicals;

(h) Has established an accounting and record keeping system to determine reasonable and allowable costs;

(i) "Ambulatory health facilities" also includes an alcoholism treatment facility approved by the joint commission on accreditation of healthcare organizations as an alcoholism treatment facility or certified by the department of alcohol and drug addiction services, and such facility shall comply with other provisions of this division not inconsistent with such accreditation or certification.

(3) "Community mental health facility" means a facility which provides community mental health services and is included in the comprehensive mental health plan for the alcohol, drug addiction, and mental health service district in which it is located.

(4) "Community mental health service" means services, other than inpatient services, provided by a community mental health facility.

(5) "Home health agency" means an institution or a distinct part of an institution operated in this state which:

(a) Is primarily engaged in providing home health services;

(b) Has home health policies which are established by a group of professional personnel, including one or more duly licensed doctors of medicine or osteopathy and one or more registered professional nurses, to govern the home health services it provides and which includes a requirement that every patient must be under the care of a duly licensed doctor of medicine or osteopathy;

(c) Is under the supervision of a duly licensed doctor of medicine or doctor of osteopathy or a registered professional nurse who is responsible for the execution of such home health policies;

(d) Maintains comprehensive records on all patients;

(e) Is operated by the state, a political subdivision, or an agency of either, or is operated not for profit in this state and is licensed or registered,

if required, pursuant to law by the appropriate department of the state, county, or municipality in which it furnishes services; or is operated for profit in this state, meets all the requirements specified in divisions (A)(5)(a) to (d) of this section, and is certified under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended.

(6) "Home health service" means the following items and services, provided, except as provided in division (A)(6)(g) of this section, on a visiting basis in a place of residence used as the patient's home:

(a) Nursing care provided by or under the supervision of a registered professional nurse;

(b) Physical, occupational, or speech therapy ordered by the patient's attending physician;

(c) Medical social services performed by or under the supervision of a qualified medical or psychiatric social worker and under the direction of the patient's attending physician;

(d) Personal health care of the patient performed by aides in accordance with the orders of a doctor of medicine or osteopathy and under the supervision of a registered professional nurse;

(e) Medical supplies and the use of medical appliances;

(f) Medical services of interns and residents-in-training under an approved teaching program of a nonprofit hospital and under the direction and supervision of the patient's attending physician;

(g) Any of the foregoing items and services which:

(i) Are provided on an outpatient basis under arrangements made by the home health agency at a hospital or skilled nursing facility;

(ii) Involve the use of equipment of such a nature that the items and services cannot readily be made available to the patient in the patient's place of residence, or which are furnished at the hospital or skilled nursing facility while the patient is there to receive any item or service involving the use of such equipment.

Any attorney, physician, osteopath, podiatrist, chiropractor, dentist, psychologist, any employee of a hospital as defined in section 3701.01 of the Revised Code, any nurse licensed under Chapter 4723. of the Revised Code, any employee of an ambulatory health facility, any employee of a home health agency, any employee of ~~an adult care~~ a residential facility as defined in licensed under section 5119.70 5119.22 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults, any employee of a nursing home, residential care facility, or home for the aging, as defined in section 3721.01 of the Revised Code, any senior service provider, any peace officer, coroner, ~~clergyman~~

member of the clergy, any employee of a community mental health facility, and any person engaged in social work or counseling having reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation shall immediately report such belief to the county department of job and family services. This section does not apply to employees of any hospital or public hospital as defined in section 5122.01 of the Revised Code.

(B) Any person having reasonable cause to believe that an adult has suffered abuse, neglect, or exploitation may report, or cause reports to be made of such belief to the department.

(C) The reports made under this section shall be made orally or in writing except that oral reports shall be followed by a written report if a written report is requested by the department. Written reports shall include:

(1) The name, address, and approximate age of the adult who is the subject of the report;

(2) The name and address of the individual responsible for the adult's care, if any individual is, and if the individual is known;

(3) The nature and extent of the alleged abuse, neglect, or exploitation of the adult;

(4) The basis of the reporter's belief that the adult has been abused, neglected, or exploited.

(D) Any person with reasonable cause to believe that an adult is suffering abuse, neglect, or exploitation who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from such a report, or any employee of the state or any of its subdivisions who is discharging responsibilities under section 5101.62 of the Revised Code shall be immune from civil or criminal liability on account of such investigation, report, or testimony, except liability for perjury, unless the person has acted in bad faith or with malicious purpose.

(E) No employer or any other person with the authority to do so shall discharge, demote, transfer, prepare a negative work performance evaluation, or reduce benefits, pay, or work privileges, or take any other action detrimental to an employee or in any way retaliate against an employee as a result of the employee's having filed a report under this section.

(F) Neither the written or oral report provided for in this section nor the investigatory report provided for in section 5101.62 of the Revised Code shall be considered a public record as defined in section 149.43 of the Revised Code. Information contained in the report shall upon request be made available to the adult who is the subject of the report, to agencies

authorized by the department to receive information contained in the report, and to legal counsel for the adult.

Sec. 5104.012. (A)(1) At the times specified in this division, the administrator of a child day-care center or a type A family day-care home shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check with respect to any applicant who has applied to the center or type A home for employment as a person responsible for the care, custody, or control of a child.

The administrator shall request a criminal records check pursuant to this division at the time of the applicant's initial application for employment and every four years thereafter. When the administrator requests pursuant to this division a criminal records check for an applicant at the time of the applicant's initial application for employment, the administrator shall request that the superintendent obtain information from the federal bureau of investigation as a part of the criminal records check for the applicant, including fingerprint-based checks of national crime information databases as described in 42 U.S.C. 671, for the person subject to the criminal records check. In all other cases in which the administrator requests a criminal records check for an applicant pursuant to this division, the administrator may request that the superintendent include information from the federal bureau of investigation in the criminal records check, including fingerprint-based checks of national crime information databases as described in 42 U.S.C. 671.

(2) A person required by division (A)(1) of this section to request a criminal records check shall provide to each applicant a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code, provide to each applicant a standard impression sheet to obtain fingerprint impressions prescribed pursuant to division (C)(2) of section 109.572 of the Revised Code, obtain the completed form and impression sheet from each applicant, and forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation at the time the person requests a criminal records check pursuant to division (A)(1) of this section. On and after August 14, 2008, the administrator of a child day-care center or a type A family day-care home shall review the results of the criminal records check before the applicant has sole responsibility for the care, custody, or control of any child.

(3) An applicant who receives pursuant to division (A)(2) of this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a copy of an impression sheet prescribed pursuant to division (C)(2) of that section and who is requested to complete the form

and provide a set of fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall provide the impression sheet with the impressions of the applicant's fingerprints. If an applicant, upon request, fails to provide the information necessary to complete the form or fails to provide impressions of the applicant's fingerprints, the center or type A home shall not employ that applicant for any position for which a criminal records check is required by division (A)(1) of this section.

(B)(1) Except as provided in rules adopted under division (E) of this section, no child day-care center or type A family day-care home shall employ or contract with another entity for the services of a person as a person responsible for the care, custody, or control of a child if the person previously has been convicted of or pleaded guilty to any of the violations described in division (A)(9)(5) of section 109.572 of the Revised Code.

(2) A child day-care center or type A family day-care home may employ an applicant conditionally until the criminal records check required by this section is completed and the center or home receives the results of the criminal records check. If the results of the criminal records check indicate that, pursuant to division (B)(1) of this section, the applicant does not qualify for employment, the center or home shall release the applicant from employment.

(C)(1) Each child day-care center and type A family day-care home shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted in accordance with that section upon the request pursuant to division (A)(1) of this section of the administrator or provider of the center or home.

(2) A child day-care center and type A family day-care home may charge an applicant a fee for the costs it incurs in obtaining a criminal records check under this section. A fee charged under this division shall not exceed the amount of fees the center or home pays under division (C)(1) of this section. If a fee is charged under this division, the center or home shall notify the applicant at the time of the applicant's initial application for employment of the amount of the fee and that, unless the fee is paid, the center or type A home will not consider the applicant for employment.

(D) The report of any criminal records check conducted by the bureau of criminal identification and investigation in accordance with section 109.572 of the Revised Code and pursuant to a request under division (A)(1) of this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the

applicant who is the subject of the criminal records check or the applicant's representative; the center or type A home requesting the criminal records check or its representative; the department of job and family services or a county department of job and family services; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant.

(E) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this section, including rules specifying circumstances under which a center or home may hire a person who has been convicted of an offense listed in division (B)(1) of this section but who meets standards in regard to rehabilitation set by the department.

(F) Any person required by division (A)(1) of this section to request a criminal records check shall inform each person, at the time of the person's initial application for employment, that the person is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed in accordance with section 109.572 of the Revised Code if the person comes under final consideration for appointment or employment as a precondition to employment for that position.

(G) As used in this section:

(1) "Applicant" means a person who is under final consideration for appointment to or employment in a position with a child day-care center or a type A family day-care home as a person responsible for the care, custody, or control of a child; an in-home aide certified pursuant to section 5104.12 of the Revised Code; or any person who would serve in any position with a child day-care center or a type A family day-care home as a person responsible for the care, custody, or control of a child pursuant to a contract with another entity.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

Sec. 5104.013. (A)(1) At the times specified in division (A)(3) of this section, the director of job and family services, as part of the process of licensure of child day-care centers and type A family day-care homes, shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check with respect to the following persons:

(a) Any owner, licensee, or administrator of a child day-care center;

(b) Any owner, licensee, or administrator of a type A family day-care home and any person eighteen years of age or older who resides in a type A family day-care home.

(2) At the times specified in division (A)(3) of this section, the director of a county department of job and family services, as part of the process of certification of type B family day-care homes, shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check with respect to any authorized provider of a certified type B family day-care home and any person eighteen years of age or older who resides in a certified type B family day-care home.

(3) The director of job and family services shall request a criminal records check pursuant to division (A)(1) of this section at the time of the initial application for licensure and every four years thereafter. The director of a county department of job and family services shall request a criminal records check pursuant to division (A)(2) of this section at the time of the initial application for certification and every four years thereafter at the time of a certification renewal. When the director of job and family services or the director of a county department of job and family services requests pursuant to division (A)(1) or (2) of this section a criminal records check for a person at the time of the person's initial application for licensure or certification, the director shall request that the superintendent of the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as a part of the criminal records check for the person, including fingerprint-based checks of national crime information databases as described in 42 U.S.C. 671 for the person subject to the criminal records check. In all other cases in which the director of job and family services or the director of a county department of job and family services requests a criminal records check for an applicant pursuant to division (A)(1) or (2) of this section, the director may request that the superintendent include information from the federal bureau of investigation in the criminal records check, including fingerprint-based checks of national crime information databases as described in 42 U.S.C. 671.

(4) The director of job and family services shall review the results of a criminal records check subsequent to a request made pursuant to divisions (A)(1) and (3) of this section prior to approval of a license. The director of a county department of job and family services shall review the results of a criminal records check subsequent to a request made pursuant to divisions (A)(2) and (3) of this section prior to approval of certification.

(B) The director of job and family services or the director of a county department of job and family services shall provide to each person for whom a criminal records check is required under this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet to obtain fingerprint

impressions prescribed pursuant to division (C)(2) of that section, obtain the completed form and impression sheet from that person, and forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation.

(C) A person who receives pursuant to division (B) of this section a copy of the form and standard impression sheet described in that division and who is requested to complete the form and provide a set of fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall provide the impression sheet with the impressions of the person's fingerprints. If the person, upon request, fails to provide the information necessary to complete the form or fails to provide impressions of the person's fingerprints, the director may consider the failure as a reason to deny licensure or certification.

(D) Except as provided in rules adopted under division (G) of this section, the director of job and family services shall not grant a license to a child day-care center or type A family day-care home and a county director of job and family services shall not certify a type B family day-care home if a person for whom a criminal records check was required in connection with the center or home previously has been convicted of or pleaded guilty to any of the violations described in division (A)(9)(5) of section 109.572 of the Revised Code.

(E) Each child day-care center, type A family day-care home, and type B family day-care home shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted in accordance with that section upon a request made pursuant to division (A) of this section.

(F) The report of any criminal records check conducted by the bureau of criminal identification and investigation in accordance with section 109.572 of the Revised Code and pursuant to a request made under division (A) of this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the person who is the subject of the criminal records check or the person's representative, the director of job and family services, the director of a county department of job and family services, the center, type A home, or type B home involved, and any court, hearing officer, or other necessary individual involved in a case dealing with a denial of licensure or certification related to the criminal records check.

(G) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this section, including rules

specifying exceptions to the prohibition in division (D) of this section for persons who have been convicted of an offense listed in that division but who meet standards in regard to rehabilitation set by the ~~department~~ director.

(H) As used in this section, "criminal records check" has the same meaning as in section 109.572 of the Revised Code.

Sec. 5104.051. (A)(1) The department of commerce is responsible for the inspections of child day-care centers as required by division (A)(1) of section 5104.05 of the Revised Code. Where there is a municipal, township, or county building department certified under section 3781.10 of the Revised Code to exercise enforcement authority with respect to the category of building occupancy which includes day-care centers, all inspections required under division (A)(1) of section 5104.05 of the Revised Code shall be made by that department according to the standards established by the board of building standards. Inspections in areas of the state where there is no municipal, township, or county building department certified under section 3781.10 of the Revised Code to exercise enforcement authority with respect to the category of building occupancy which includes day-care centers shall be made by personnel of the department of commerce. Inspections of centers shall be contingent upon payment of a fee by the applicant to the department having jurisdiction to inspect.

(2) The department of commerce is responsible for the inspections of type A family day-care homes as required by division (B)(3) of section 5104.05 of the Revised Code. Where there is a municipal, township, or county building department certified under section 3781.10 of the Revised Code to exercise enforcement authority with respect to the category of building occupancy which includes type A homes, all inspections required under division (B)(3) of section 5104.05 of the Revised Code shall be made by that department according to the standards established by the board of building standards. Inspections in areas of the state where there is no municipal, township, or county building department certified under section 3781.10 of the Revised Code to exercise enforcement authority with respect to the category of building occupancy which includes type A homes shall be made by personnel of the department of commerce. Inspections of type A homes shall be contingent upon payment of a fee by the applicant to the department having jurisdiction to inspect.

(B) The state fire marshal is responsible for the inspections required by divisions (A)(2) and (B)(1) of section 5104.05 of the Revised Code. In municipal corporations and in townships outside municipal corporations where there is a fire prevention official, the inspections shall be made by the

fire chief or the fire prevention official under the supervision of and according to the standards established by the state fire marshal. In townships outside municipal corporations where there is no fire prevention official, inspections shall be made by the employees of the state fire marshal.

(C) The state fire marshal shall enforce all statutes and rules pertaining to fire safety and fire prevention in child day-care centers and type A family day-care homes. In the event of a dispute between the state fire marshal and any other responsible officer under sections 5104.05 and 5104.051 of the Revised Code with respect to the interpretation or application of a specific fire safety statute or rule, the interpretation of the state fire marshal shall prevail.

(D) As used in this division, "licensor" has the same meaning as in section 3717.01 of the Revised Code.

The licensor for food service operations in the city or general health district in which the center is located is responsible for the inspections required under Chapter 3717. of the Revised Code.

(E) Any moneys collected by the department of commerce under this section shall be paid into the state treasury to the credit of the ~~labor~~ industrial compliance operating fund created in section 121.084 of the Revised Code.

Sec. 5104.09. (A)(1) Except as provided in rules adopted pursuant to division (D) of this section, no individual who has been convicted of or pleaded guilty to a violation described in division (A)(~~9~~)(5) of section 109.572 of the Revised Code, a violation of section 2905.11, 2909.02, 2909.03, 2909.04, 2909.05, 2917.01, 2917.02, 2917.03, 2917.31, 2921.03, 2921.34, or 2921.35 of the Revised Code or a violation of an existing or former law or ordinance of any municipal corporation, this state, any other state, or the United States that is substantially equivalent to any of those violations, or two violations of section 4511.19 of the Revised Code during operation of the center or home shall be certified as an in-home aide or be employed in any capacity in or own or operate a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home.

(2) Each employee of a child day-care center and type A home and every person eighteen years of age or older residing in a type A home shall sign a statement on forms prescribed by the director of job and family services attesting to the fact that the employee or resident person has not been convicted of or pleaded guilty to any offense set forth in division (A)(1) of this section and that no child has been removed from the employee's or resident person's home pursuant to section 2151.353 of the

Revised Code. Each licensee of a type A home shall sign a statement on a form prescribed by the director attesting to the fact that no person who resides at the type A home and who is under the age of eighteen has been adjudicated a delinquent child for committing a violation of any section listed in division (A)(1) of this section. The statements shall be kept on file at the center or type A home.

(3) Each in-home aide and every person eighteen years of age or older residing in a certified type B home shall sign a statement on forms prescribed by the director of job and family services attesting that the aide or resident person has not been convicted of or pleaded guilty to any offense set forth in division (A)(1) of this section and that no child has been removed from the aide's or resident person's home pursuant to section 2151.353 of the Revised Code. Each authorized provider shall sign a statement on forms prescribed by the director attesting that the provider has not been convicted of or pleaded guilty to any offense set forth in division (A)(1) of this section and that no child has been removed from the provider's home pursuant to section 2151.353 of the Revised Code. Each authorized provider shall sign a statement on a form prescribed by the director attesting to the fact that no person who resides at the certified type B home and who is under the age of eighteen has been adjudicated a delinquent child for committing a violation of any section listed in division (A)(1) of this section. The statements shall be kept on file at the county department of job and family services.

(4) Each administrator and licensee of a center or type A home shall sign a statement on a form prescribed by the director of job and family services attesting that the administrator or licensee has not been convicted of or pleaded guilty to any offense set forth in division (A)(1) of this section and that no child has been removed from the administrator's or licensee's home pursuant to section 2151.353 of the Revised Code. The statement shall be kept on file at the center or type A home.

(B) No in-home aide, no administrator, licensee, authorized provider, or employee of a center, type A home, or certified type B home, and no person eighteen years of age or older residing in a type A home or certified type B home shall withhold information from, or falsify information on, any statement required pursuant to division (A)(2), (3), or (4) of this section.

(C) No administrator, licensee, or child-care staff member shall discriminate in the enrollment of children in a child day-care center upon the basis of race, color, religion, sex, or national origin.

(D) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this section, including rules

specifying exceptions to the prohibition in division (A) of this section for persons who have been convicted of an offense listed in that division but meet rehabilitation standards set by the ~~department~~ director.

Sec. 5104.37. (A) As used in this section, "eligible provider" means an individual or entity eligible to provide publicly funded child care pursuant to section 5104.31 of the Revised Code.

(B) The department of job and family services may withhold any money due, under this chapter and recover through any appropriate method any money erroneously paid, under this chapter if evidence exists of less than full compliance with this chapter and any rules adopted under it.

(C) Notwithstanding any other provision of this chapter to the contrary, the department shall take action against an eligible provider as described in this section.

(D) Subject to the notice and appeal provisions of divisions (G) and (H) of this section, the department may suspend a contract entered into under section 5104.32 of the Revised Code with an eligible provider if the department has initiated an investigation of the provider for either of the following reasons:

(1) The department has evidence that the eligible provider received an improper child care payment as a result of the provider's intentional act.

(2) The department receives notice and a copy of an indictment, information, or complaint charging the eligible provider or the owner or operator of the provider with committing any of the following:

(a) An act that is a felony or misdemeanor relating to providing or billing for publicly funded child care or providing management or administrative services relating to providing publicly funded child care;

(b) An act that would constitute an offense described in section 5104.09 of the Revised Code.

(E)(1) Except as provided in division (E)(2) of this section, the suspension of a contract under division (D) of this section shall continue until the department completes its investigation or all criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty.

(2) If the department initiates the termination of a contract that has been suspended pursuant to division (D) of this section, the suspension shall continue until the termination process is completed.

(F) An eligible provider shall not provide publicly funded child care while the provider's contract is under suspension pursuant to division (D) of this section. As of the date the eligible provider's contract is suspended, the department shall withhold payment to the eligible provider for publicly

funded child care.

(G) Before suspending an eligible provider's contract pursuant to division (D) of this section, the department shall notify the eligible provider. The notice shall include all of the following:

(1) A description, which need not disclose specific information concerning any ongoing administrative or criminal investigation, of the reason that the department initiated its investigation of the provider;

(2) A statement that the eligible provider will be prohibited from providing publicly funded child care while the contract is under suspension;

(3) A statement that the suspension will continue until the department completes its investigation or all criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty, and that if the department initiates the termination of the contract, the suspension will continue until the termination process is completed.

(H) An eligible provider may file an appeal with the department regarding any proposal by the department to suspend the provider's contract pursuant to division (D) of this section. The appeal must be received by the department not later than fifteen days after the date the provider receives the notification described in division (G) of this section. The department shall review the evidence and issue a decision not later than thirty days after receiving the appeal. The department shall not suspend a contract pursuant to division (D) of this section until the time for filing the appeal has passed or, if the provider files a timely appeal, the department has issued a decision on the appeal.

Sec. 5107.05. The director of job and family services shall adopt rules to implement this chapter. The rules shall be consistent with Title IV-A, Title IV-D, federal regulations, state law, the Title IV-A state plan submitted to the United States secretary of health and human services under section 5101.80 of the Revised Code, amendments to the plan, and waivers granted by the United States secretary. Rules governing eligibility, program participation, and other applicant and participant requirements shall be adopted in accordance with Chapter 119. of the Revised Code. Rules governing financial and other administrative requirements applicable to the department of job and family services and county departments of job and family services shall be adopted in accordance with section 111.15 of the Revised Code.

(A) The rules shall specify, establish, or govern all of the following:

(1) A payment standard for Ohio works first based on federal and state appropriations that is increased in accordance with section 5107.04 of the Revised Code;

(2) For the purpose of section 5107.04 of the Revised Code, the method of determining the amount of cash assistance an assistance group receives under Ohio works first;

(3) Requirements for initial and continued eligibility for Ohio works first, including requirements regarding income, citizenship, age, residence, and assistance group composition;

(4) For the purpose of section 5107.12 of the Revised Code, application and verification procedures, including the minimum information an application must contain;

(5) The extent to which a participant of Ohio works first must notify, pursuant to section 5107.12 of the Revised Code, a county department of job and family services of additional income not previously reported to the county department;

(6) For the purpose of section 5107.16 of the Revised Code, ~~all~~ both of the following:

(a) Standards for the determination of good cause for failure or refusal to comply in full with a provision of a self-sufficiency contract;

(b) The compliance ~~form~~ activities a member of an assistance group ~~may complete to indicate willingness to come into full compliance must complete for the member to be considered to have ceased to fail or refuse to comply in full~~ with a provision of a self-sufficiency contract;

~~(c) The manner by which the compliance form is to be completed and provided to a county department of job and family services.~~

(7) The department of job and family services providing written notice of a sanction under section 5107.161 of the Revised Code;

(8) For the purpose of division ~~(A)(2)(B)~~ of section 5107.17 of the Revised Code, the ~~period of time by which a county department of job and family services is to receive a compliance form established in rules adopted under division (A)(6)(b) of this section~~ circumstances under which the adult member of an assistance group or an assistance group's minor head of household whose failure or refusal, without good cause, to comply in full with a provision of a self-sufficiency contract causes a sanction under section 5107.16 of the Revised Code must enter into a new, or amend an existing, self-sufficiency contract before the assistance group may resume participation in Ohio works first following the sanction;

(9) Requirements for the collection and distribution of support payments owed participants of Ohio works first pursuant to section 5107.20 of the Revised Code;

(10) For the purpose of section 5107.22 of the Revised Code, what constitutes cooperating in establishing a minor child's paternity or

establishing, modifying, or enforcing a child support order and good cause for failure or refusal to cooperate;

(11) The requirements governing the LEAP program, including the definitions of "equivalent of a high school diploma" and "good cause," and the incentives provided under the LEAP program;

(12) If the director implements section 5107.301 of the Revised Code, the requirements governing the award provided under that section, including the form that the award is to take and requirements an individual must satisfy to receive the award;

(13) Circumstances under which a county department of job and family services may exempt a minor head of household or adult from participating in a work activity or developmental activity for all or some of the weekly hours otherwise required by section 5107.43 of the Revised Code.

(14) The maximum amount of time the department will subsidize positions created by state agencies and political subdivisions under division (C) of section 5107.52 of the Revised Code;

(15) The implementation of sections 5107.71 to 5107.717 of the Revised Code by county departments of job and family services;

(16) A domestic violence screening process to be used for the purpose of division (A) of section 5107.71 of the Revised Code;

(17) The minimum frequency with which county departments of job and family services must redetermine a member of an assistance group's need for a waiver issued under section 5107.714 of the Revised Code.

(B) The rules adopted under division (A)(3) of this section regarding income shall specify what is countable income, gross earned income, and gross unearned income for the purpose of section 5107.10 of the Revised Code.

The rules adopted under division (A)(10) of this section shall be consistent with 42 U.S.C. 654(29).

The rules adopted under division (A)(13) of this section shall specify that the circumstances include that a school or place of work is closed due to a holiday or weather or other emergency and that an employer grants the minor head of household or adult leave for illness or earned vacation.

(C) The rules may provide that a county department of job and family services is not required to take action under section 5107.76 of the Revised Code to recover an erroneous payment ~~that is below an amount the department specifies~~ under circumstances the rules specify.

Sec. 5107.16. (A) If a member of an assistance group fails or refuses, without good cause, to comply in full with a provision of a self-sufficiency contract entered into under section 5107.14 of the Revised Code, a county

department of job and family services shall sanction the assistance group as follows:

(1) For a first failure or refusal, the county department shall deny or terminate the assistance group's eligibility to participate in Ohio works first for one payment month or until the failure or refusal ceases, whichever is longer;

(2) For a second failure or refusal, the county department shall deny or terminate the assistance group's eligibility to participate in Ohio works first for three payment months or until the failure or refusal ceases, whichever is longer;

(3) For a third or subsequent failure or refusal, the county department shall deny or terminate the assistance group's eligibility to participate in Ohio works first for six payment months or until the failure or refusal ceases, whichever is longer.

(B) The director of job and family services shall establish standards for the determination of good cause for failure or refusal to comply in full with a provision of a self-sufficiency contract in rules adopted under section 5107.05 of the Revised Code.

~~(C) The director of job and family services shall provide a compliance form established in rules adopted under section 5107.05 of the Revised Code to an~~ An assistance group member who fails or refuses, without good cause, to comply in full with a provision of a self-sufficiency contract. ~~The member's failure or refusal to comply in full with the provision shall be deemed to have ceased on the date a county department of job and family services receives the compliance form from the member if the compliance form is completed and provided to the county department in the manner~~ must complete all compliance activities specified in rules adopted under section 5107.05 of the Revised Code in order for the failure or refusal to be considered to have ceased.

(D) After sanctioning an assistance group under division (A) of this section, a county department of job and family services shall continue to work with the assistance group.

(E) An adult eligible for medicaid pursuant to division ~~(A)~~(C)(1)(a) of section 5111.01 of the Revised Code who is sanctioned under division (A)(3) of this section for a failure or refusal, without good cause, to comply in full with a provision of a self-sufficiency contract related to work responsibilities under sections 5107.40 to 5107.69 of the Revised Code loses eligibility for medicaid unless the adult is otherwise eligible for medicaid pursuant to another division of section 5111.01 of the Revised Code.

An assistance group that would be participating in Ohio works first if

not for a sanction under this section shall continue to be eligible for all of the following:

(1) Publicly funded child care in accordance with division (A)(3) of section 5104.30 of the Revised Code;

(2) Support services in accordance with section 5107.66 of the Revised Code;

(3) To the extent permitted by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201, as amended, to participate in work activities, developmental activities, and alternative work activities in accordance with sections 5107.40 to 5107.69 of the Revised Code.

Sec. 5107.17. ~~An~~ Both of the following must occur before an assistance group ~~that resumes~~ may resume participation in Ohio works first following a sanction under section 5107.16 of the Revised Code ~~is not required to do either of the following:~~

(A) ~~Reapply~~ The assistance group must reapply under section 5107.12 of the Revised Code, ~~unless either~~ if any of the following applies apply:

(1) It is the assistance group's regularly scheduled time for an eligibility redetermination;

(2) ~~The county department of job and family services does not receive the completed compliance form established in rules adopted under section 5107.05 of the Revised Code within the period of time specified in rules adopted under that section~~ If the sanction was imposed under division (A)(1) of section 5107.16 of the Revised Code, the failure or refusal on which the sanction was based is not considered to have ceased until after one payment month immediately following the date the sanction began;

(3) If the sanction was imposed under division (A)(2) of section 5107.16 of the Revised Code, the failure or refusal on which the sanction was based is not considered to have ceased until after three payment months immediately following the date the sanction began;

(4) If the sanction was imposed under division (A)(3) of section 5107.16 of the Revised Code, the failure or refusal on which the sanction was based is not considered to have ceased until after six payment months immediately following the date the sanction began.

(B) ~~Enter~~ The adult member of the assistance group or the assistance group's minor head of household whose failure or refusal, without good cause, to comply in full with a provision of a self-sufficiency contract caused the sanction must enter into a new, or amend an existing, self-sufficiency contract under section 5107.14 of the Revised Code, unless the county department of job and family services determines it is time for a new appraisal under section 5107.41 of the Revised Code or the assistance

~~group's circumstances have changed in a manner necessitating an amendment to the self-sufficiency contract as determined using procedures included in the contract under division (B)(9) of if required to do so by rules adopted under section 5107.14 5107.05 of the Revised Code.~~

Sec. 5111.01. (A) As used in this chapter, "~~medical~~;

"Children's health insurance program" means the children's health insurance program part I, children's health insurance program part II, and children's health insurance program part III authorized by sections 5101.50 to 5101.529 of the Revised Code.

"Medical assistance program" or "medicaid" means the program that is authorized by this chapter and provided by the ~~department office of job and family services~~ medical assistance under this chapter, Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1396, et seq., as amended, and the waivers of Title XIX requirements granted to the ~~department office~~ by the centers for medicare and medicaid services of the United States department of health and human services.

The ~~department of job and family services~~ (B) There is hereby established the office of medical assistance as a work unit within the department of job and family services. The chief of the office shall hold the title of medical assistance director. Notwithstanding section 5101.06 of the Revised Code, the governor shall appoint the medical assistance director and the medical assistance director shall serve at the governor's pleasure. The medical assistance director is not an assistant director of the department of job and family services for purposes of section 121.05 or 5101.03 of the Revised Code or any other purpose.

Subject to appropriations for the medicaid program and children's health insurance program, the department of job and family services shall provide staff and support services as necessary for the operation of the office of medical assistance.

If a statute, rule, contract, or other legal authority requires the director of job and family services or department of job and family services to take an action regarding the medicaid program or children's health insurance program, the medical assistance director or office of medical assistance shall take the action in place of the director of job and family services or department of job and family services. If a statute, rule, contract, or other legal authority permits the director of job and family services or department of job and family services to take an action regarding the medicaid program or children's health insurance program, the medical assistance director or office of medical assistance shall take the action in place of the director of job and family services or department of job and family services if the

action is to be taken.

The office of medical assistance shall act as the single state agency to supervise the administration of the medicaid program. As the single state agency, the ~~department~~ office shall comply with 42 C.F.R. 431.10(e). The ~~department's~~ office's rules governing medicaid are binding on other agencies that administer components of the medicaid program. No agency may establish, by rule or otherwise, a policy governing medicaid that is inconsistent with a medicaid policy established, in rule or otherwise, by the medical assistance director of job and family services.

~~(A)(C)~~ The ~~department~~ office of job and family services medical assistance may provide medical assistance under the medicaid program as long as federal funds are provided for such assistance, to the following:

(1) Families with children that meet either of the following conditions:

(a) The family meets the income, resource, and family composition requirements in effect on July 16, 1996, for the former aid to dependent children program as those requirements were established by Chapter 5107. of the Revised Code, federal waivers granted pursuant to requests made under former section 5101.09 of the Revised Code, and rules adopted by the department or any changes the department makes to those requirements in accordance with paragraph (a)(2) of section 114 of the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 110 Stat. 2177, 42 U.S.C.A. 1396u-1, for the purpose of implementing section 5111.0120 of the Revised Code. An adult loses eligibility for medicaid under division ~~(A)(C)~~(1)(a) of this section pursuant to division (E) of section 5107.16 of the Revised Code.

(b) The family does not meet the requirements specified in division ~~(A)(C)~~(1)(a) of this section but is eligible for medicaid pursuant to section 5101.18 of the Revised Code.

(2) Aged, blind, and disabled persons who meet the following conditions:

(a) Receive federal aid under Title XVI of the "Social Security Act," or are eligible for but are not receiving such aid, provided that the income from all other sources for individuals with independent living arrangements shall not exceed one hundred seventy-five dollars per month. The income standards hereby established shall be adjusted annually at the rate that is used by the United States department of health and human services to adjust the amounts payable under Title XVI.

(b) Do not receive aid under Title XVI, but meet any of the following criteria:

(i) Would be eligible to receive such aid, except that their income, other

than that excluded from consideration as income under Title XVI, exceeds the maximum under division ~~(A)(C)~~(2)(a) of this section, and incurred expenses for medical care, as determined under federal regulations applicable to section 209(b) of the "Social Security Amendments of 1972," 86 Stat. 1381, 42 U.S.C.A. 1396a(f), as amended, equal or exceed the amount by which their income exceeds the maximum under division ~~(A)(C)~~(2)(a) of this section;

(ii) Received aid for the aged, aid to the blind, or aid for the permanently and totally disabled prior to January 1, 1974, and continue to meet all the same eligibility requirements;

(iii) Are eligible for medicaid pursuant to section 5101.18 of the Revised Code.

(3) Persons to whom federal law requires, as a condition of state participation in the medicaid program, that medicaid be provided;

(4) Persons under age twenty-one who meet the income requirements for the Ohio works first program established under Chapter 5107. of the Revised Code but do not meet other eligibility requirements for the program. The medical assistance director shall adopt rules in accordance with Chapter 119. of the Revised Code specifying which Ohio works first requirements shall be waived for the purpose of providing medicaid eligibility under division ~~(A)(C)~~(4) of this section.

~~(B)(D)~~ If sufficient funds are appropriated for the medicaid program, the department office of medical assistance may provide medical assistance under the medicaid program to persons in groups designated by federal law as groups to which a state, at its option, may provide medical assistance under the medicaid program.

~~(C)(E)~~ The department office of medical assistance may expand eligibility for the medicaid program to include individuals under age nineteen with family incomes at or below one hundred fifty per cent of the federal poverty guidelines, except that the eligibility expansion shall not occur unless the department office receives the approval of the federal government. The department office may implement the eligibility expansion authorized under this division on any date selected by the department office, but not sooner than January 1, 1998.

~~(D)(F)~~ In addition to any other authority or requirement to adopt rules under this chapter, the medical assistance director may adopt rules in accordance with section 111.15 of the Revised Code as the director considers necessary to establish standards, procedures, and other requirements regarding the provision of medical assistance under the medicaid program. The rules may establish requirements to be followed in

applying for medicaid, making determinations of eligibility for medicaid, and verifying eligibility for medicaid. The rules may include special conditions as the department office determines appropriate for making applications, determining eligibility, and verifying eligibility for any medical assistance that the department office may provide under the medicaid program pursuant to division ~~(C)~~(E) of this section and section 5111.014 or 5111.0120 of the Revised Code.

Sec. 5111.013. (A) The provision of medical assistance to pregnant women and young children who are eligible for medical assistance under division ~~(A)(C)~~(3) of section 5111.01 of the Revised Code, but who are not otherwise eligible for medical assistance under that section, shall be known as the healthy start program.

(B) The department of job and family services shall do all of the following with regard to the application procedures for the healthy start program:

(1) Establish a short application form for the program that requires the applicant to provide no more information than is necessary for making determinations of eligibility for the healthy start program, except that the form may require applicants to provide their social security numbers. The form shall include a statement, which must be signed by the applicant, indicating that she does not choose at the time of making application for the program to apply for assistance provided under any other program administered by the department and that she understands that she is permitted at any other time to apply at the county department of job and family services of the county in which she resides for any other assistance administered by the department.

(2) To the extent permitted by federal law, do one or both of the following:

(a) Distribute the application form for the program to each public or private entity that serves as a women, infants, and children clinic or as a child and family health clinic and to each administrative body for such clinics and train employees of each such agency or entity to provide applicants assistance in completing the form;

(b) In cooperation with the department of health, develop arrangements under which employees of county departments of job and family services are stationed at public or private agencies or entities selected by the department of job and family services that serve as women, infants, and children clinics; child and family health clinics; or administrative bodies for such clinics for the purpose both of assisting applicants for the program in completing the application form and of making determinations at that

location of eligibility for the program.

(3) Establish performance standards by which a county department of job and family services' level of enrollment of persons potentially eligible for the program can be measured, and establish acceptable levels of enrollment for each county department.

(4) Direct any county department of job and family services whose rate of enrollment of potentially eligible enrollees in the program is below acceptable levels established under division (B)(3) of this section to implement corrective action. Corrective action may include but is not limited to any one or more of the following to the extent permitted by federal law:

(a) Establishing formal referral and outreach methods with local health departments and local entities receiving funding through the bureau of maternal and child health;

(b) Designating a specialized intake unit within the county department for healthy start applicants;

(c) Establishing abbreviated timeliness requirements to shorten the time between receipt of an application and the scheduling of an initial application interview;

(d) Establishing a system for telephone scheduling of intake interviews for applicants;

(e) Establishing procedures to minimize the time an applicant must spend in completing the application and eligibility determination process, including permitting applicants to complete the process at times other than the regular business hours of the county department and at locations other than the offices of the county department.

(C) To the extent permitted by federal law, local funds, whether from public or private sources, expended by a county department for administration of the healthy start program shall be considered to have been expended by the state for the purpose of determining the extent to which the state has complied with any federal requirement that the state provide funds to match federal funds for medical assistance, except that this division shall not affect the amount of funds the county is entitled to receive under section 5101.16, 5101.161, or 5111.012 of the Revised Code.

(D) A county department of job and family services that maintains offices at more than one location shall accept applications for the healthy start program at all of those locations.

(E) The director of job and family services shall adopt rules in accordance with section 111.15 of the Revised Code as necessary to implement this section.

Sec. 5111.014. (A) The director of job and family services shall submit to the United States secretary of health and human services an amendment to the state medicaid plan to make an individual who meets all of the following requirements eligible for medicaid:

- (1) The individual is pregnant;
- (2) The individual's family income does not exceed two hundred per cent of the federal poverty guidelines;
- (3) The individual satisfies all relevant requirements established by rules adopted under division ~~(D)~~(F) of section 5111.01 of the Revised Code.

(B) If approved by the United States secretary of health and human services, the director of job and family services shall implement the medicaid plan amendment submitted under division (A) of this section as soon as possible after receipt of notice of the approval, but not sooner than January 1, 2008.

Sec. 5111.0115. (A) The department of job and family services may provide medical assistance under the medicaid program, as long as federal funds are provided for such assistance, to each former participant of the Ohio works first program established under Chapter 5107. of the Revised Code who meets all of the following requirements:

- (1) Is ineligible to participate in Ohio works first solely as a result of increased income due to employment;
- (2) Is not covered by, and does not have access to, medical insurance coverage through the employer with benefits comparable to those provided under this section, as determined in accordance with rules adopted by the director of job and family services under division (B) of this section;
- (3) Meets any other requirement established by rule adopted under division (B) of this section.

(B) The director of job and family services shall adopt such rules under Chapter 119. of the Revised Code as are necessary to implement and administer the medical assistance program under this section.

(C) A person seeking to participate in a program of medical assistance under this section shall apply to the county department of job and family services in the county in which the applicant resides. The application shall be made on a form prescribed by the department of job and family services and furnished by the county department.

(D) If the county department of job and family services determines that a person is eligible to receive medical assistance under this section, the department shall provide assistance, to the same extent and in the same manner as medical assistance is provided to a person eligible for medical assistance pursuant to division ~~(A)~~(C)(1)(a) of section 5111.01 of the

Revised Code, for no longer than twelve months, beginning the month after the date the participant's eligibility for Ohio works first is terminated.

Sec. 5111.0120. The director of job and family services shall submit to the United States secretary of health and human services an amendment to the state medicaid plan to make an individual eligible for medicaid who meets all of the following requirements:

(A) The individual is the parent of a child under nineteen years of age and resides with the child;

(B) The individual's family income does not exceed ninety per cent of the federal poverty guidelines;

(C) The individual is not otherwise eligible for medicaid;

(D) The individual satisfies all relevant requirements established by rules adopted under division ~~(D)~~(E) of section 5111.01 of the Revised Code.

Sec. 5111.031. (A) As used in this section:

(1) "Independent provider" has the same meaning as in section 5111.034 of the Revised Code.

(2) "Intermediate care facility for the mentally retarded" and "nursing facility" have the same meanings as in section 5111.20 of the Revised Code.

(3) "Noninstitutional medicaid provider" means any person or entity with a medicaid provider agreement other than a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(4) "Owner" means any person having at least five per cent ownership in a noninstitutional medicaid provider.

(B) Notwithstanding any provision of this chapter to the contrary, the department of job and family services shall take action under this section against a noninstitutional medicaid provider or its owner, officer, authorized agent, associate, manager, or employee.

(C) Except as provided in division (D) of this section and in rules adopted by the department under division (H) of this section, on receiving notice and a copy of an indictment that is issued on or after September 29, 2007, and charges a noninstitutional medicaid provider or its owner, officer, authorized agent, associate, manager, or employee with committing an offense specified in division (E) of this section, the department shall suspend the provider agreement held by the noninstitutional medicaid provider. Subject to division (D) of this section, the department shall also terminate medicaid reimbursement to the provider for services rendered.

The suspension shall continue in effect until the proceedings in the criminal case are completed through dismissal of the indictment or through conviction, entry of a guilty plea, or finding of not guilty. If the department commences a process to terminate the suspended provider agreement, the

suspension shall also continue in effect until the termination process is concluded.

Pursuant to section 5111.06 of the Revised Code, the department is not required to take action under this division by issuing an order pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code.

When subject to a suspension under this division, a provider, owner, officer, authorized agent, associate, manager, or employee shall not own or provide services to any other medicaid provider or risk contractor or arrange for, render, or order services for medicaid recipients during the period of suspension. During the period of suspension, the provider, owner, officer, authorized agent, associate, manager, or employee shall not receive reimbursement in the form of direct payments from the department or indirect payments of medicaid funds in the form of salary, shared fees, contracts, kickbacks, or rebates from or through any participating provider or risk contractor.

(D)(1) The department shall not suspend a provider agreement or terminate medicaid reimbursement under division (C) of this section if the provider or owner can demonstrate through the submission of written evidence that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the indictment.

(2) The termination of medicaid reimbursement applies only to payments for medicaid services rendered subsequent to the date on which the notice required under division (F) of this section is sent. Claims for reimbursement for medicaid services rendered by the provider prior to the issuance of the notice may be subject to prepayment review procedures whereby the department reviews claims to determine whether they are supported by sufficient documentation, are in compliance with state and federal statutes and rules, and are otherwise complete.

(E)(1) In the case of a noninstitutional medicaid provider that is not an independent provider, the suspension of a provider agreement under division (C) of this section applies when an indictment charges a person with committing an act that would be a felony or misdemeanor under the laws of this state and the act relates to or results from either of the following:

(a) Furnishing or billing for medical care, services, or supplies under the medicaid program;

(b) Participating in the performance of management or administrative services relating to furnishing medical care, services, or supplies under the medicaid program.

(2) In the case of a noninstitutional medicaid provider that is an independent provider, the suspension of a provider agreement under division (C) of this section applies when an indictment charges a person with committing an act that would constitute ~~one of the offenses specified in division (D) of a disqualifying offense~~ as defined in section 5111.034 5111.032 of the Revised Code.

(F) Not later than five days after suspending a provider agreement under division (C) of this section, the department shall send notice of the suspension to the affected provider or owner. In providing the notice, the department shall do all of the following:

(1) Describe the indictment that was the cause of the suspension, without necessarily disclosing specific information concerning any ongoing civil or criminal investigation;

(2) State that the suspension will continue in effect until the proceedings in the criminal case are completed through dismissal of the indictment or through conviction, entry of a guilty plea, or finding of not guilty and, if the department commences a process to terminate the suspended provider agreement, until the termination process is concluded;

(3) Inform the provider or owner of the opportunity to submit to the department, not later than thirty days after receiving the notice, a request for a reconsideration pursuant to division (G) of this section.

(G)(1) Pursuant to the procedure specified in division (G)(2) of this section, a noninstitutional medicaid provider or owner subject to a suspension under this section may request a reconsideration. The request shall be made not later than thirty days after receipt of the notice provided under division (F) of this section. The reconsideration is not subject to an adjudication hearing pursuant to Chapter 119. of the Revised Code.

(2) In requesting a reconsideration, the provider or owner shall submit written information and documents to the department. The information and documents may pertain to any of the following issues:

(a) Whether the determination to suspend the provider agreement was based on a mistake of fact, other than the validity of the indictment;

(b) Whether any offense charged in the indictment resulted from an offense specified in division (E) of this section;

(c) Whether the provider or owner can demonstrate that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the indictment.

(3) The department shall review the information and documents submitted in a request for reconsideration. After the review, the suspension may be affirmed, reversed, or modified, in whole or in part. The department

shall notify the affected provider or owner of the results of the review. The review and notification of its results shall be completed not later than forty-five days after receiving the information and documents submitted in a request for reconsideration.

(H) The department may adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The rules may specify circumstances under which the department would not suspend a provider agreement pursuant to this section.

Sec. 5111.032. (A) As used in this section:

(1) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(2) ~~"Department" includes a designee of the department of job and family services.~~

(3) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(3) "Owner" means a person who has an ownership interest in a provider or applicant to be a provider in an amount designated by the department of job and family services in rules adopted under this section.

(4) "Person subject to the criminal records check requirement" means the following:

(a) A provider or applicant to be a provider who is notified under division (E)(1) of this section that the provider or applicant is subject to a criminal records check;

(b) An owner or prospective owner, officer or prospective officer, or board member or prospective board member of a provider or applicant to be a provider if, pursuant to division (E)(1)(a) of this section, the owner or prospective owner, officer or prospective officer, or board member or prospective board member is specified in information given to the provider or applicant under division (E)(1) of this section;

(c) An employee or prospective employee of a provider or applicant to be a provider if both of the following apply:

(i) The employee or prospective employee is specified, pursuant to division (E)(1)(b) of this section, in information given to the provider or applicant under division (E)(1) of this section.

(ii) The provider or applicant is not prohibited by division (D)(3)(b) of this section from employing the employee or prospective employee.

(5) "Provider" means a person, institution, or entity that has a medicaid provider agreement with the department of job and family services ~~pursuant to Title XIX of the "Social Security Act," 49 State. 620 (1965), 42 U.S.C.~~

~~1396~~, as amended.

(6) "Responsible entity" means the following:

(a) With respect to a criminal records check required under this section for a provider or applicant to be a provider, the department of job and family services or the department's designee;

(b) With respect to a criminal records check required under this section for an owner or prospective owner, officer or prospective officer, board member or prospective board member, or employee or prospective employee of a provider or applicant to be a provider, the provider or applicant.

(B)(1) Except as provided in division (B)(2) of this section, the This section does not apply to any individual who is subject to a criminal records check under section 3712.09, 3721.121, 5111.034, 5123.081, or 5123.169 of the Revised Code or any individual who is subject to a database review or criminal records check under section 173.394, 3701.881, or 5111.033 of the Revised Code.

(C) The department of job and family services may require do any of the following:

(1) Require that any provider, or applicant to be a provider, employee or prospective employee of a provider, owner or prospective owner of a provider, officer or prospective officer of a provider, or board member or prospective board member of a provider submit to a criminal records check as a condition of obtaining having a medicaid provider agreement, continuing to hold a provider agreement, being employed by a provider, having an ownership interest in a provider, or being an officer or board member of a provider. The department may designate the categories of persons who are subject to the criminal records check requirement. The department shall designate the times at which the criminal records checks must be conducted.

(2) The section does not apply to providers, applicants to be providers, employees of a provider, or prospective employees of a provider who are subject to criminal records checks under section 5111.033 or 5111.034 of the Revised Code;

(2) Require that any provider or applicant to be a provider require an owner or prospective owner, officer or prospective officer, or board member or prospective board member of the provider or applicant submit to a criminal records check as a condition of being an owner, officer, or board member of the provider or applicant;

(3) Require that any provider or applicant to be a provider do the following:

(a) If so required by rules adopted under this section, determine pursuant to a database review conducted under division (F)(1)(a) of this section whether any employee or prospective employee of the provider or applicant is included in a database;

(b) Unless the provider or applicant is prohibited by division (D)(3)(b) of this section from employing the employee or prospective employee, require the employee or prospective employee to submit to a criminal records check as a condition of being an employee of the provider or applicant.

(D)(1) The department or the department's designee shall terminate a provider's medicaid provider agreement or deny an applicant's application for a medicaid provider agreement if the provider or applicant is a person subject to the criminal records check requirement and either of the following applies:

(a) The provider or applicant fails to obtain the criminal records check after being given the information specified in division (G)(1) of this section.

(b) Except as provided in rules adopted under this section, the provider or applicant is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, the date of entry of the guilty plea, or the date the applicant or provider was found eligible for intervention in lieu of conviction.

(2) No provider or applicant to be a provider shall permit a person to be an owner, officer, or board member of the provider or applicant if the person is a person subject to the criminal records check requirement and either of the following applies:

(a) The person fails to obtain the criminal records check after being given the information specified in division (G)(1) of this section.

(b) Except as provided in rules adopted under this section, the person is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, the date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction.

(3) No provider or applicant to be a provider shall employ a person if any of the following apply:

(a) The person has been excluded from providing services or items under the medicaid program, the medicare program operated pursuant to Title XVIII of the "Social Security Act," or any other federal health care program.

(b) If the person is subject to a database review conducted under division (F)(1)(a) of this section, the person is found by the database review to be included in a database and the rules adopted under this section regarding the database review prohibit the provider or applicant from employing a person included in the database.

(c) If the person is a person subject to the criminal records check requirement, either of the following applies:

(i) The person fails to obtain the criminal records check after being given the information specified in division (G)(1) of this section.

(ii) Except as provided in rules adopted under this section, the person is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, the date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction.

~~(C)(E)(1)~~ (E)(1) The department or the department's designee shall inform each provider or applicant to be a provider whether the provider or applicant is subject to a criminal records check ~~requirement under division (B) of this section~~. For providers, the information shall be given at times designated in rules adopted under this section. For applicants to be providers, the information shall be given at the time of initial application. When the information is given, the department or the department's designee shall specify ~~which~~ the following:

(a) Which of the provider's or applicant's employees or prospective employees, owners or prospective owners, officers or prospective officers, or board members or prospective board members are subject to the a criminal records check requirement;

(b) Which of the provider's or applicant's employees or prospective employees are subject to division (C)(3) of this section.

(2) At times designated in rules adopted under this section, a provider or applicant to be a provider that is a person subject to the criminal records check requirement shall inform do the following:

(a) Inform each person specified by the department under division ~~(C)(1)(E)(1)(a)~~ of this section that the person is required, as applicable, to submit to a criminal records check for final consideration for employment in a full-time, part-time, or temporary position; as a condition of continued employment; or as a condition of becoming or continuing to be being an owner, officer, or board member or owner of a the provider or applicant;

(b) Inform each person specified under division (E)(1)(b) of this section that the person is subject to division (C)(3) of this section.

~~(D)~~(F)(1) If a provider or applicant to be a provider is a person subject to a the criminal records check ~~under this section requirement~~, the department or the department's designee shall require the conduct of a criminal records check by the superintendent of the bureau of criminal identification and investigation. ~~If a provider or applicant to be a provider for whom a criminal records check is required does not present proof of having been a resident of this state for the five year period immediately prior to the date the criminal records check is requested or provide evidence that within that five year period the superintendent has requested information about the individual from the federal bureau of investigation in a criminal records check, the department shall require the provider or applicant to request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check of the provider or applicant. Even if a provider or applicant for whom a criminal records check request is required presents proof of having been a resident of this state for the five year period, the department may require that the provider or applicant request that the superintendent obtain information from the federal bureau of investigation and include it in the criminal records check of the provider or applicant.~~

(2) investigation. A provider or applicant to be a provider shall require the conduct of a criminal records check by the superintendent with respect to each of the persons specified by ~~the department~~ under division ~~(C)(1)(E)(1)(a)~~ of this section. ~~If the person for whom a criminal records check is required does not present proof of having been a resident of this state for the five year period immediately prior to the date the criminal records check is requested or provide evidence that within that five year period the superintendent of the bureau of criminal identification and investigation has requested information about the individual from the federal bureau of investigation in a criminal records check, the individual shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check of the individual. Even if an individual for whom a criminal records check request is required presents proof of having been a resident of this state for the five year period, the department may require the provider to request that the superintendent obtain information from the federal bureau of investigation and include it in the criminal records check of the person.~~ With respect to each employee and prospective employee specified under division (E)(1)(b) of this section, a provider or applicant to be a provider shall do the following:

(a) If rules adopted under this section require the provider or applicant to conduct a database review to determine whether the employee or

prospective employee is included in a database, conduct the database review in accordance with the rules;

(b) Unless the provider or applicant is prohibited by division (D)(3)(b) of this section from employing the employee or prospective employee, require the conduct of a criminal records check of the employee or prospective employee by the superintendent.

(2) If a person subject to the criminal records check requirement does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the person from the federal bureau of investigation in a criminal records check, the responsible entity shall require the person to request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check of the person. Even if the person presents proof of having been a resident of this state for the five-year period, the responsible entity may require that the person request that the superintendent obtain information from the federal bureau of investigation and include it in the criminal records check of the person.

(E)(1)(G) Criminal records checks required under by this section for providers or applicants to be providers shall be obtained as follows:

(a)(1) The department responsible entity shall provide each provider or applicant person subject to the criminal records check requirement information about accessing and completing the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section.

(b)(2) The provider or applicant person subject to the criminal records check requirement shall submit the required form and one complete set of the person's fingerprint impressions directly to the superintendent for purposes of conducting the criminal records check using the applicable methods prescribed by division (C) of section 109.572 of the Revised Code. The applicant or provider person shall pay all fees associated with obtaining the criminal records check.

(c)(3) The superintendent shall conduct the criminal records check in accordance with section 109.572 of the Revised Code. The provider or applicant person subject to the criminal records check requirement shall instruct the superintendent to submit the report of the criminal records check directly to the director of job and family services.

(2) Criminal records checks required under this section for persons

~~specified by the department under division (C)(1) of this section shall be obtained as follows:~~

~~(a) The provider shall give to each person subject to criminal records check requirement information about accessing and completing the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section.~~

~~(b) The person shall submit the required form and one complete set of fingerprint impressions directly to the superintendent for purposes of conducting the criminal records check using the applicable methods prescribed by division (C) of section 109.572 of the Revised Code. The person shall pay all fees associated with obtaining the criminal records check.~~

~~(c) The superintendent shall conduct the criminal records check in accordance with section 109.572 of the Revised Code. The person subject to the criminal records check shall instruct the superintendent to submit the report of the criminal records check directly to the provider responsible entity. The If the department or the department's designee is not the responsible entity, the department or designee may require the provider responsible entity to submit the report to the department or designee.~~

~~(F) If a provider or applicant to be a provider is given the information specified in division (E)(1)(a) of this section but fails to obtain a criminal records check, the department shall, as applicable, terminate the provider agreement or deny the application to be a provider.~~

~~If a person is given the information specified in division (E)(2)(a) of this section but fails to obtain a criminal records check, the provider shall not, as applicable, permit the person to be an employee, owner, officer, or board member of the provider.~~

~~(G) Except as provided in rules adopted under division (J) of this section, the department shall terminate the provider agreement of a provider or the department shall not issue a provider agreement to an applicant if the provider or applicant is subject to a criminal records check under this section and the provider or applicant has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the following, regardless of the date of the conviction, the date of entry of the guilty plea, or the date the applicant or provider was found eligible for intervention in lieu of conviction:~~

~~(1) A violation of section 959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02,~~

~~2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.04, 2909.05, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.05, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.01, 2917.02, 2917.03, 2917.11, 2917.31, 2919.12, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.13, 2921.34, 2921.35, 2921.36, 2923.01, 2923.02, 2923.03, 2923.12, 2923.13, 2923.161, 2923.32, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.14, 2925.22, 2925.23, 2927.12, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date;~~

~~(2) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (G)(1) of this section.~~

~~(H)(1)(a) Except as provided in rules adopted under division (J) of this section and subject to division (H)(2) of this section, no provider shall permit a person to be an employee, owner, officer, or board member of the provider if the person is subject to a criminal records check under this section and the person has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the offenses specified in division (G)(1) or (2) of this section.~~

~~(b) No provider shall employ a person who has been excluded from participating in the medicaid program, the medicare program operated pursuant to Title XVIII of the "Social Security Act," or any other federal health care program.~~

~~(2)(a)(H)(1) A provider or applicant to be a provider may employ conditionally a person for whom a criminal records check is required under by this section prior to obtaining the results of a the criminal records check regarding the person, but only if the both of the following apply:~~

~~(a) The provider or applicant is not prohibited by division (D)(3)(b) of this section from employing the person.~~

~~(b) The person submits a request for a the criminal records check not later than five business days after the individual person begins conditional employment.~~

~~(b)(2)~~ A provider or applicant to be a provider that employs a person conditionally under ~~authority of~~ division (H)(2)(a)(1) of this section shall terminate the person's employment if the results of the criminal records check request are not obtained within the period ending sixty days after the date the request is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the ~~individual person~~ has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for ~~any of the offenses specified in division (G)(1) or (2) of this section~~ a disqualifying offense, the provider or applicant shall terminate the person's employment unless circumstances specified in rules adopted under this section exist that permit the provider or applicant to employ the person and the provider or applicant chooses to employ the individual pursuant to division (J) of this section person.

(I) The report of a criminal records check conducted pursuant to this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The person who is the subject of the criminal records check or the person's representative;

(2) The director of job and family services and the staff of the department who are involved in the administration of the medicaid program;

(3) The department's designee;

(4) The provider or applicant to be a provider who required the person who is the subject of the criminal records check to submit to the criminal records check;

(5) A court, hearing officer, or other necessary individual involved in a case dealing with ~~the any of the following:~~

(a) The denial or termination of a medicaid provider agreement;

~~(4) A court, hearing officer, or other necessary individual involved in a case dealing with a (b) A person's denial of employment, termination of employment, or employment or unemployment benefits;~~

(c) A civil or criminal action regarding the medicaid program.

(J) The ~~department~~ director of job and family services may adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. If the director adopts such rules, the rules shall designate the times at which a criminal records check must be conducted under this section. The rules may specify ~~do any of the following:~~

(1) Designate the categories of persons who are subject to a criminal records check under this section;

(2) Specify circumstances under which the department or the

department's designee may continue a ~~medicaid~~ provider agreement or issue a ~~medicaid~~ provider agreement to an applicant when the provider or applicant ~~has is found by a criminal records check to have been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the offenses specified in division (G)(1) or (2) of this section. The rules may also specify a disqualifying offense:~~

(3) Specify circumstances under which a provider ~~or applicant to be a provider~~ may permit a person to be an employee, owner, officer, or board member of the provider ~~or applicant~~, when the person ~~has is found by a criminal records check conducted pursuant to this section to have been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the offenses specified in division (G)(1) or (2) of this section a disqualifying offense:~~

(4) Specify all of the following:

(a) The circumstances under which a database review must be conducted under division (F)(1)(a) of this section to determine whether an employee or prospective employee of a provider or applicant to be a provider is included in a database;

(b) The procedures for conducting the database review;

(c) The databases that are to be checked;

(d) The circumstances under which a provider or applicant to be a provider is prohibited from employing a person who is found by the database review to be included in a database.

Sec. 5111.033. (A) As used in this section:

~~(1) "Applicant" means a person who is under final consideration for employment or, after September 26, 2003, an existing employee with a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities. "Applicant" also means an existing employee with a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities after September 26, 2003.~~

(2) "Criminal Community-based long-term care agency" has the same meaning as in section 173.39 of the Revised Code.

"Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

~~(3) "Waiver agency" means a person or government entity that is not certified under the medicare program and is accredited by the community health accreditation program or the joint commission on accreditation of health care organizations or a company that provides home and~~

~~community-based waiver services to persons with disabilities through department of job and family services administered home and community-based waiver programs.~~

(4) "Home "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

"Employee" means a person employed by a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based services.

"Home and community-based ~~waiver~~ services ~~medicaid waiver component~~" means services furnished under the provision of 42 C.F.R. 441, subpart G, that permit individuals to live in a home setting rather than a nursing facility or hospital has the same meaning as in section 5111.85 of the Revised Code. Home and community-based waiver services are approved by the centers for medicare and medicaid for specific populations and are not otherwise available under the medicaid state plan.

"Waiver agency" means a person or government entity that provides home and community-based services under a home and community-based services medicaid waiver component administered by the department of job and family services, other than such a person or government entity that is certified under the medicare program. "Waiver agency" does not mean an independent provider as defined in section 5111.034 of the Revised Code.

(B) This section does not apply to any individual who is subject to a database review or criminal records check under section 3701.881 of the Revised Code. If a waiver agency also is a community-based long-term care agency, the agency may provide for applicants and employees to undergo database reviews and criminal records checks in accordance with section 173.394 of the Revised Code rather than this section.

(C) No waiver agency shall employ an applicant or continue to employ an employee in a position that involves providing home and community-based services if any of the following apply:

(1) A review of the databases listed in division (E) of this section reveals any of the following:

(a) That the applicant or employee is included in one or more of the databases listed in divisions (E)(1) to (5) of this section;

(b) That there is in the state nurse aide registry established under section 3721.32 of the Revised Code a statement detailing findings by the director of health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(c) That the applicant or employee is included in one or more of the databases, if any, specified in rules adopted under this section and the rules prohibit the waiver agency from employing an applicant or continuing to employ an employee included in such a database in a position that involves providing home and community-based services.

(2) After the applicant or employee is given the information and notification required by divisions (F)(2)(a) and (b) of this section, the applicant or employee fails to do either of the following:

(a) Access, complete, or forward to the superintendent of the bureau of criminal identification and investigation the form prescribed to division (C)(1) of section 109.572 of the Revised Code or the standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Instruct the superintendent to submit the completed report of the criminal records check required by this section directly to the chief administrator of the waiver agency.

(3) Except as provided in rules adopted under this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the applicant or employee was found eligible for intervention in lieu of conviction.

(D) At the time of each applicant's initial application for employment in a position that involves providing home and community-based services, the chief administrator of a waiver agency shall inform the applicant of both of the following:

(1) That a review of the databases listed in division (E) of this section will be conducted to determine whether the waiver agency is prohibited by division (C)(1) of this section from employing the applicant in the position;

(2) That, unless the database review reveals that the applicant may not be employed in the position, a criminal records check of the applicant will be conducted and the applicant is required to provide a set of the applicant's fingerprint impressions as part of the criminal records check.

(E) As a condition of employing any applicant in a position that involves providing home and community-based services, the chief administrator of a waiver agency shall conduct a database review of the applicant in accordance with rules adopted under this section. If rules adopted under this section so require, the chief administrator of a waiver agency shall conduct a database review of an employee in accordance with the rules as a condition of continuing to employ the employee in a position

that involves providing home and community-based services. A database review shall determine whether the applicant or employee is included in any of the following:

(1) The excluded parties list system maintained by the United States general services administration pursuant to subpart 9.4 of the federal acquisition regulation;

(2) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to section 1128 of the "Social Security Act," 94 Stat. 2619 (1980), 42 U.S.C. 1320a-7, as amended, and section 1156 of the "Social Security Act," 96 Stat. 388 (1982), 42 U.S.C. 1320c-5, as amended;

(3) The registry of MR/DD employees established under section 5123.52 of the Revised Code;

(4) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(5) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(6) The state nurse aide registry established under section 3721.32 of the Revised Code;

(7) Any other database, if any, specified in rules adopted under this section.

(F)(1) The As a condition of employing any applicant in a position that involves providing home and community-based services, the chief administrator of a waiver agency shall require each the applicant to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check with respect to of the applicant. If rules adopted under this section so require, the chief administrator of a waiver agency shall require an employee to request that the superintendent conduct a criminal records check of the employee at times specified in the rules as a condition of continuing to employ the employee in a position that involves providing home and community-based services. However, a criminal records check is not required for an applicant or employee if the waiver agency is prohibited by division (C)(1) of this section from employing the applicant or continuing to employ the employee in a position that involves providing home and community-based services. If an applicant or employee for whom a criminal records check request is required under this division by this section does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the

applicant or employee from the federal bureau of investigation in a criminal records check, the chief administrator shall require the applicant or employee to request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check ~~of the applicant~~. Even if an applicant or employee for whom a criminal records check request is required ~~under this division~~ by this section presents proof of having been a resident of this state for the five-year period, the chief administrator may require the applicant or employee to request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) The chief administrator shall provide the following to each applicant and employee for whom a criminal records check ~~request~~ is required ~~under division (B)(1) of~~ by this section:

(a) Information about accessing, completing, and forwarding to the superintendent of the bureau of criminal identification and investigation the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard ~~fingerprint~~ impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Written notification that the applicant or employee is to instruct the superintendent to submit the completed report of the criminal records check directly to the chief administrator.

(3) ~~An applicant given information and notification under divisions (B)(2)(a) and (b) of this section who fails to access, complete, and forward to the superintendent the form or the standard fingerprint impression sheet, or who fails to instruct the superintendent to submit the completed report of the criminal records check directly to the chief administrator, shall not be employed in any position in a waiver agency for which a criminal records check is required by this section. A waiver agency shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for any criminal records check required by this section. However, a waiver agency may require an applicant to pay to the bureau the fee for a criminal records check of the applicant. If the waiver agency pays the fee for an applicant, it may charge the applicant a fee not exceeding the amount the waiver agency pays to the bureau under this section if the waiver agency notifies the applicant at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the applicant will not be considered for employment.~~

~~(C)(1) Except as provided in rules adopted by the department of job and family services in accordance with division (F) of this section and subject to~~

~~division (C)(2) of this section, no waiver agency shall employ a person in a position that involves providing home and community-based waiver services to persons with disabilities if the person has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the following, regardless of the date of the conviction, the date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction:~~

~~(a) A violation of section 959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.04, 2909.05, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.05, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.01, 2917.02, 2917.03, 2917.11, 2917.31, 2919.12, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.13, 2921.34, 2921.35, 2921.36, 2923.01, 2923.02, 2923.03, 2923.12, 2923.13, 2923.161, 2923.32, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.14, 2925.22, 2925.23, 2927.12, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date;~~

~~(b) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (C)(1)(a) of this section.~~

~~(2)(a)(G)(1) A waiver agency may employ conditionally an applicant for whom a criminal records check request is required under division (B) of by this section prior to obtaining the results of a the criminal records check regarding the individual, provided that the if both of the following apply:~~

~~(a) The waiver agency is not prohibited by division (C)(1) of this section from employing the applicant in a position that involves providing home and community-based services:~~

~~(b) The chief administrator of the waiver agency shall require requires the individual applicant to request a criminal records check regarding the individual applicant in accordance with division (B)(F)(1) of this section not~~

later than five business days after the individual applicant begins conditional employment.

~~(b)(2)~~ A waiver agency that employs an individual applicant conditionally under ~~authority of division (C)(2)(a)(G)(1)~~ of this section shall terminate the individual's applicant's employment if the results of the criminal records check ~~request under division (B) of this section~~, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending sixty days after the date the request for the criminal records check is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the individual applicant has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for ~~any of the offenses listed or described in division (C)(1) of this section~~ a disqualifying offense, the waiver agency shall terminate the individual's applicant's employment unless circumstances specified in rules adopted under this section exist that permit the waiver agency to employ the applicant and the waiver agency chooses to employ the individual pursuant to division (F) of this section applicant.

~~(D)(1)~~ The fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted pursuant to a request made under division (B) of this section shall be paid to the bureau of criminal identification and investigation by the applicant or the waiver agency.

(2) If a waiver agency pays the fee, it may charge the applicant a fee not exceeding the amount the agency pays under division (D)(1) of this section. ~~An agency may collect a fee only if the agency notifies the person at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment.~~

~~(E)(H)~~ The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The individual applicant or employee who is the subject of the criminal records check or the individual's representative of the applicant or employee;

(2) The chief administrator of the waiver agency requesting that requires the applicant or employee to request the criminal records check or the administrator's representative;

(3) ~~An administrator at~~ The director of job and family services and the staff of the department who are involved in the administration of the

medicaid program;

(4) The director of aging or the director's designee if the waiver agency also is a community-based long-term care agency;

(5) A court, hearing officer, or other necessary individual involved in a case dealing with a any of the following:

(a) A denial of employment of the applicant or ~~dealing with employment~~ employee;

(b) Employment or unemployment benefits of the applicant or employee;

(c) A civil or criminal action regarding the medicaid program.

~~(F)~~(I) The department director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The

(1) The rules may do the following:

(a) Require employees to undergo database reviews and criminal records checks under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, exempt one or more classes of employees from the requirements;

(c) For the purpose of division (E)(7) of this section, specify other databases that are to be checked as part of a database review conducted under this section.

(2) The rules shall specify all of the following:

(a) The procedures for conducting a database review under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, the times at which the database reviews and criminal records checks are to be conducted;

(c) If the rules specify other databases to be checked as part of a database review, the circumstances under which a waiver agency is prohibited from employing an applicant or continuing to employ an employee who is found by the database review to be included in one or more of those databases;

(d) The circumstances under which a waiver agency may employ a person ~~an applicant or employee who has~~ is found by a criminal records check required by this section to have been convicted of, ~~has~~ pleaded guilty to, or ~~has~~ been found eligible for intervention in lieu of conviction for an offense listed or described in division (C)(1) of this section a disqualifying offense.

~~(G) The chief administrator of a waiver agency shall inform each person, at the time of initial application for a position that involves~~

~~providing home and community-based waiver services to a person with a disability, that the person is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the person comes under final consideration for employment.~~

~~(H)(1) A person who, on September 26, 2003, is an employee of a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities shall comply with this section within sixty days after September 26, 2003, unless division (H)(2) of this section applies.~~

~~(2) This section shall not apply to a person to whom all of the following apply:~~

~~(a) On September 26, 2003, the person is an employee of a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities.~~

~~(b) The person previously had been the subject of a criminal background check relating to that position;~~

~~(c) The person has been continuously employed in that position since that criminal background check had been conducted.~~

(J) The amendments made by H.B. 487 of the 129th general assembly to this section do not preclude the department of job and family services from taking action against a person for failure to comply with former division (H) of this section as that division existed on the day preceding the effective date of this amendment.

Sec. 5111.034. (A) As used in this section:

~~(1) "Anniversary date" means the later of the effective date of the provider agreement relating to the independent provider or sixty days after September 26, 2003.~~

~~(2) "Criminal "Applicant" means a person who has applied for a medicaid provider agreement to provide home and community-based services as an independent provider under a home and community-based medicaid waiver component administered by the department of job and family services.~~

"Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

~~(3) "Department" includes a designee of the department of job and family services.~~

~~(4) "Independent "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.~~

"Independent provider" means a person who ~~is submitting an application for a provider agreement or who has a~~ medicaid provider agreement to provide home and community-based services as an independent provider in a home and community-based services medicaid waiver component administered by the department of job and family services administered home and community-based services program providing home and community-based waiver services to consumers with disabilities.

(5) "Home and community-based ~~waiver~~ services medicaid waiver component" has the same meaning as in section ~~5111.033~~ 5111.85 of the Revised Code.

(B) The department of job and family services or the department's designee shall deny an applicant's application for a medicaid provider agreement and shall terminate an independent provider's medicaid provider agreement if either of the following applies:

(1) After the applicant or independent provider is given the information and notification required by divisions (D)(2)(a) and (b) of this section, the applicant or independent provider fails to do either of the following:

(a) Access, complete, or forward to the superintendent of the bureau of criminal identification and investigation the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code or the standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Instruct the superintendent to submit the completed report of the criminal records check required by this section directly to the department or the department's designee.

(2) Except as provided in rules adopted under this section, the applicant or independent provider is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, the date of entry of the guilty plea, or the date the applicant or independent provider was found eligible for intervention in lieu of conviction.

(C)(1) The department of job and family services or the department's designee shall inform each independent provider applicant, at the time of initial application for a medicaid provider agreement that involves providing home and community-based waiver services to consumers with disabilities, that the independent provider applicant is required to provide a set of the applicant's fingerprint impressions and that a criminal records check is required to be conducted if the person is to become an independent provider in a department administered home and community-based waiver program

as a condition of the department's approving the application.

(2) Beginning on September 26, 2003, the department or the department's designee shall inform each ~~enrolled-medicare~~ independent provider on or before the time of the anniversary date of the medicaid provider agreement ~~that involves providing home and community-based waiver services to consumers with disabilities~~ that the independent provider is required to provide a set of the independent provider's fingerprint impressions and that a criminal records check is required to be conducted.

~~(C)(D)~~(1) The department or the department's designee shall require ~~the independent provider~~ an applicant to complete a criminal records check prior to entering into a medicaid provider agreement with the ~~independent provider and applicant~~. The department or the department's designee shall require an independent provider to complete a criminal records check at least annually thereafter. If an applicant or independent provider for whom a criminal records check is required ~~under this division~~ by this section does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent of the bureau of criminal identification and investigation has requested information about the applicant or independent provider from the federal bureau of investigation in a criminal records check, the department or the department's designee shall request that the applicant or independent provider obtain through the superintendent a criminal records request from the federal bureau of investigation as part of the criminal records check of the applicant or independent provider. Even if an applicant or independent provider for whom a criminal records check request is required ~~under this division~~ by this section presents proof of having been a resident of this state for the five-year period, the department or the department's designee may request that the applicant or independent provider obtain information through the superintendent from the federal bureau of investigation in the criminal records check.

(2) The department or the department's designee shall provide the following to each applicant and independent provider for whom a criminal records check ~~request~~ is required ~~under division (C)(1) of~~ by this section:

(a) Information about accessing, completing, and forwarding to the superintendent of the bureau of criminal identification and investigation the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard ~~fingerprint~~ impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Written notification that the applicant or independent provider is to

instruct the superintendent to submit the completed report of the criminal records check directly to the department or the department's designee.

~~(3) An independent provider given information and notification under divisions (C)(2)(a) and (b) of this section who fails to access, complete, and forward to the superintendent the form or the standard fingerprint impression sheet, or who fails to instruct the superintendent to submit the completed report of the criminal records check directly to the department, shall not be approved as an independent provider. Each applicant and independent provider for whom a criminal records check is required by this section shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for the criminal records check conducted of the applicant or independent provider.~~

~~(D) Except as provided in rules adopted by the department in accordance with division (G) of this section, the department shall not issue a new provider agreement to, and shall terminate an existing provider agreement of, an independent provider if the person has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the following, regardless of the date of the conviction, the date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction:~~

~~(1) A violation of section 959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.04, 2909.05, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.05, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.01, 2917.02, 2917.03, 2917.11, 2917.31, 2919.12, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.13, 2921.34, 2921.35, 2921.36, 2923.01, 2923.02, 2923.03, 2923.12, 2923.13, 2923.161, 2923.32, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.14, 2925.22, 2925.23, 2927.12, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that~~

date;

~~(2) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (D)(1) of this section.~~

~~(E) Each independent provider shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted pursuant to a request made under division (C) of this section.~~

~~(F)~~(E) The report of any criminal records check conducted by the bureau of criminal identification and investigation in accordance with section 109.572 of the Revised Code and pursuant to a request made under division (C) of this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The person who is the subject of the criminal records check or the person's representative;

(2) An administrator at The director of job and family services and the staff of the department or the administrator's representative who are involved in the administration of the medicaid program;

(3) The department's designee;

(4) An individual who receives home and community-based services from the person who is the subject of the criminal records check;

(5) A court, hearing officer, or other necessary individual involved in a case dealing with a either of the following:

(a) A denial or termination of a provider agreement related to the criminal records check;

(b) A civil or criminal action regarding the medicaid program.

~~(G)~~(F) The ~~department~~ director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The rules shall specify circumstances under which the department or the department's designee may either ~~issue a provider agreement to an independent provider~~ approve an applicant's application or allow an independent provider to maintain an existing medicaid provider agreement ~~when even though the applicant or independent provider has is found by a criminal records check required by this section to have been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for an offense listed or described in division (D)(1) or (2) of this section a disqualifying offense.~~

Sec. 5111.06. (A)(1) As used in this section and in sections 5111.061 and 5111.063 of the Revised Code:

(a) "Provider" means any person, institution, or entity that furnishes medicaid services under a provider agreement with the department of job and family services pursuant to Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

(b) "Party" has the same meaning as in division (G) of section 119.01 of the Revised Code.

(c) "Adjudication" has the same meaning as in division (D) of section 119.01 of the Revised Code.

(2) This section does not apply to any either of the following:

(a) Any action taken or decision made by the department of job and family services with respect to entering into or refusing to enter into a contract with a managed care organization pursuant to section 5111.17 of the Revised Code;

(b) Any action taken by the department under sections 5111.16 to 5111.177 or sections 5111.35 to 5111.62 of the Revised Code.

(B) Except as provided in division (D) of this section and section 5111.914 of the Revised Code, the department shall do either of the following by issuing an order pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code:

(1) Enter into or refuse to enter into a provider agreement with a provider, or suspend, terminate, renew, or refuse to renew an existing provider agreement with a provider;

(2) Take any action based upon a final fiscal audit of a provider.

(C) Any party who is adversely affected by the issuance of an adjudication order under division (B) of this section may appeal to the court of common pleas of Franklin county in accordance with section 119.12 of the Revised Code.

(D) The department is not required to comply with division (B)(1) of this section whenever any of the following occur:

(1) The terms of a provider agreement require the provider to hold a license, permit, or certificate or maintain a certification issued by an official, board, commission, department, division, bureau, or other agency of state or federal government other than the department of job and family services, and the license, permit, certificate, or certification has been denied, revoked, not renewed, suspended, or otherwise limited.

(2) The terms of a provider agreement require the provider to hold a license, permit, or certificate or maintain certification issued by an official, board, commission, department, division, bureau, or other agency of state or federal government other than the department of job and family services, and the provider has not obtained the license, permit, certificate, or

certification.

(3) The provider agreement is denied, terminated, or not renewed due to the termination, refusal to renew, or denial of a license, permit, certificate, or certification by an official, board, commission, department, division, bureau, or other agency of this state other than the department of job and family services, notwithstanding the fact that the provider may hold a license, permit, certificate, or certification from an official, board, commission, department, division, bureau, or other agency of another state.

(4) The provider agreement is denied, terminated, or not renewed pursuant to division (C) or (F) of section 5111.03 of the Revised Code.

(5) The provider agreement is denied, terminated, or not renewed due to the provider's termination, suspension, or exclusion from the medicare program established under Title XVIII of the "Social Security Act" or from another state's medicaid program and, in either case, the termination, suspension, or exclusion is binding on the provider's participation in the medicaid program in this state.

(6) The provider agreement is denied, terminated, or not renewed due to the provider's pleading guilty to or being convicted of a criminal activity materially related to either the medicare or medicaid program.

(7) The provider agreement is denied, terminated, or suspended as a result of action by the United States department of health and human services and that action is binding on the provider's participation in the medicaid program.

(8) Pursuant to either section 5111.031 or 5111.035 of the Revised Code, the provider agreement is suspended and payments to the provider are suspended pending indictment of the provider.

(9) The provider agreement is denied, terminated, or not renewed because the provider or its owner, officer, authorized agent, associate, manager, or employee has been convicted of one of the offenses that caused the provider agreement to be suspended pursuant to section 5111.031 of the Revised Code.

(10) The provider agreement is converted under section 5111.028 of the Revised Code from a provider agreement that is not time-limited to a provider agreement that is time-limited.

(11) The provider agreement is terminated or an application for re-enrollment is denied because the provider has failed to apply for re-enrollment within the time or in the manner specified for re-enrollment pursuant to section 5111.028 of the Revised Code.

(12) The provider agreement is suspended or terminated, or an application for enrollment or re-enrollment is denied, for any reason

authorized or required by one or more of the following: 42 C.F.R. 455.106, 455.23, 455.416, 455.434, or 455.450.

(13) The provider agreement is terminated or not renewed because the provider has not billed or otherwise submitted a medicaid claim to the department for two years or longer.

(14) The provider agreement is denied, terminated, or not renewed because the provider fails to provide to the department the national provider identifier assigned the provider by the national provider system pursuant to 45 C.F.R. 162.408.

In the case of a provider described in division (D)(13) or (14) of this section, the department may take its proposed action against a provider agreement by sending a notice explaining the proposed action to the provider. The notice shall be sent to the provider's address on record with the department. The notice may be sent by regular mail.

(E) The department may withhold payments for services rendered by a medicaid provider under the medicaid program during the pendency of proceedings initiated under division (B)(1) of this section. If the proceedings are initiated under division (B)(2) of this section, the department may withhold payments only to the extent that they equal amounts determined in a final fiscal audit as being due the state. This division does not apply if the department fails to comply with section 119.07 of the Revised Code, requests a continuance of the hearing, or does not issue a decision within thirty days after the hearing is completed. This division does not apply to nursing facilities and intermediate care facilities for the mentally retarded as defined in section 5111.20 of the Revised Code.

Sec. 5111.091. ~~Not later than the first day of each calendar quarter~~ Semiannually, the director of job and family services shall submit ~~a report~~ to the president and minority leader of the senate, speaker and minority leader of the house of representatives, and the chairpersons of the standing committees of the senate and house of representatives ~~that hear bills with primary responsibility for legislation~~ making biennial appropriations a report on the establishment and implementation of programs designed to control the increase of the cost of the medicaid program, increase the efficiency of the medicaid program, and promote better health outcomes. In each calendar year, one report shall be submitted not later than the last day of June and the subsequent report shall be submitted not later than the last day of December.

~~The report shall include information regarding all of the following:~~

~~(A) Provider network management;~~

~~(B) Electronic claims submission and payment systems;~~

~~(C) Limited provider contracts and payments based on performance;~~
~~(D) Efforts to enforce third party liability;~~
~~(E) Implementation of the medicaid information technology system;~~
~~(F) Expansion of the medicaid data warehouse and decision support system;~~

~~(G) Development of infrastructure policies for electronic health records and e-prescribing.~~

Sec. 5111.113. (A) As used in this section:

(1) ~~"Adult care facility" has the same meaning as in section 5119.70 of the Revised Code.~~

(2) "Commissioner" means a person appointed by a probate court under division (E) of section 2113.03 of the Revised Code to act as a commissioner.

(3)(2) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(4)(3) "Personal needs allowance account" means an account or petty cash fund that holds the money of a resident of an adult care facility or home and that the facility or home manages for the resident.

(4) "Residential facility" means a residential facility licensed under section 5119.22 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults.

(B) Except as provided in divisions (C) and (D) of this section, the owner or operator of ~~an adult care facility or a home~~ or residential facility shall transfer to the department of job and family services the money in the personal needs allowance account of a resident of the ~~facility or home~~ or facility who was a recipient of the medical assistance program no earlier than sixty days but not later than ninety days after the resident dies. The ~~adult care facility or home~~ or facility shall transfer the money even though the owner or operator of the facility or home has not been issued letters testamentary or letters of administration concerning the resident's estate.

(C) If funeral or burial expenses for a resident of ~~an adult care facility or a home~~ or residential facility who has died have not been paid and the only resource the resident had that could be used to pay for the expenses is the money in the resident's personal needs allowance account, or all other resources of the resident are inadequate to pay the full cost of the expenses, the money in the resident's personal needs allowance account shall be used to pay for the expenses rather than being transferred to the department of job and family services pursuant to division (B) of this section.

(D) If, not later than sixty days after a resident of ~~an adult care facility or a home~~ or residential facility dies, letters testamentary or letters of

administration are issued, or an application for release from administration is filed under section 2113.03 of the Revised Code, concerning the resident's estate, the owner or operator of the ~~facility or home~~ or facility shall transfer the money in the resident's personal needs allowance account to the administrator, executor, commissioner, or person who filed the application for release from administration.

(E) The transfer or use of money in a resident's personal needs allowance account in accordance with division (B), (C), or (D) of this section discharges and releases the ~~adult care facility or home~~ or residential facility, and the owner or operator of the ~~facility or home~~, from any claim for the money from any source.

(F) If, sixty-one or more days after a resident of ~~an adult care facility or a home~~ or residential facility dies, letters testamentary or letters of administration are issued, or an application for release from administration under section 2113.03 of the Revised Code is filed, concerning the resident's estate, the department of job and family services shall transfer the funds to the administrator, executor, commissioner, or person who filed the application, unless the department is entitled to recover the money under the medicaid estate recovery program instituted under section 5111.11 of the Revised Code.

Sec. 5111.16. (A) As part of the medicaid program, the department of job and family services shall establish a care management system. The department shall submit, if necessary, applications to the United States department of health and human services for waivers of federal medicaid requirements that would otherwise be violated in the implementation of the system.

(B) The department shall implement the care management system in some or all counties and shall designate the medicaid recipients who are required or permitted to participate in the system. In the department's implementation of the system and designation of participants, all of the following apply:

(1) In the case of individuals who receive medicaid on the basis of being included in the category identified by the department as covered families and children, the department shall implement the care management system in all counties. All individuals included in the category shall be designated for participation, except for individuals included in one or more of the medicaid recipient groups specified in 42 C.F.R. 438.50(d). The department shall ensure that all participants are enrolled in health insuring corporations under contract with the department pursuant to section 5111.17 of the Revised Code.

(2) In the case of individuals who receive medicaid on the basis of being aged, blind, or disabled, as specified in division ~~(A)~~(C)(2) of section 5111.01 of the Revised Code, the department shall implement the care management system in all counties. Except as provided in division (C) of this section, all individuals included in the category shall be designated for participation. The department shall ensure that all participants are enrolled in health insuring corporations under contract with the department pursuant to section 5111.17 of the Revised Code.

(3) Alcohol, drug addiction, and mental health services covered by medicaid shall not be included in any component of the care management system when the nonfederal share of the cost of those services is provided by a board of alcohol, drug addiction, and mental health services or a state agency other than the department of job and family services, but the recipients of those services may otherwise be designated for participation in the system.

(C)(1) In designating participants who receive medicaid on the basis of being aged, blind, or disabled, the department shall not include any of the following, except as provided under division (C)(2) of this section:

- (a) Individuals who are under twenty-one years of age;
- (b) Individuals who are institutionalized;
- (c) Individuals who become eligible for medicaid by spending down their income or resources to a level that meets the medicaid program's financial eligibility requirements;
- (d) Individuals who are dually eligible under the medicaid program and the medicare program established under Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395, as amended;
- (e) Individuals to the extent that they are receiving medicaid services through a medicaid waiver component, as defined in section 5111.85 of the Revised Code.

(2) If any necessary waiver of federal medicaid requirements is granted, the department may designate any of the following individuals who receive medicaid on the basis of being aged, blind, or disabled as individuals who are permitted or required to participate in the care management system:

- (a) Individuals who are under twenty-one years of age;
- (b) Individuals who reside in a nursing facility, as defined in section 5111.20 of the Revised Code;
- (c) Individuals who, as an alternative to receiving nursing facility services, are participating in a home and community-based services medicaid waiver component, as defined in section 5111.85 of the Revised Code;

(d) Individuals who are dually eligible under the medicaid program and the medicare program.

(D) Subject to division (B) of this section, the department may do both of the following under the care management system:

(1) Require or permit participants in the system to obtain health care services from providers designated by the department;

(2) Require or permit participants in the system to obtain health care services through managed care organizations under contract with the department pursuant to section 5111.17 of the Revised Code.

(E)(1) The department shall prepare an annual report on the care management system. The report shall address the department's ability to implement the system, including all of the following components:

(a) The required designation of participants included in the category identified by the department as covered families and children;

(b) The required designation of participants included in the aged, blind, or disabled category of medicaid recipients;

(c) The use of any programs for enhanced care management.

(2) The department shall submit each annual report to the general assembly. The first report shall be submitted not later than October 1, 2007.

(F) The director of job and family services may adopt rules in accordance with Chapter 119. of the Revised Code to implement this section.

Sec. 5111.161. (A) As used in this section:

(1) "Children's care network" means any of the following:

(a) A children's hospital;

(b) A group of children's hospitals;

(c) A group of pediatric physicians;

(2) "Children's hospital" has the same meaning as in section 2151.86 of the Revised Code.

(B) If the department of job and family services includes in the care management system, pursuant to section 5111.16 of the Revised Code, individuals under twenty-one years of age included in the category of individuals who receive medicaid on the basis of being aged, blind, or disabled, as specified in division ~~(A)~~(C)(2) of section 5111.01 of the Revised Code, the department shall develop a system to recognize entities as pediatric accountable care organizations. The purpose of the recognition system shall be to meet the complex medical and behavioral needs of disabled children through new approaches to care coordination. The department shall implement the recognition system not later than July 1, 2012.

An entity recognized by the department as a pediatric accountable care organization may develop innovative partnerships between relevant groups and may contract directly or subcontract with the state to provide services to the medicaid recipients under twenty-one years of age described in this division who are permitted or required to participate in the care management system.

(C)(1) To be recognized by the department as a pediatric accountable care organization, an entity shall meet the standards established in rules adopted under this section. Unless required by sections 2706 and 3022 of the "Patient Protection and Affordable Care Act," 124 Stat. 325 (2010) and Title XVIII of the "Social Security Act," 124 Stat. 395 (2010), 42 U.S.C. 1395jjj, the regulations adopted pursuant to those sections, and the laws of this state, the department shall not require that an entity be a health insuring corporation as a condition of receiving the department's recognition.

(2) Any of the following entities may receive the department's recognition, if the standards for recognition have been met:

(a) A children's care network;

(b) A children's care network that may include one or more other entities, including, but not limited to, health insuring corporations or other managed care organizations;

(c) Any other entity the department determines is qualified.

(D) The department shall consult with all of the following in adopting rules under division (E) of this section necessary for an entity to be recognized by the department as a pediatric accountable care organization:

(1) The superintendent of insurance;

(2) Children's hospitals;

(3) Managed care organizations under contract pursuant to section 5111.17 of the Revised Code;

(4) Any other relevant entities, as determined necessary by the department, with interests in pediatric accountable care organizations.

(E) The department shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement this section. In adopting the rules, the department shall do all of the following:

(1) Establish application procedures to be followed by an entity seeking recognition as a pediatric accountable care organization;

(2) Ensure that the standards for recognition as a pediatric accountable care organization are the same as and do not conflict with those specified in sections 2706 and 3022 of the "Patient Protection and Affordable Care Act," 124 Stat. 325 (2010) and Title XVIII of the "Social Security Act," 124 Stat. 395 (2010), 42 U.S.C. 1395jjj or the regulations adopted pursuant to those

sections;

(3) Establish requirements regarding the access to pediatric specialty care provided through or by a pediatric accountable care organization;

(4) Establish accountability and financial requirements for an entity recognized as a pediatric accountable care organization;

(5) Establish quality improvement initiatives consistent with any state medicaid quality plan established by the department;

(6) Establish transparency and consumer protection requirements for an entity recognized as a pediatric accountable care organization;

(7) Establish a process for sharing data.

(F) This section does not limit the authority of the department of insurance to regulate the business of insurance in this state.

Sec. 5111.171. (A) The department of job and family services may provide financial incentive awards to managed care organizations under contract with the department pursuant to section 5111.17 of the Revised Code that meet or exceed performance standards specified in provider agreements or rules adopted by the department. The department may specify in a contract with a managed care organization the amounts of financial incentive awards, methodology for distributing awards, types of awards, and standards for administration by the department.

~~(B) There is hereby created in the state treasury the health care compliance fund. The fund shall consist of all fines imposed on and collected from managed care organizations for failure to meet performance standards or other requirements specified in provider agreements or rules adopted by the department. All investment earnings of the fund shall be credited to the fund. Moneys credited to the fund shall be used solely for the following purposes:~~

~~(1) To reimburse managed care organizations that have paid fines for failures to meet performance standards or other requirements and that have come into compliance by meeting requirements as specified by the department;~~

~~(2) To provide financial incentive awards established pursuant to division (A) of this section and specified in contracts between managed care organizations and the department.~~

Sec. 5111.20. As used in sections 5111.20 to 5111.331 of the Revised Code:

(A) "Allowable costs" are those costs determined by the department of job and family services to be reasonable and do not include fines paid under sections 5111.35 to 5111.61 and section 5111.99 of the Revised Code.

(B) "Ancillary and support costs" means all reasonable costs incurred by

a nursing facility other than direct care costs, tax costs, or capital costs. "Ancillary and support costs" includes, but is not limited to, costs of activities, social services, pharmacy consultants, habilitation supervisors, qualified mental retardation professionals, program directors, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, medical equipment, utilities, 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, ~~wheelchairs, resident transportation~~, maintenance and repairs, 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 by the director of job and family services under section 5111.02 of the Revised Code, for personnel listed in this division. "Ancillary and support 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 facility's cost report for the cost reporting period ending December 31, 1992.

(C) "Capital costs" means costs of ownership and, in the case of an intermediate care facility for the mentally retarded, costs of nonextensive renovation.

(1) "Cost of ownership" means the actual expense incurred for all of the following:

(a) 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 section 5111.251 of the Revised Code;
- (iii) Except as provided in division (B) of this section, equipment;
- (iv) In the case of an intermediate care facility for the mentally retarded, extensive renovations;
- (v) Transportation equipment.

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

(c) Amortization of financing costs;

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

The costs of capital assets of less than five hundred dollars per item may be considered capital costs in accordance with a provider's practice.

(2) "Costs of nonextensive renovation" means the actual expense incurred by an intermediate care facility for the mentally retarded for depreciation or amortization and interest on renovations that are not extensive renovations.

(D) "Capital lease" and "operating lease" shall be construed in accordance with generally accepted accounting principles.

(E) "Case-mix score" means the measure determined under section 5111.232 of the Revised Code of the relative direct-care resources needed to provide care and habilitation to a resident of a nursing facility or intermediate care facility for the mentally retarded.

(F)(1) "Date of licensure," for a facility originally licensed as a nursing home under Chapter 3721. of the Revised Code, means the date specific beds were originally licensed as nursing home beds under that chapter, regardless of whether they were subsequently licensed as residential facility beds under section 5123.19 of the Revised Code. For a facility originally licensed as a residential facility under section 5123.19 of the Revised Code, "date of licensure" means the date specific beds were originally licensed as residential facility beds under that section.

If nursing home beds licensed under Chapter 3721. of the Revised Code or residential facility beds licensed under section 5123.19 of the Revised Code were not required by law to be licensed when they were originally used to provide nursing home or residential facility services, "date of licensure" means the date the beds first were used to provide nursing home or residential facility services, regardless of the date the present provider obtained licensure.

If a facility adds nursing home beds or residential facility beds or extensively renovates all or part of the facility after its original date of licensure, it will have a different date of licensure for the additional beds or extensively renovated portion of the facility, unless the beds are added in a space that was constructed at the same time as the previously licensed beds but was not licensed under Chapter 3721. or section 5123.19 of the Revised Code at that time.

(2) The definition of "date of licensure" in this section applies in determinations of the medicaid reimbursement rate for a nursing facility or intermediate care facility for the mentally retarded but does not apply in determinations of the franchise permit fee for a nursing facility or intermediate care facility for the mentally retarded.

(G) "Desk-reviewed" means that costs as reported on a cost report

submitted under section 5111.26 of the Revised Code have been subjected to a desk review under division (A) of section 5111.27 of the Revised Code and preliminarily determined to be allowable costs.

(H) "Direct care costs" means all of the following:

(1)(a) Costs for registered nurses, licensed practical nurses, and nurse aides employed by the facility;

(b) Costs for direct care staff, administrative nursing staff, medical directors, respiratory therapists, and except as provided in division (H)(2) of this section, other persons holding degrees qualifying them to provide therapy;

(c) Costs of purchased nursing services;

(d) Costs of quality assurance;

(e) 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 by the director of job and family services in accordance with Chapter 119. of the Revised Code, for personnel listed in divisions (H)(1)(a), (b), and (d) of this section;

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

(g) Allocated direct care home office costs.

(2) In addition to the costs specified in division (H)(1) of this section, for nursing facilities only, direct care costs include costs of habilitation staff (other than habilitation supervisors), medical supplies, oxygen, over-the-counter pharmacy products, behavioral and mental health services, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, audiologists, habilitation supplies, wheelchairs, resident transportation, and universal precautions supplies.

(3) In addition to the costs specified in division (H)(1) of this section, for intermediate care facilities for the mentally retarded only, direct care costs include both of the following:

(a) Costs for physical therapists and physical therapy assistants, occupational therapists and occupational therapy assistants, speech therapists, audiologists, habilitation staff (including habilitation supervisors), qualified mental retardation professionals, program directors, social services staff, activities staff, off-site day programming, psychologists and psychology assistants, and social workers and counselors;

(b) 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 5111.02 of the Revised Code, for personnel listed in division (H)(3)(a) of this

section.

(4) Costs of other direct-care resources that are specified as direct care costs in rules adopted under section 5111.02 of the Revised Code.

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

(J) "Franchise permit fee" means the following:

(1) In the context of nursing facilities, the fee imposed by sections 3721.50 to 3721.58 of the Revised Code;

(2) In the context of intermediate care facilities for the mentally retarded, the fee imposed by sections 5112.30 to 5112.39 of the Revised Code.

(K) "Indirect care costs" means all reasonable costs incurred by an intermediate care facility for the mentally retarded other than direct care costs, other protected costs, or capital costs. "Indirect care costs" includes but is not limited to 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 repairs, 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 5111.02 of the Revised Code, for personnel listed in this division. Notwithstanding division (C)(1) 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 facility's cost report for the cost reporting period ending December 31, 1992.

(L) "Inpatient days" means ~~all~~ the following:

(1) In the context of a nursing facility, both of the following:

(a) All days during which a resident, regardless of payment source, occupies a bed in a nursing facility ~~or intermediate care facility for the mentally retarded~~ that is included in the nursing facility's certified capacity under Title XIX. ~~Therapeutic or hospital leave;~~

(b) Fifty per cent of the days for which payment is made under section ~~5111.33 or 5111.331~~ of the Revised Code ~~are considered inpatient days proportionate to the percentage of the facility's per resident per day rate paid~~

~~for those days.~~

(2) In the context of an intermediate care facility for the mentally retarded, both of the following:

(a) All days during which a resident, regardless of payment source, occupies a bed in an intermediate care facility for the mentally retarded that is included in the facility's certified capacity under Title XIX;

(b) All days for which payment is made under section 5111.33 of the Revised Code.

(M) "Intermediate care facility for the mentally retarded" means an intermediate care facility for the mentally retarded certified as in compliance with applicable standards for the medicaid program by the director of health in accordance with Title XIX.

(N) "Maintenance and repair expenses" means, except as provided in division (BB)(2) 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 but is not limited to the cost of ordinary repairs such as painting and wallpapering.

(O) "Medicaid days" means all the following:

(1) In the context of a nursing facility, both of the following:

(a) All days during which a resident who is a medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's certified capacity under Title XIX. Therapeutic or hospital leave;

(b) Fifty per cent of the days for which payment is made under section 5111.33 or 5111.331 of the Revised Code are considered medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days.

(2) In the context of an intermediate care facility for the mentally retarded, both of the following:

(a) All days during which a resident who is a medicaid recipient eligible for intermediate care facility for the mentally retarded services occupies a bed in an intermediate care facility for the mentally retarded that is included in the facility's certified capacity under Title XIX;

(b) All days for which payment is made under section 5111.33 of the Revised Code.

(P) "Nursing facility" means a facility, or a distinct part of a facility, that is certified as a nursing facility by the director of health in accordance with Title XIX and is not an intermediate care facility for the mentally retarded. "Nursing facility" includes a facility, or a distinct part of a facility, that is

certified as a nursing facility by the director of health in accordance with Title XIX and is certified as a skilled nursing facility by the director in accordance with Title XVIII.

(Q) "Operator" means the person or government entity responsible for the daily operating and management decisions for a nursing facility or intermediate care facility for the mentally retarded.

(R) "Other protected costs" means costs incurred by an intermediate care facility for the mentally retarded 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 5111.02 of the Revised Code.

(S)(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 a nursing facility or intermediate care facility for the mentally retarded:

- (a) The land on which the facility is located;
- (b) The structure in which the facility 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 facility is located;
- (d) Any lease or sublease of the land or structure on or in which the facility is located.

(2) "Owner" does not mean a holder of a debenture or bond related to the nursing facility or intermediate care facility for the mentally retarded and purchased at public issue or a regulated lender that has made a loan related to the facility unless the holder or lender operates the facility directly or through a subsidiary.

(T) "Patient" includes "resident."

(U) Except as provided in divisions (U)(1) and (2) of this section, "per diem" means a nursing facility's or intermediate care facility for the mentally retarded's 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.

(1) When calculating indirect care costs for the purpose of establishing rates under section 5111.241 of the Revised Code, "per diem" means an intermediate care facility for the mentally retarded's actual, allowable indirect care 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 facility would have had during that period if its occupancy rate had been

eighty-five per cent.

(2) When calculating capital costs for the purpose of establishing rates under section 5111.251 of the Revised Code, "per diem" means a facility'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 facility would have had during that period if its occupancy rate had been ninety-five per cent.

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

(W) "Provider agreement" means a contract between the department of job and family services and the operator of a nursing facility or intermediate care facility for the mentally retarded for the provision of nursing facility services or intermediate care facility services for the mentally retarded under the medicaid program.

(X) "Purchased nursing services" means services that are provided in a nursing facility by registered nurses, licensed practical nurses, or nurse aides who are not employees of the facility.

(Y) "Reasonable" means that a cost is an actual cost that is appropriate and helpful to develop and maintain the operation of patient 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.

(Z) "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, the 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 nursing facilities or intermediate care facilities for the mentally retarded from outside organizations and are not a basic element of patient care ordinarily furnished directly to patients by the facilities.

(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.

(AA) "Relative of owner" means an individual who is related to an owner of a nursing facility or intermediate care facility for the mentally retarded 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.

(BB) "Renovation" and "extensive renovation" mean:

(1) Any betterment, improvement, or restoration of an intermediate care facility for the mentally retarded started before July 1, 1993, that meets the definition of a renovation or extensive renovation established in rules adopted by the director of job and family services in effect on December 22, 1992.

(2) In the case of betterments, improvements, and restorations of intermediate care facilities for the mentally retarded started on or after July 1, 1993:

(a) "Renovation" means the betterment, improvement, or restoration of an intermediate care facility for the mentally retarded beyond its current functional capacity through a structural change that costs at least five hundred dollars per bed. A renovation may include betterment, improvement, restoration, or replacement of assets that are affixed to the building and have a useful life of at least five years. A renovation may include 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. "Renovation" does not mean construction of additional space for beds that will be added to a facility's licensed or certified capacity.

(b) "Extensive renovation" means a renovation that costs more than sixty-five per cent and no more than eighty-five per cent of the cost of constructing a new bed and that extends the useful life of the assets for at least ten years.

For the purposes of division (BB)(2) 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 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.

The department of job and family services 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.

(CC) "Tax costs" means the costs of taxes imposed under Chapter 5751. of the Revised Code, real estate taxes, personal property taxes, and corporate franchise taxes.

(DD) "Title XIX" means Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396, as amended.

~~(DD)~~(EE) "Title XVIII" means Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395, as amended.

Sec. 5111.222. (A) Except as otherwise provided by sections 5111.20 to 5111.331 of the Revised Code and by division (B) of this section, the total rate that the department of job and family services shall agree to pay for a fiscal year to the provider of a nursing facility pursuant to a provider agreement shall equal the sum of all of the following:

(1) The rate for direct care costs determined for the nursing facility under section 5111.231 of the Revised Code;

(2) The rate for ancillary and support costs determined for the nursing facility's ancillary and support cost peer group under section 5111.24 of the Revised Code;

(3) The rate for tax costs determined for the nursing facility under section 5111.242 of the Revised Code;

(4) The quality incentive payment paid to the nursing facility under section 5111.244 of the Revised Code;

(5) If the nursing facility qualifies as a critical access nursing facility, the critical access incentive payment paid to the nursing facility under

section 5111.246 of the Revised Code:

(6) The rate for capital costs determined for the nursing facility's capital costs peer group under section 5111.25 of the Revised Code.

(B) The department shall adjust the rates otherwise determined under division (A) of this section as directed by the general assembly through the enactment of law governing medicaid payments to providers of nursing facilities, including any law that establishes factors by which the rates are to be adjusted.

(C) In addition to paying a nursing facility provider the total rate determined for the nursing facility under division (A) of this section for a fiscal year, the department shall pay the provider a quality bonus under section 5111.245 of the Revised Code for that fiscal year if the provider's nursing facility is a qualifying nursing facility, as defined in that section, for that fiscal year. The quality bonus shall not be part of the total rate.

Sec. 5111.23. (A) The department of job and family services shall pay a provider for each of the provider's eligible intermediate care facilities for the mentally retarded a per resident per day rate for direct care costs established prospectively for each facility. The department shall establish each facility's rate for direct care costs quarterly.

(B) Each facility's rate for direct care costs shall be based on the facility's cost per case-mix unit, subject to the maximum costs per case-mix unit established under division (B)(2) of this section, from the calendar year preceding the fiscal year in which the rate is paid. To determine the rate, the department shall do all of the following:

(1) Determine each facility's cost per case-mix unit for the calendar year preceding the fiscal year in which the rate will be paid by dividing the facility's desk-reviewed, actual, allowable, per diem direct care costs for that year by its average case-mix score determined under section 5111.232 of the Revised Code for the same calendar year.

(2)(a) Set the maximum cost per case-mix unit for each peer group of intermediate care facilities for the mentally retarded with more than eight beds specified in rules adopted under division (F) of this section at a percentage above the cost per case-mix unit of the facility in the group that has the group's median medicaid ~~inpatient~~ day for the calendar year preceding the fiscal year in which the rate will be paid, as calculated under division (B)(1) of this section, that is no less than the percentage calculated under division (E)(2) of this section.

(b) Set the maximum cost per case-mix unit for each peer group of intermediate care facilities for the mentally retarded with eight or fewer beds specified in rules adopted under division (F) of this section at a percentage

above the cost per case-mix unit of the facility in the group that has the group's median medicaid ~~inpatient~~ day for the calendar year preceding the fiscal year in which the rate will be paid, as calculated under division (B)(1) of this section, that is no less than the percentage calculated under division (E)(3) of this section.

(c) In calculating the maximum cost per case-mix unit under divisions (B)(2)(a) and (b) of this section for each peer group, the department shall exclude from its calculations the cost per case-mix unit of any facility in the group that participated in the medicaid program under the same operator for less than twelve months during the calendar year preceding the fiscal year in which the rate will be paid.

(3) 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 which the rate will be paid and ending on the thirty-first day of December of the fiscal year in which the rate will be paid, using the index specified in division (C) of this section. If the estimated inflation rate for the eighteen-month period 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 (B)(3) of this section for the following fiscal year.

(4) The department shall not recalculate a maximum cost per case-mix unit under division (B)(2) of this section or a percentage under division (E) of this section based on additional information that it receives after the maximum costs per case-mix unit or percentages are set. The department shall recalculate a maximum cost per case-mix units or percentage only if it made an error in computing the maximum cost per case-mix unit or percentage based on information available at the time of the original calculation.

(C) The department shall use the following index for the purpose of division (B)(3) of this section:

(1) The employment cost index for total compensation, health services 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 (C)(1) of this section, the index that is subsequently published by the bureau and covers nursing facilities' staff costs.

(D) Each facility's rate for direct care costs shall be determined as follows for each calendar quarter within a fiscal year:

(1) Multiply the lesser of the following by the facility's average case-mix score determined under section 5111.232 of the Revised Code for

the calendar quarter that preceded the immediately preceding calendar quarter:

(a) The facility's cost per case-mix unit for the calendar year preceding the fiscal year in which the rate will be paid, as determined under division (B)(1) of this section;

(b) The maximum cost per case-mix unit established for the fiscal year in which the rate will be paid for the facility's peer group under division (B)(2) of this section;

(2) Adjust the product determined under division (D)(1) of this section by the inflation rate estimated under division (B)(3) of this section.

(E)(1) The department shall calculate the percentage above the median cost per case-mix unit determined under division (B)(1) of this section for the facility that has the median medicaid ~~inpatient~~ day for calendar year 1992 for all intermediate care facilities for the mentally retarded with more than eight beds that would result in payment of all desk-reviewed, actual, allowable direct care costs for eighty and one-half per cent of the medicaid ~~inpatient~~ days for such facilities for calendar year 1992.

(2) The department shall calculate the percentage above the median cost per case-mix unit determined under division (B)(1) of this section for the facility that has the median medicaid ~~inpatient~~ day for calendar year 1992 for all intermediate care facilities for the mentally retarded with eight or fewer beds that would result in payment of all desk-reviewed, actual, allowable direct care costs for eighty and one-half per cent of the medicaid ~~inpatient~~ days for such facilities for calendar year 1992.

(F) The director of job and family services shall adopt rules under section 5111.02 of the Revised Code that specify peer groups of intermediate care facilities for the mentally retarded with more than eight beds and intermediate care facilities for the mentally retarded with eight or fewer beds, based on findings of significant per diem direct care cost differences due to geography and facility bed-size. The rules also may specify peer groups based on findings of significant per diem direct care cost differences due to other factors which may include case-mix.

(G) The department, in accordance with division (D) of section 5111.232 of the Revised Code and rules adopted under division (F) of that section, may assign case-mix scores or costs per case-mix unit if a provider fails to submit assessment data necessary to calculate an intermediate care facility for the mentally retarded's case-mix score in accordance with that section.

Sec. 5111.242. (A) As used in this section:

(1) ~~"Applicable, "~~"applicable calendar year" means the following:

(a)(1) For the purpose of the department of job and family services' initial determination under this section of nursing facilities' rate for tax costs, calendar year 2003;

(b)(2) For the purpose of the department's subsequent determinations under division (C) of this section of nursing facilities' rate for tax costs, the calendar year the department selects.

(2) "Tax costs" means the costs of taxes imposed under Chapter 5751 of the Revised Code, real estate taxes, personal property taxes, and corporate franchise taxes.

(B) The department of job and family services shall pay a provider for each of the provider's eligible nursing facilities a per resident per day rate for tax costs determined under division (C) of this section.

(C) At least once every ten years, the department shall determine the rate for tax costs for each nursing facility. The rate for tax costs determined under this division for a nursing facility shall be used for subsequent years until the department redetermines it. To determine a nursing facility's rate for tax costs and except as provided in division (D) of this section, the department shall divide the nursing facility's desk-reviewed, actual, allowable tax costs paid for the applicable calendar year by the number of inpatient days the nursing facility would have had if its occupancy rate had been one hundred per cent during the applicable calendar year.

(D) If a nursing facility had a credit regarding its real estate taxes reflected on its cost report for calendar year 2003, the department shall determine its rate for tax costs for the period beginning on July 1, 2010, and ending on the first day of the fiscal year for which the department first redetermines all nursing facilities' rate for tax costs under division (C) of this section by dividing the nursing facility's desk-reviewed, actual, allowable tax costs paid for calendar year 2004 by the number of inpatient days the nursing facility would have had if its occupancy rate had been one hundred per cent during calendar year 2004.

Sec. 5111.246. (A) Each fiscal year, the department of job and family services shall pay a critical access incentive payment to the provider of each nursing facility that qualifies as a critical access nursing facility. To qualify as a critical access nursing facility for a fiscal year, a nursing facility must meet all of the following requirements:

(1) The nursing facility must be located in an area that, on December 31, 2011, was designated an empowerment zone under section 1391 of the "Internal Revenue Code of 1986," 107 Stat. 543, 26 U.S.C. 1391, as amended.

(2) The nursing facility must have an occupancy rate of at least

eighty-five per cent as of the last day of the calendar year preceding the fiscal year.

(3) The nursing facility must have a medicaid utilization rate of at least sixty-five per cent as of the last day of the calendar year preceding the fiscal year.

(B) A critical access nursing facility's critical access incentive payment for a fiscal year shall equal five per cent of the portion of the nursing facility's total rate for the fiscal year that is the sum of the rates and payment identified in divisions (A)(1) to (4) and (6) of section 5111.222 of the Revised Code.

Sec. 5111.254. (A) The department of job and family services shall establish initial rates for a nursing facility with a first date of licensure that is on or after July 1, 2006, including a facility that replaces one or more existing facilities, or for a nursing facility with a first date of licensure before that date that was initially certified for the medicaid program on or after that date, in the following manner:

(1) The rate for direct care costs shall be the product of the cost per case-mix unit determined under division (D) of section 5111.231 of the Revised Code for the facility's peer group and the nursing facility's case-mix score. For the purpose of division (A)(1) of this section, the nursing facility's case-mix score shall be the following:

(a) Unless the nursing facility replaces an existing nursing facility that participated in the medicaid program immediately before the replacement nursing facility begins participating in the medicaid program, the median annual average case-mix score for the nursing facility's peer group;

(b) If the nursing facility replaces an existing nursing facility that participated in the medicaid program immediately before the replacement nursing facility begins participating in the medicaid program, the semiannual case-mix score most recently determined under section 5111.232 of the Revised Code for the replaced nursing facility as adjusted, if necessary, to reflect any difference in the number of beds in the replaced and replacement nursing facilities.

(2) The rate for ancillary and support costs shall be the rate for the facility's peer group determined under division (D) of section 5111.24 of the Revised Code.

(3) The rate for capital costs shall be the rate for the facility's peer group determined under division (D) of section 5111.25 of the Revised Code.

(4) The rate for tax costs ~~as defined in section 5111.242 of the Revised Code~~ shall be the median rate for tax costs for the facility's peer group in which the facility is placed under division (C) of section 5111.24 of the

Revised Code.

(5) The quality incentive payment shall be the mean payment made to nursing facilities under section 5111.244 of the Revised Code.

(B) Subject to division (C) of this section, the department shall adjust the rates established under division (A) of this section effective the first day of July, to reflect new rate calculations for all nursing facilities under sections 5111.20 to 5111.331 of the Revised Code.

(C) If a rate for direct care costs is determined under this section for a nursing facility using the median annual average case-mix score for the nursing facility's peer group, the rate shall be redetermined to reflect the replacement nursing facility's actual semiannual case-mix score determined under section 5111.232 of the Revised Code after the nursing facility submits its first two quarterly assessment data that qualify for use in calculating a case-mix score in accordance with rules authorized by division (E) of section 5111.232 of the Revised Code. If the nursing facility's quarterly submissions do not qualify for use in calculating a case-mix score, the department shall continue to use the median annual average case-mix score for the nursing facility's peer group in lieu of the nursing facility's semiannual case-mix score until the nursing facility submits two consecutive quarterly assessment data that qualify for use in calculating a case-mix score.

Sec. 5111.862. (A) As used in this section:

"Hospital long-term care unit" has the same meaning as in section 3721.50 of the Revised Code.

"Nursing facility" has the same meaning as in section 5111.20 of the Revised Code.

"Ohio home care program" means the medicaid waiver component created under section 5111.861 of the Revised Code.

"Residential treatment facility" means a residential facility licensed by the department of mental health under section 5119.22 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.

(B) Subject to division (C) of section 5111.861 of the Revised Code, the department of job and family services shall establish a home first component for the Ohio home care program. An individual is eligible for the Ohio home care program's home first component if the individual has been determined to be eligible for the Ohio home care program and at least one of the following applies:

(1) If the individual is under twenty-one years of age, the individual received inpatient hospital services for at least fourteen consecutive days, or had at least three inpatient hospital stays during the twelve months, immediately preceding the date the individual applies for the Ohio home care program.

(2) If the individual is at least twenty-one but less than sixty years of age, the individual received inpatient hospital services for at least fourteen consecutive days immediately preceding the date the individual applies for the Ohio home care program.

(3) The individual received private duty nursing services under the medicaid program for at least twelve consecutive months immediately preceding the date the individual applies for the Ohio home care program.

(4) The individual does not reside in a nursing facility or hospital long-term care unit at the time the individual applies for the Ohio home care program but is at risk of imminent admission to a nursing facility or hospital long-term care unit due to a documented loss of a primary caregiver.

(5) The individual resides in a nursing facility at the time the individual applies for the Ohio home care program.

(6) At the time the individual applies for the Ohio home care program, the individual participates in the money follows the person demonstration project authorized by section 6071 of the "Deficit Reduction Act of 2005," Pub. L. No. 109-171, as amended, and either resides in a residential treatment facility or inpatient hospital setting.

(C) An individual determined to be eligible for the home first component of the Ohio home care program shall be enrolled in the Ohio home care program in accordance with rules adopted under section 5111.85 of the Revised Code.

Sec. 5111.874. (A) As used in sections 5111.874 to 5111.8710 of the Revised Code:

"Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.

"ICF/MR services" means intermediate care facility for the mentally retarded services covered by the medicaid program that an intermediate care facility for the mentally retarded provides to a resident of the facility who is a medicaid recipient eligible for medicaid-covered intermediate care facility for the mentally retarded services.

"Intermediate care facility for the mentally retarded" means an intermediate care facility for the mentally retarded that is certified as in compliance with applicable standards for the medicaid program by the director of health in accordance with Title XIX of the "Social Security Act,"

79 Stat. 286 (1965), 42 U.S.C. 1396, as amended, and licensed as a residential facility under section 5123.19 of the Revised Code.

"Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

(B) For the purpose of increasing the number of slots available for home and community-based services and subject to sections 5111.877 and 5111.878 of the Revised Code, the operator of an intermediate care facility for the mentally retarded may convert some or all of the beds in the facility from providing ICF/MR services to providing home and community-based services if all of the following requirements are met:

(1) The operator provides the directors of health, ~~job and family services~~, and developmental disabilities at least ninety days' notice of the operator's intent to make the conversion.

(2) The operator complies with the requirements of sections 5111.65 to 5111.689 of the Revised Code regarding a voluntary termination as defined in section 5111.65 of the Revised Code if those requirements are applicable.

(3) If the operator intends to convert all of the facility's beds, the operator notifies each of the facility's residents that the facility is to cease providing ICF/MR services and inform each resident that the resident may do either of the following:

(a) Continue to receive ICF/MR services by transferring to another facility that is an intermediate care facility for the mentally retarded willing and able to accept the resident if the resident continues to qualify for ICF/MR services;

(b) Begin to receive home and community-based services instead of ICF/MR services from any provider of home and community-based services that is willing and able to provide the services to the resident if the resident is eligible for the services and a slot for the services is available to the resident.

(4) If the operator intends to convert some but not all of the facility's beds, the operator notifies each of the facility's residents that the facility is to convert some of its beds from providing ICF/MR services to providing home and community-based services and inform each resident that the resident may do either of the following:

(a) Continue to receive ICF/MR services from any provider of ICF/MR services that is willing and able to provide the services to the resident if the resident continues to qualify for ICF/MR services;

(b) Begin to receive home and community-based services instead of ICF/MR services from any provider of home and community-based services that is willing and able to provide the services to the resident if the resident

is eligible for the services and a slot for the services is available to the resident.

(5) The operator meets the requirements for providing home and community-based services, including the following:

(a) Such requirements applicable to a residential facility if the operator maintains the facility's license as a residential facility;

(b) Such requirements applicable to a facility that is not licensed as a residential facility if the operator surrenders the facility's license as a residential facility under section 5123.19 of the Revised Code.

(6) The ~~directors~~ director of developmental disabilities ~~and job and family services approve~~ approves the conversion.

(C) A decision by the ~~directors~~ director of developmental disabilities to approve or refuse to approve a proposed conversion of beds is final. In making a decision, the ~~directors~~ director shall consider all of the following:

(1) The fiscal impact on the facility if some but not all of the beds are converted;

(2) The fiscal impact on the medical assistance program;

(3) The availability of home and community-based services.

(D) The notice provided to the directors under division (B)(1) of this section shall specify whether some or all of the facility's beds are to be converted. If some but not all of the beds are to be converted, the notice shall specify how many of the facility's beds are to be converted and how many of the beds are to continue to provide ICF/MR services. The notice to the director of developmental disabilities shall specify whether the operator wishes to surrender the facility's license as a residential facility under section 5123.19 of the Revised Code.

(E)(1) If the ~~directors~~ director of developmental disabilities ~~and job and family services approve~~ approves a conversion under division (C) of this section, the director of health shall do the following:

(a) Terminate the certification of the intermediate care facility for the mentally retarded if the notice specifies that all of the facility's beds are to be converted;

(b) Reduce the facility's certified capacity by the number of beds being converted if the notice specifies that some but not all of the beds are to be converted.

(2) The director of health shall notify the director of job and family services of the termination or reduction. On receipt of the director of health's notice, the director of job and family services shall do the following:

(a) Terminate the operator's medicaid provider agreement that authorizes the operator to provide ICF/MR services at the facility if the

facility's certification was terminated;

(b) Amend the operator's medicaid provider agreement to reflect the facility's reduced certified capacity if the facility's certified capacity is reduced.

(3) In the case of action taken under division (E)(2)(a) of this section, the operator is not entitled to notice or a hearing under Chapter 119. of the Revised Code before the director of job and family services terminates the medicaid provider agreement.

Sec. 5111.877. The director of job and family services may seek approval from the United States secretary of health and human services for not more than a total of ~~two~~ five hundred slots for home and community-based services for the purposes of sections 5111.874, 5111.875, and 5111.876 of the Revised Code.

Sec. 5111.878. Not more than a total of ~~one~~ five hundred beds may be converted from providing ICF/MR services to providing home and community-based services under sections 5111.874 and 5111.875 of the Revised Code.

Sec. 5111.89. (A) As used in sections 5111.89 to 5111.894 of the Revised Code:

"Area agency on aging" has the same meaning as in section 173.14 of the Revised Code.

"Assisted living program" means the program created under this section.

"Assisted living services" means the following home and community-based services: personal care, homemaker, chore, attendant care, companion, medication oversight, and therapeutic social and recreational programming.

"Assisted living waiver" means the federal medicaid waiver granted by the United States secretary of health and human services that authorizes the medicaid-funded component of the assisted living program.

"County or district home" means a county or district home operated under Chapter 5155. of the Revised Code.

"Long-term care consultation program" means the program the department of aging is required to develop under section 173.42 of the Revised Code.

"Long-term care consultation program administrator" or "administrator" means the department of aging or, if the department contracts with an area agency on aging or other entity to administer the long-term care consultation program for a particular area, that agency or entity.

"Medicaid waiver component" has the same meaning as in section 5111.85 of the Revised Code.

"Nursing facility" has the same meaning as in section 5111.20 of the Revised Code.

"Residential care facility" has the same meaning as in section 3721.01 of the Revised Code.

"Unified long-term services and support medicaid waiver component" means the medicaid waiver component authorized by section 5111.864 of the Revised Code.

(B) There is hereby created the assisted living program. The program shall provide assisted living services to individuals who meet the program's applicable eligibility requirements. Subject to division (C) of this section, the program shall have a medicaid-funded component and a state-funded component.

(C)(1) Unless the medicaid-funded component of the assisted living program is terminated under division (C)(2) of this section, all of the following apply:

(a) The department of aging shall administer the medicaid-funded component through a contract entered into with the department of job and family services under section 5111.91 of the Revised Code.

(b) The contract shall include an estimate of the medicaid-funded component's costs.

(c) The medicaid-funded component shall be operated as a separate medicaid waiver component.

(d) The medicaid-funded component may not serve more individuals than is set by the United States secretary of health and human services in the assisted living waiver.

(e) The director of job and family services may adopt rules under section 5111.85 of the Revised Code regarding the medicaid-funded component.

(f) The director of aging may adopt rules under Chapter 119. of the Revised Code regarding the medicaid-funded component that the rules adopted by the director of job and family services under division (C)(1)(e) of this section authorize the director of aging to adopt.

(2) If the unified long-term services and support medicaid waiver component is created, the departments of aging and job and family services shall work together to determine whether the medicaid-funded component of the assisted living program should continue to operate as a separate medicaid waiver component or be terminated. If the departments determine that the medicaid-funded component of the assisted living program should be terminated, the medicaid-funded component shall cease to exist on a date the departments shall specify.

(D) The department of aging shall administer the state-funded component of the assisted living program. The state-funded component shall not be administered as part of the medicaid program.

An individual who is eligible for the state-funded component may participate in the component for not more than ~~three months~~ ninety days.

The director of aging shall adopt rules in accordance with section 111.15 of the Revised Code to implement the state-funded component.

Sec. 5111.894. (A) Subject to division (C)(2) of section 5111.89 of the Revised Code, the department of aging shall establish a home first component of the assisted living program under which eligible individuals may be enrolled in the medicaid-funded component of the assisted living program in accordance with this section. An individual is eligible for the assisted living program's home first component if both of the following apply:

(1) The individual has been determined to be eligible for the medicaid-funded component of the assisted living program.

(2) At least one of the following applies:

(a) The individual has been admitted to a nursing facility.

(b) A physician has determined and documented in writing that the individual has a medical condition that, unless the individual is enrolled in home and community-based services such as the assisted living program, will require the individual to be admitted to a nursing facility within thirty days of the physician's determination.

(c) The individual has been hospitalized and a physician has determined and documented in writing that, unless the individual is enrolled in home and community-based services such as the assisted living program, the individual is to be transported directly from the hospital to a nursing facility and admitted.

(d) Both of the following apply:

(i) The individual is the subject of a report made under section 5101.61 of the Revised Code regarding abuse, neglect, or exploitation or such a report referred to a county department of job and family services under section 5126.31 of the Revised Code or has made a request to a county department for protective services as defined in section 5101.60 of the Revised Code.

(ii) A county department of job and family services and an area agency on aging have jointly documented in writing that, unless the individual is enrolled in home and community-based services such as the assisted living program, the individual should be admitted to a nursing facility.

~~(e) The individual resided in a residential care facility for at least six~~

~~months immediately before applying for the medicaid-funded component of the assisted living program and is at risk of imminent admission to a nursing facility because the costs of residing in the residential care facility have depleted the individual's resources such that the individual is unable to continue to afford the cost of residing in the residential care facility.~~

(B) Each month, each area agency on aging shall identify individuals residing in the area that the area agency on aging serves who are eligible for the home first component of the assisted living program. When an area agency on aging identifies such an individual and determines that there is a vacancy in a residential care facility participating in the medicaid-funded component of the assisted living program that is acceptable to the individual, the agency shall notify the long-term care consultation program administrator serving the area in which the individual resides. The administrator shall determine whether the assisted living program is appropriate for the individual and whether the individual would rather participate in the assisted living program than continue or begin to reside in a nursing facility. If the administrator determines that the assisted living program is appropriate for the individual and the individual would rather participate in the assisted living program than continue or begin to reside in a nursing facility, the administrator shall so notify the department of aging. On receipt of the notice from the administrator, the department shall approve the individual's enrollment in the medicaid-funded component of the assisted living program regardless of the unified waiting list established under section 173.404 of the Revised Code, unless the enrollment would cause the component to exceed any limit on the number of individuals who may participate in the component as set by the United States secretary of health and human services in the assisted living waiver.

Sec. 5111.941. (A) The medicaid revenue and collections health care/medicaid support and recoveries fund is hereby created in the state treasury. Except All of the following shall be credited to the fund:

(1) Except as otherwise provided by statute or as authorized by the controlling board, the nonfederal share of all medicaid-related revenues, collections, and recoveries shall be credited to the fund;

(2) Federal reimbursement received for payment adjustments made pursuant to section 1923 of the "Social Security Act," 101 Stat. 1330-148 (1987), 42 U.S.C. 1396r-4, as amended, under the medicaid program to state mental health hospitals maintained and operated by the department of mental health under division (A) of section 5119.02 of the Revised Code;

(3) Revenues the department of job and family services receives from another state agency for medicaid services pursuant to an interagency

agreement, other than such revenues required to be deposited into the health care services administration fund created under section 5111.94 of the Revised Code;

(4) The first seven hundred fifty thousand dollars the department receives in a fiscal year for performing eligibility verification services necessary for compliance with the independent, certified audit requirement of 42 C.F.R. 455.304.

(B) The department of job and family services shall use money credited to the ~~medicaid revenue and collections~~ health care/medicaid support and recoveries fund to pay for medicaid services and contracts.

Sec. 5111.946. (A) As used in this section, "medicaid managed care organization" means a managed care organization under contract with the department of job and family services pursuant to section 5111.17 of the Revised Code.

(B) There is hereby created in the state treasury the health care compliance fund. All of the following shall be credited to the fund:

(1) All fines imposed on and collected from medicaid managed care organizations for failure to meet performance standards or other requirements specified in provider agreements or rules adopted by the department;

(2) Money the department receives in a fiscal year for performing eligibility verification services necessary for compliance with the independent, certified audit requirement of 42 C.F.R. 455.304, other than the amounts of such money that are to be credited to the health care/medicaid support and recoveries fund under section 5111.941 of the Revised Code;

(3) All investment earnings of the fund.

(C) Money credited to the health care compliance fund shall be used solely for the following purposes:

(1) To reimburse medicaid managed care organizations that have paid fines for failure to meet performance standards or other requirements and have come into compliance by meeting requirements as specified by the department;

(2) To provide financial incentive awards established pursuant to section 5111.171 of the Revised Code and specified in contracts between medicaid managed care organizations and the department.

Sec. 5111.96. (A) As used in this section, "MFP demonstration project" means a money follows the person demonstration project that the United States secretary of health and human services is authorized to award under section 6071 of the Deficit Reduction Act of 2005 (Pub. L. No. 109-171, as

amended).

(B) To the extent funds are available under an MFP demonstration project awarded to the department of job and family services, the director of job and family services may operate the helping Ohioans move, expanding (HOME) choice demonstration component of the medicaid program to transition medicaid recipients who qualify for the demonstration component to community settings. The director may adopt rules in accordance with Chapter 119. of the Revised Code for the administration and operation of the demonstration component.

Sec. 5111.97. (A) As used in this section, "~~nursing~~:"

(1) "Home and community-based services medicaid waiver component" has the same meaning as in section 5111.85 of the Revised Code.

(2) "Nursing facility" has the same meaning as in section 5111.20 of the Revised Code.

(B) To the extent funds are available, the director of job and family services may establish the Ohio access success project to help medicaid recipients make the transition from residing in a nursing facility to residing in a community setting. The project may be established as a separate nonmedicaid program or integrated into a new or existing ~~program of medicaid-funded home and community-based services authorized by a medicaid waiver approved by the United States department of health and human services component.~~ The director shall permit any recipient of medicaid-funded nursing facility services to apply for participation in the project, but may limit the number of project participants.

The director shall ensure that an assessment of an applicant is conducted as soon as practicable to determine whether the applicant is eligible for participation in the project. To the maximum extent possible, the assessment and eligibility determination shall be completed not later than the date that occurs six months after the applicant became a recipient of medicaid-funded nursing facility services.

(C) To be eligible for benefits under the project, a medicaid recipient must satisfy all of the following requirements:

(1) The medicaid recipient must be a recipient of medicaid-funded nursing facility services, at the time of applying for the project benefits.

(2) If the project is established as a nonmedicaid program, the medicaid recipient must be able to remain in the community as a result of receiving project benefits and the projected cost of the benefits to the project does not exceed eighty per cent of the average monthly medicaid cost of a medicaid recipient in a nursing facility.

(3) If the project is integrated into a ~~medicaid-funded~~ home and

community-based services medicaid waiver ~~program~~ component, the medicaid recipient must meet the waiver component's enrollment criteria.

(D) If the director establishes the Ohio access success project, the benefits provided under the project may include payment of all of the following:

- (1) The first month's rent in a community setting;
- (2) Rental deposits;
- (3) Utility deposits;
- (4) Moving expenses;
- (5) Other expenses not covered by the medicaid program that facilitate a medicaid recipient's move from a nursing facility to a community setting.

(E) If the project is established as a nonmedicaid program, no participant may receive more than two thousand dollars' worth of benefits under the project.

(F) If the department of job and family services enters into a contract with an entity to provide fiscal management services regarding the project, the contract may provide for a portion of a participant's benefits under the project to be paid to the contracting entity. The contract shall specify the portion to be paid to the contracting entity.

(G) The director may submit a request to the United States secretary of health and human services pursuant to section 1915 of the "Social Security Act," 79 95 Stat. 286 809 (1965 1981), 42 U.S.C. 1396n, as amended, to create a ~~medicaid~~ home and community-based services medicaid waiver ~~program~~ component to serve individuals who meet the criteria for participation in the Ohio access success project. ~~The~~

(H) The director may adopt rules under in accordance with Chapter 119. of the Revised Code for the administration and operation of the project. If the project is integrated into a home and community-based services medicaid waiver component, the rules shall be adopted under section 5111.85 of the Revised Code.

Sec. 5112.31. The department of job and family services shall do all of the following:

(A) Subject to section 5112.331 of the Revised Code and divisions (B) and (C) of this section and for the purposes specified in ~~sections 5112.37 and section 5112.371~~ of the Revised Code, assess for each fiscal year each intermediate care facility for the mentally retarded a franchise permit fee equal to the franchise permit fee rate multiplied by the product of the following:

- (1) The number of beds certified under Title XIX of the "Social Security Act" on the first day of May of the calendar year in which the assessment is

determined pursuant to division (A) of section 5112.33 of the Revised Code;

(2) The number of days in the fiscal year.

(B) If the total amount of the franchise permit fee assessed under division (A) of this section for a fiscal year exceeds the indirect guarantee percentage of the actual net patient revenue for all intermediate care facilities for the mentally retarded for that fiscal year and seventy-five per cent or more of the total number of intermediate care facilities for the mentally retarded receive enhanced medicaid payments or other state payments equal to seventy-five per cent or more of their total franchise permit fee assessments, do both of the following:

(1) Recalculate the assessments under division (A) of this section using a per bed per day rate equal to the indirect guarantee percentage of actual net patient revenue for all intermediate care facilities for the mentally retarded for that fiscal year;

(2) Refund the difference between the amount of the franchise permit fee assessed for that fiscal year under division (A) of this section and the amount recalculated under division (B)(1) of this section as a credit against the assessments imposed under division (A) of this section for the subsequent fiscal year.

(C) If the United States secretary of health and human services determines that the franchise permit fee established by sections 5112.30 to 5112.39 of the Revised Code would be an impermissible health care-related tax under section 1903(w) of the "Social Security Act," 105 Stat. 1793 (1991), 42 U.S.C.A. 1396b(w), as amended, take all necessary actions to cease implementation of those sections in accordance with rules adopted under section 5112.39 of the Revised Code.

Sec. 5112.33. (A) Not later than the fifteenth day of August of each year, the department of job and family services shall determine the annual franchise permit fee for each intermediate care facility for the mentally retarded in accordance with section 5112.31 of the Revised Code.

(B) Not later than the first day of September of each year, the department shall mail to each intermediate care facility for the mentally retarded notice of the amount of the franchise permit fee the facility has been assessed under section 5112.31 of the Revised Code.

(C) Each ~~Each~~ Subject to section 5112.331 of the Revised Code, each intermediate care facility for the mentally retarded shall pay its fee under section 5112.31 of the Revised Code to the department in quarterly installment payments not later than forty-five days after the last day of each September, December, March, and June.

Sec. 5112.331. (A) If, during the period beginning on the first day of

May of a calendar year and ending on the first day of January of the immediately following calendar year, the operator of an intermediate care facility for the mentally retarded converts, pursuant to section 5111.874 of the Revised Code, one or more of the facility's beds to providing home and community-based services, the department of job and family services shall do the following:

(1) If the facility's medicaid certification is terminated because of the conversion, terminate the facility's franchise permit fee effective on the first day of the quarter immediately following the quarter in which the department receives the notice of the conversion from the director of health;

(2) If the facility's certified capacity under medicaid is reduced because of the conversion, redetermine the facility's franchise permit fee in accordance with division (B) of this section for the second half of the fiscal year for which the fee is assessed.

(B)(1) To redetermine an intermediate care facility for the mentally retarded's franchise permit fee, the department shall multiply the franchise permit fee rate by the product of the following:

(a) The number of the facility's beds that remain certified under Title XIX of the "Social Security Act" as of the date the conversion takes effect;

(b) The number of days in the second half of the fiscal year for which the redetermination is made.

(2) The intermediate care facility for the mentally retarded shall pay its franchise permit fee as redetermined under division (B)(1) of this section in installment payments not later than forty-five days after the last day of March and June of the fiscal year for which the redetermination is made.

Sec. 5112.341. (A) In addition to assessing a penalty pursuant to section 5112.34 of the Revised Code, the department of job and family services may do any of the following if an intermediate care facility for the mentally retarded fails to pay the full amount of a franchise permit fee installment when due:

(1) Withhold an amount less than or equal to the installment and penalty assessed under section 5112.34 of the Revised Code from a medicaid payment due the facility until the facility pays the installment and penalty;

(2) Offset an amount less than or equal to the installment and penalty assessed under section 5112.34 of the Revised Code from a ~~Medicaid~~ medicaid payment due the ~~nursing facility or hospital~~;

(3) Terminate the facility's medicaid provider agreement.

(B) The department may offset a medicaid payment under division (A) of this section without providing notice to the intermediate care facility for the mentally retarded and without conducting an adjudication under Chapter

119. of the Revised Code.

Sec. 5112.37. There is hereby created in the state treasury the home and community-based services for the mentally retarded and developmentally disabled fund. ~~Eighty-one and seventy-seven hundredths per cent of all~~ All installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code ~~for state fiscal year 2012 shall be deposited into the fund. Eighty-two and two tenths per cent of all installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code for state fiscal year 2013 and thereafter shall be deposited into the fund. The department~~ As soon as possible after the end of each quarter, the director of job and family services shall distribute certify to the director of budget and management the amount of money in that is in the fund in accordance with rules adopted under section 5112.39 of the Revised Code as of the last day of that quarter. The departments of job and family services and developmental disabilities shall ~~use the money for the medicaid program established under Chapter 5111. of the Revised Code and home and community-based services to mentally retarded and developmentally disabled persons.~~ On receipt of a certification, the director of budget and management shall transfer the amount so certified from the home and community-based services for the mentally retarded and developmentally disabled fund to the department of developmental disabilities operating and services fund created under section 5112.371 of the Revised Code.

Sec. 5112.371. There is hereby created in the state treasury the department of developmental disabilities operating and services fund. ~~All installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code that are not deposited into the home and community-based services for the mentally retarded and developmentally disabled fund shall be deposited into the department of developmental disabilities operating and services~~ The fund shall consist of the money transferred to it under section 5112.37 of the Revised Code. The money in the fund shall be used for the expenses of the programs that the department of developmental disabilities administers and the department's administrative expenses.

Sec. 5112.39. The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to do ~~all~~ both of the following:

(A) Prescribe the actions the department will take to cease implementation of sections 5112.30 to 5112.39 of the Revised Code if the

United States secretary of health and human services determines that the franchise permit fee imposed under section 5112.31 of the Revised Code is an impermissible health care-related tax under section 1903(w) of the "Social Security Act," 49 105 Stat. 620 1793 (~~1935~~ 1991), 42 U.S.C.A. 1396b(w), as amended;

~~(B) Establish the method of distributing the money in the home and community-based services for the mentally retarded and developmentally disabled fund created by section 5112.37 of the Revised Code;~~

~~(C)~~ Establish any other requirements or procedures the director considers necessary to implement sections 5112.30 to 5112.39 of the Revised Code.

Sec. 5119.22. (A)~~(1)~~ As used in this section and section 5119.221 of the Revised Code:

~~(a)~~(1) "Accommodations" means housing, daily meal preparation, laundry, housekeeping, arranging for transportation, social and recreational activities, maintenance, security, and other services that do not constitute personal care services or skilled nursing care.

(2) "ADAMHS board" means a board of alcohol, drug addiction, and mental health services.

(3) "Adult" means a person who is eighteen years of age or older, other than a person described in division (A)(4) of this section who is between eighteen and twenty-one years of age.

(4) "Child" means a person who is under eighteen years of age or a person with a mental disability who is under twenty-one years of age.

(5) "Community mental health agency" means a community mental health agency as defined in division (H) of section 5122.01 of the Revised Code.

~~(b)~~(6) "Community mental health services" means any of the services listed in section 340.09 of the Revised Code.

~~(e)~~(7) "Operator" means the person that is responsible for the administration and management of a residential facility.

(8) "Personal care services" means services including, but not limited to, the following:

~~(i)~~(a) Assisting residents with activities of daily living;

~~(ii)~~(b) Assisting residents with self-administration of medication in accordance with rules adopted under this section;

~~(iii)~~(c) Preparing special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian, in accordance with rules adopted under this section.

"Personal care services" does not include "skilled nursing care" as

defined in section 3721.01 of the Revised Code. A facility need not provide more than one of the services listed in division (A)(1)(e)(8) of this section to be considered to be providing personal care services.

~~(d)~~(9) "Residential facility" means a publicly or privately operated home or facility that provides one of the following:

~~(i) Room and board~~ (a) Accommodations, supervision, personal care services, and community mental health services ~~to~~ for one or more of the following unrelated persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

(i) Adults with mental illness;

(ii) Persons of any age with severe mental disabilities;

(iii) Children with serious emotional disturbances or in need of mental health services.

~~(ii) Room and board~~ (b) Accommodations and personal care services for only one or two unrelated adults; accommodations, supervision, and personal care services ~~to~~ for three to sixteen unrelated adults; or accommodations, supervision, and personal care services for one or two of the following unrelated persons:

(i) Persons of any age with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

~~(iii) Room and board to~~ (ii) Persons of any age with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

(c) Room and board for five or more of the following unrelated persons:

(i) Adults with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

(ii) Adults with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

~~The following are not residential facilities~~ (10) "Residential facility" does not include any of the following: ~~the residence of a relative or guardian of a mentally ill individual, a~~

(a) A hospital subject to licensure under section 5119.20 of the Revised Code, a;

(b) A residential facility as defined in licensed under section 5123.19 of the Revised Code, a facility providing care for a child in the custody of a

public children services agency or a private agency certified under section 5103.03 of the Revised Code, a foster care facility or otherwise regulated by the department of developmental disabilities;

(c) An institution or association subject to certification under section 5103.03 of the Revised Code, an adult care facility subject to licensure under sections 5119.70 to 5119.88 of the Revised Code, and a;

(d) A facility operated by a hospice care program licensed under section 3712.04 of the Revised Code that is used exclusively for care of hospice patients;

(e) A nursing home, residential care facility, or home for the aging subject to licensure under as defined in section 3721.02 of the Revised Code;

(f) An alcohol or drug addiction program as defined in section 3793.01 of the Revised Code;

(g) A facility licensed to provide methadone treatment under section 3793.11 of the Revised Code;

(h) Any facility that receives funding for operating costs from the department of development under any program established to provide emergency shelter housing or transitional housing for the homeless;

(i) A terminal care facility for the homeless that has entered into an agreement with a hospice care program under section 3712.07 of the Revised Code;

(j) A facility approved by the veterans administration under section 104(a) of the "Veterans Health Care Amendments of 1983," 97 Stat. 993, 38 U.S.C. 630, as amended, and used exclusively for the placement and care of veterans.

(11) "Room and board" means the provision of sleeping and living space, meals or meal preparation, laundry services, housekeeping services, or any combination thereof.

(12) "Supervision" means any of the following:

(a) Observing a resident to ensure the resident's health, safety, and welfare while the resident engages in activities of daily living or other activities;

(b) Reminding a resident to perform or complete an activity, such as reminding a resident to engage in personal hygiene or other self-care activities;

(c) Assisting a resident in making or keeping an appointment.

(13) "Unrelated" means that a resident is not related to the owner or operator of a residential facility or to the owner's or operator's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece,

nephew, aunt, or uncle, or as the child of an aunt or uncle.

~~(2)(B)~~ Nothing in division (A)(1)(d)(9) of this section shall be construed to permit personal care services to be imposed on a resident who is capable of performing the activity in question without assistance.

~~(3)(C)~~ Except in the case of a residential facility described in division (A)(1)(d)(i)(9)(a) of this section, members of the staff of a residential facility shall not administer medication to the facility's residents, ~~all medication taken by residents of a residential facility shall be self-administered, and no person shall be admitted to or retained by a residential facility unless the person is capable of taking the person's own medication and biologicals, as determined in writing by the person's personal physician. Members of the staff of a residential facility but~~ may do any of the following:

~~(a)(1)~~ Remind a resident when to take medication and watch to ensure that the resident follows the directions on the container;

~~(b)(2)~~ Assist a resident in the self-administration of medication by taking the medication from the locked area where it is stored, in accordance with rules adopted pursuant to this section, and handing it to the resident. If the resident is physically unable to open the container, a staff member may open the container for the resident.

~~(c)(3)~~ Assist a physically impaired but mentally alert resident, such as a resident with arthritis, cerebral palsy, or Parkinson's disease, in removing oral or topical medication from containers and in consuming or applying the medication, upon request by or with the consent of the resident. If a resident is physically unable to place a dose of medicine to the resident's mouth without spilling it, a staff member may place the dose in a container and place the container to the mouth of the resident.

~~(B) Every (D)(1)~~ Except as provided in division (D)(2) of this section, a person operating or ~~desiring seeking~~ to operate a residential facility shall apply for licensure of the facility to the department of mental health ~~and~~. The application shall be submitted by the operator. When applying for the license, the applicant shall pay to the department the application fee specified in rules adopted under division (L) of this section. The fee is nonrefundable.

The department shall send a copy of the an application to the ADAMHS board of alcohol, drug addiction, and mental health services whose service district includes serving the county in which the person operates or desires seeks to operate a residential the facility. The ADAMHS board shall review such applications and recommend approval or disapproval to the department. Each recommendation shall be consistent with the board's

community mental health plan.

(C) the application and provide to the department any information about the applicant or the facility that the board would like the department to consider in reviewing the application.

(2) A person may not apply for a license to operate a residential facility if the person is or has been the owner, operator, or manager of a residential facility for which a license to operate was revoked or for which renewal of a license was refused for any reason other than nonpayment of the license renewal fee, unless both of the following conditions are met:

(a) A period of not less than two years has elapsed since the date the director of mental health issued the order revoking or refusing to renew the facility's license.

(b) The director's revocation or refusal to renew the license was not based on an act or omission at the facility that violated a resident's right to be free from abuse, neglect, or exploitation.

(E)(1) Any person may operate a residential facility providing accommodations and personal care services for one to five unrelated persons and licensed as a residential facility that meets the criteria specified in division (A)(9)(b) of this section as a permitted use in any residential district or zone, including any single-family residential district or zone of any political subdivision. Such facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.

(2) Any person may operate a residential facility providing accommodations and personal care services for six to sixteen persons and licensed as a residential facility that meets the criteria specified in division (A)(9)(b) of this section as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned-unit development districts as defined in section 519.021 of the Revised Code may exclude such facilities from such districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate such facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

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

(b) Require compliance with yard, parking, and sign regulation.

(3) Divisions (E)(1) and (2) of this section do not affect any right of a political subdivision to permit a person to operate a residential facility licensed under this section in a single-family residential district or zone under conditions established by the political subdivision.

(4)(a) Notwithstanding divisions (E)(1) and (2) of this section and except as provided in division (E)(4)(b) of this section, a political subdivision that has enacted a zoning ordinance or resolution may limit the excessive concentration of licensed residential facilities that meet the criteria specified in division (A)(9)(b) of this section.

(b) Division (E)(4)(a) of this section does not authorize a political subdivision to prevent or limit the continued existence and operation of residential facilities existing and operating on the effective date of this section and that meet the criteria specified in division (A)(9)(b) of this section. A political subdivision may consider the existence of such facilities for the purpose of limiting the excessive concentration of such facilities that meet the criteria specified in division (A)(9)(b) of this section that are not existing and operating on the effective date of this section.

(F)(1) The department of mental health shall inspect and license the operation of residential facilities. The department shall consider the past record of the facility and the applicant or licensee in arriving at its licensure decision. The

The department may issue full, probationary, and interim licenses. A full license shall expire two years after the date of issuance, a probationary license shall expire in a shorter period of time as prescribed by rule specified in rules adopted by the director of mental health pursuant to Chapter 119. of the Revised Code under division (L) of this section, and an interim license shall expire ninety days after the date of issuance. The A license may be renewed in accordance with rules adopted by the director under division (L) of this section. The renewal application shall be submitted by the operator. When applying for renewal of a license, the applicant shall pay to the department the renewal fee specified in rules adopted under division (L) of this section. The fee is nonrefundable.

(2) The department may issue an order suspending the admission of residents to the facility or refuse to issue or renew and may revoke a license if it finds the facility is not in compliance with rules adopted by the department director pursuant to division (G)(L) of this section or if any facility operated by the applicant or licensee has had been cited for repeated violations of statutes or rules during the period of previous licenses. Proceedings initiated to deny applications for full or probationary licenses or

to revoke such licenses are governed by Chapter 119. of the Revised Code.

~~(D)~~(G) The department may issue an interim license to operate a residential facility if both of the following conditions are met:

(1) The department determines that the closing of or the need to remove residents from another residential facility has created an emergency situation requiring immediate removal of residents and an insufficient number of licensed beds are available.

(2) The residential facility applying for an interim license meets standards established for interim licenses in rules adopted by the director under ~~Chapter 119. of the Revised Code~~ division (L) of this section.

An interim license shall be valid for ninety days and may be renewed by the director no more than twice. Proceedings initiated to deny applications for or to revoke interim licenses under this division are not subject to Chapter 119. of the Revised Code.

~~(E)~~(H)(1) The department of mental health may conduct an inspection of a residential facility as follows:

~~(1)~~(a) Prior to the issuance of a license ~~to a prospective operator~~ for the facility;

~~(2)~~(b) Prior to the renewal of ~~any operator's~~ the license;

~~(3)~~(c) To determine whether a the facility has completed a plan of correction required pursuant to ~~this division~~ (H)(2) of this section and corrected deficiencies to the satisfaction of the department and in compliance with this section and rules adopted pursuant to it;

~~(4)~~(d) Upon complaint by any individual or agency;

~~(5)~~(e) At any time the director considers an inspection to be necessary in order to determine whether ~~a residential~~ the facility is in compliance with this section and rules adopted pursuant to this section.

(2) In conducting inspections the department may conduct an on-site examination and evaluation of the residential facility, and its personnel, activities, and services. The department shall have access to examine and copy all records, accounts, and any other documents relating to the operation of the residential facility, including records pertaining to residents, and shall have access to the facility in order to conduct interviews with the operator, staff, and residents. Following each inspection and review, the department shall complete a report listing any deficiencies, and including, when appropriate, a time table within which the operator shall correct the deficiencies. The department may require the operator to submit a plan of correction describing how the deficiencies will be corrected.

~~(F)~~(I) No person shall do any of the following:

(1) Operate a residential facility unless the facility holds a valid license;

(2) Violate any of the conditions of licensure after having been granted a license;

(3) Interfere with a state or local official's inspection or investigation of a residential facility;

(4) Violate any of the provisions of this section or any rules adopted pursuant to this section.

~~(G)~~(J) The following may enter a residential facility at any time:

(1) Employees designated by the director of mental health;

(2) Employees of an ADAMHS board under either of the following circumstances:

(a) When a resident of the facility is receiving services from a community mental health agency under contract with that ADAMHS board or another ADAMHS board;

(b) When authorized by section 340.05 of the Revised Code.

(3) Employees of a community mental health agency under either of the following circumstances:

(a) When the agency has a client residing in the facility;

(b) When the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract.

(4) Representatives of the state long-term care ombudsperson program when the facility provides accommodations, supervision, and personal care services for three to sixteen unrelated adults or to one or two unrelated adults who are recipients under the residential state supplement program.

The persons specified in division (J) of this section shall be afforded access to examine and copy all records, accounts, and any other documents relating to the operation of the residential facility, including records pertaining to residents.

(K) Employees of the department of mental health may enter, for the purpose of investigation, any institution, residence, facility, or other structure which has been reported to the department as, or that the department has reasonable cause to believe is, operating as a residential facility without a valid license.

(L) The director shall adopt and may amend and rescind rules pursuant to Chapter 119. of the Revised Code, ~~prescribing minimum~~ governing the licensing and operation of residential facilities. The rules shall establish all of the following:

(1) Minimum standards for the health, safety, adequacy, and cultural specificity and sensitivity competency of treatment of and services for persons in residential facilities; ~~establishing procedures~~

(2) Procedures for the issuance, renewal or revocation of the licenses of

such residential facilities; ~~establishing the~~

(3) Procedures for conducting criminal records checks for prospective operators, staff, and other individuals who, if employed by a residential facility, would have unsupervised access to facility residents;

(4) The fee to be paid when applying for a new residential facility license or renewing the license;

(5) Procedures for the operator of a residential facility to follow when notifying the ADAMHS board serving the county in which the facility is located when the facility is serving residents with mental illness or severe mental disability, including the circumstances under which the operator is required to make such a notification;

(6) Procedures for the issuance and termination of orders of suspension of admission of residents to a residential facility;

(7) Measures to be taken by residential facilities relative to residents' medication;

(8) Requirements relating to preparation of special diets;

(9) The maximum number of residents of who may be served in a residential facility; ~~establishing the~~

(10) The rights of residents of residential facilities and procedures to protect such rights; ~~and requiring~~

(11) Procedures for obtaining an affiliation agreement approved by the board between a residential facility and a community mental health agency. Such affiliation agreement must be consistent with the residential portion of the community mental health plan submitted pursuant to section 340.03 of the Revised Code;

(12) Standards and procedures under which the director may waive the requirements of any of the rules adopted.

~~(H) The department may investigate any facility that has been reported to the department or that the department has reasonable cause to believe is operating as a residential facility without a valid license.~~

~~(M)(1)~~ (1) The department may withhold the source of any complaint reported as a violation of this ~~act~~ section when the department determines that disclosure could be detrimental to the department's purposes or could jeopardize the investigation. The department may disclose the source of any complaint if the complainant agrees in writing to such disclosure and shall disclose the source upon order by a court of competent jurisdiction.

~~(2)~~ (2) Any person who makes a complaint under division (M)(1) of this section, or any person who participates in an administrative or judicial proceeding resulting from such a complaint, is immune from civil liability and is not subject to criminal prosecution, other than for perjury, unless the

person has acted in bad faith or with malicious purpose.

(N)(1) The director of mental health may petition the court of common pleas of the county in which a residential facility is located for an order enjoining any person from operating a residential facility without a license or from operating a licensed facility when, in the director's judgment, there is a ~~real and~~ present danger to the health or safety of any of the occupants of the facility. The court shall have jurisdiction to grant such injunctive relief upon a showing that the respondent named in the petition is operating a facility without a license or there is a ~~real and~~ present danger to the health or safety of any residents of the facility.

~~(K) Whoever violates division (F) of this section or any rule adopted under this section is liable for a civil penalty of one hundred dollars for the first offense; for each subsequent offense, such violator is liable for a civil penalty of five hundred dollars. If the violator does not pay, the attorney general, upon the request of the director of mental health, shall bring a civil action to collect the penalty. Fines collected pursuant to this section shall be deposited into the state treasury to the credit of the mental health sale of goods and services fund.~~

(2) When the court grants injunctive relief in the case of a facility operating without a license, the court shall issue, at a minimum, an order enjoining the facility from admitting new residents to the facility and an order requiring the facility to assist with the safe and orderly relocation of the facility's residents.

(3) If injunctive relief is granted against a facility for operating without a license and the facility continues to operate without a license, the director shall refer the case to the attorney general for further action.

(O) The director may fine a person for violating division (I) of this section. The fine shall be five hundred dollars for a first offense; for each subsequent offense, the fine shall be one thousand dollars. The director's actions in imposing a fine shall be taken in accordance with Chapter 119. of the Revised Code.

Sec. 5119.61. Any provision in this chapter that refers to a board of alcohol, drug addiction, and mental health services also refers to the community mental health board in an alcohol, drug addiction, and mental health service district that has a community mental health board.

The director of mental health with respect to all facilities and programs established and operated under Chapter 340. of the Revised Code for mentally ill and emotionally disturbed persons, shall do all of the following:

(A) Adopt rules pursuant to Chapter 119. of the Revised Code that may be necessary to carry out the purposes of Chapter 340. and sections 5119.61

to 5119.63 of the Revised Code.

(1) The rules shall include ~~all of~~ the following:

(a) Rules governing a community mental health agency's services under section 340.091 of the Revised Code to an individual referred to the agency under division ~~(C)(D)~~(2) of section 5119.69 of the Revised Code;

(b) For the purpose of division (A)(16) of section 340.03 of the Revised Code, rules governing the duties of mental health agencies and boards of alcohol, drug addiction, and mental health services ~~under section 5119.88 of the Revised Code~~ regarding referrals of individuals with mental illness or severe mental disability to ~~adult care~~ residential facilities as defined in division (A)(9)(b) of section 5119.22 of the Revised Code and effective arrangements for ongoing mental health services for the individuals. ~~The rules shall do at least the following:~~

~~(i) Provide for agencies and boards to participate fully in the procedures owners and managers of adult care facilities must follow under division (A) of section 5119.88 of the Revised Code;~~

~~(ii) Specify the manner in which boards are accountable for ensuring that ongoing mental health services are effectively arranged for individuals with mental illness or severe mental disability who are referred by the board or mental health agency under contract with the board to an adult care facility.~~

~~(c) Rules governing a board of alcohol, drug addiction, and mental health services when making a report to the director of mental health under section 5119.87 of the Revised Code regarding the quality of care and services provided by an adult care facility to a person with mental illness or a severe mental disability.~~

(2) Rules may be adopted to govern the method of paying a community mental health facility, as defined in section 5111.023 of the Revised Code, for providing services listed in division (B) of that section. Such rules must be consistent with the contract entered into between the departments of job and family services and mental health under section 5111.91 of the Revised Code and include requirements ensuring appropriate service utilization.

(B) Review and evaluate, and, taking into account the findings and recommendations of the board of alcohol, drug addiction, and mental health services of the district served by the program and the requirements and priorities of the state mental health plan, including the needs of residents of the district now residing in state mental institutions, and make recommendations for needed improvements to boards of alcohol, drug addiction, and mental health services;

(C) Provide consultative services to community mental health agencies

with the knowledge and cooperation of the board of alcohol, drug addiction, and mental health services;

(D) At the director's discretion, provide to boards of alcohol, drug addiction, and mental health services state or federal funds, in addition to those allocated under section 5119.62 of the Revised Code, for special programs or projects the director considers necessary but for which local funds are not available;

(E) Establish criteria by which a board of alcohol, drug addiction, and mental health services reviews and evaluates the quality, effectiveness, and efficiency of services provided through its community mental health plan. The criteria shall include requirements ensuring appropriate service utilization. The department shall assess a board's evaluation of services and the compliance of each board with this section, Chapter 340. or section 5119.62 of the Revised Code, and other state or federal law and regulations. The department, in cooperation with the board, periodically shall review and evaluate the quality, effectiveness, and efficiency of services provided through each board. The department shall collect information that is necessary to perform these functions.

(F) To the extent the director determines necessary and after consulting with boards of alcohol, drug addiction, and mental health services, develop and operate, or contract for the operation of, a community mental health information system or systems.

Boards of alcohol, drug ~~abuse~~ addiction, and mental health services shall submit information requested by the department in the form and manner prescribed by the department. Information collected by the department shall include, but not be limited to, all of the following:

(1) Information regarding units of services provided in whole or in part under contract with a board, including diagnosis and special needs, demographic information, the number of units of service provided, past treatment, financial status, and service dates in accordance with rules adopted by the department in accordance with Chapter 119. of the Revised Code;

(2) Financial information other than price or price-related data regarding expenditures of boards and community mental health agencies, including units of service provided, budgeted and actual expenses by type, and sources of funds.

Boards shall submit the information specified in division (F)(1) of this section no less frequently than annually for each client, and each time the client's case is opened or closed. The department shall not collect any personal information from the boards except as required or permitted by

state or federal law for purposes related to payment, health care operations, program and service evaluation, reporting activities, research, system administration, and oversight.

(G) Review each board's community mental health plan submitted pursuant to section 340.03 of the Revised Code and approve or disapprove it in whole or in part. Periodically, in consultation with representatives of boards and after considering the recommendations of the medical director, the director shall issue criteria for determining when a plan is complete, criteria for plan approval or disapproval, and provisions for conditional approval. The factors that the director considers may include, but are not limited to, the following:

(1) The mental health needs of all persons residing within the board's service district, especially severely mentally disabled children, adolescents, and adults;

(2) The demonstrated quality, effectiveness, efficiency, and cultural relevance of the services provided in each service district, the extent to which any services are duplicative of other available services, and whether the services meet the needs identified above;

(3) The adequacy of the board's accounting for the expenditure of funds.

If the director disapproves all or part of any plan, the director shall provide the board an opportunity to present its position. The director shall inform the board of the reasons for the disapproval and of the criteria that must be met before the plan may be approved. The director shall give the board a reasonable time within which to meet the criteria, and shall offer technical assistance to the board to help it meet the criteria.

If the approval of a plan remains in dispute, the board or the director may request that the dispute be submitted to a mutually agreed upon third-party mediator with the cost to be shared by the board and the department. The mediator shall issue to the board and the department recommendations for resolution of the dispute. The director, taking into consideration the recommendations of the mediator, shall make a final determination and approve or disapprove the plan, in whole or in part.

Sec. 5119.69. (A) As used in this section and section 5119.691 of the Revised Code:

(1) "Long-term care consultation program" means the program the department of aging is required to develop under section 173.42 of the Revised Code.

(2) "Long-term care consultation program administrator" or "administrator" means the department of aging or, if the department contracts with an area agency on aging or other entity to administer the

long-term care consultation program for a particular area, that agency or entity.

(3) "Nursing facility" has the same meaning as in section 5111.20 of the Revised Code.

(4) "Residential state supplement administrative agency" means the department of mental health or, if the department designates an entity under division (C) of this section for a particular area, the designated entity.

(5) "Residential state supplement program" means the program administered pursuant to this section.

(B) The department of mental health shall implement the residential state supplement program under which the state supplements the supplemental security income payments received by aged, blind, or disabled adults under Title XVI of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A., as amended. Residential state supplement payments shall be used for the provision of accommodations, supervision, and personal care services to supplemental security income recipients who the department determines are at risk of needing institutional care.

~~(B)~~(C) In implementing the program, the department may designate one or more entities to be responsible for providing administrative services regarding the program. The department may designate an entity to be a residential state supplement administrative agency under this division either by entering into a contract with the entity to serve in that capacity or by otherwise delegating to the entity the responsibility to serve in that capacity.

~~(C)~~(D) For an individual to be eligible for residential state supplement payments, all of the following must be the case:

(1) Except as provided by division ~~(G)~~(H) of this section, the individual must reside in one of the following:

~~(a) An adult foster home certified under section 5119.692 of the Revised Code;~~

~~(b) A home or facility, other than a nursing home or nursing home unit of a home for the aging, licensed by the department of health under Chapter 3721. of the Revised Code or the department of mental health under sections 5119.70 to 5119.88 of the Revised Code;~~

~~(c)~~(b) A residential facility as defined in division (A)~~(1)(d)(ii)~~(9)(b) of section 5119.22 of the Revised Code licensed by the department of mental health;

~~(d)~~(c) An apartment or room used to provide community mental health housing services certified by the department of mental health under section 5119.611 of the Revised Code and approved by a board of alcohol, drug addiction, and mental health services under division (A)~~(14)~~ of section

340.03 of the Revised Code.

(2) A residential state supplement administrative agency must have determined that the environment in which the individual will be living while receiving the payments is appropriate for the individual's needs. If the individual is eligible for supplemental security income payments or social security disability insurance benefits because of a mental disability, the residential state supplement administrative agency shall refer the individual to a community mental health agency for ~~the community mental health agency to issue in accordance with an assessment under division (A) of~~ section 340.091 of the Revised Code ~~a recommendation on whether the residential state supplement administrative agency should determine that the environment in which the individual will be living while receiving the payments is appropriate for the individual's needs.~~

(3) The individual satisfies all eligibility requirements established by rules adopted under division ~~(D)~~(E) of this section.

~~(D)~~(E) The directors of mental health and job and family services shall adopt rules in accordance with section 111.15 of the Revised Code as necessary to implement the residential state supplement program.

To the extent permitted by Title XVI of the "Social Security Act," and any other provision of federal law, the director of job and family services may adopt rules establishing standards for adjusting the eligibility requirements concerning the level of impairment a person must have so that the amount appropriated for the program by the general assembly is adequate for the number of eligible individuals. The rules shall not limit the eligibility of disabled persons solely on a basis classifying disabilities as physical or mental. The director of job and family services also may adopt rules that establish eligibility standards for aged, blind, or disabled individuals who reside in one of the homes or facilities specified in division ~~(C)~~(D)(1) of this section but who, because of their income, do not receive supplemental security income payments. The rules may provide that these individuals may include individuals who receive other types of benefits, including, social security disability insurance benefits provided under Title II of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 401, as amended. Notwithstanding division ~~(A)~~(B) of this section, such payments may be made if funds are available for them.

The director of mental health may adopt rules establishing the method to be used to determine the amount an eligible individual will receive under the program. The amount the general assembly appropriates for the program may be a factor included in the method that director establishes.

~~(E)~~(F) The county department of job and family services of the county

in which an applicant for the residential state supplement program resides shall determine whether the applicant meets income and resource requirements for the program.

~~(F)~~(G) The department of mental health shall maintain a waiting list of any individuals eligible for payments under this section but not receiving them because moneys appropriated to the department for the purposes of this section are insufficient to make payments to all eligible individuals. An individual may apply to be placed on the waiting list even though the individual does not reside in one of the homes or facilities specified in division ~~(C)~~(D)(1) of this section at the time of application. The director of mental health, by rules adopted in accordance with Chapter 119. of the Revised Code, may specify procedures and requirements for placing an individual on the waiting list and priorities for the order in which individuals placed on the waiting list are to begin to receive residential state supplement payments. The rules specifying priorities may give priority to individuals placed on the waiting list on or after July 1, 2006, who receive supplemental security income benefits under Title XVI of the "Social Security Act," 86 Stat. 1475 (1972), 42 U.S.C. 1381, as amended. The rules shall not affect the place on the waiting list of any person who was on the list on July 1, 2006. The rules specifying priorities may also set additional priorities based on living arrangement, such as whether an individual resides in a facility listed in division ~~(C)~~(D)(1) of this section or has been admitted to a nursing facility.

~~(G)~~(H) An individual in a licensed or certified living arrangement receiving state supplementation on November 15, 1990, under former section 5101.531 of the Revised Code shall not become ineligible for payments under this section solely by reason of the individual's living arrangement as long as the individual remains in the living arrangement in which the individual resided on November 15, 1990.

~~(H)~~(I) The department of mental health shall notify each person denied approval for payments under this section of the person's right to a hearing. On request, the hearing shall be provided in accordance with Chapter 119. of the Revised Code.

Sec. 5119.691. ~~(A) As used in this section:~~

~~"Long-term care consultation program" means the program the department of aging is required to develop under section 173.42 of the Revised Code.~~

~~"Long-term care consultation program administrator" or "administrator" means the department of aging or, if the department contracts with an area agency on aging or other entity to administer the long-term care consultation~~

program for a particular area, that agency or entity.

~~"Nursing facility" has the same meaning as in section 5111.20 of the Revised Code.~~

~~"Residential state supplement administrative agency" means an entity designated as such by the department of mental health under section 5119.69 of the Revised Code.~~

~~"Residential state supplement program" means the program administered pursuant to section 5119.69 of the Revised Code.~~

(B) On a periodic schedule determined by the department of mental health, each residential state supplement administrative agency shall determine whether individuals who reside in the area that the agency serves and are on a waiting list for the residential state supplement program have been admitted to a nursing facility. If a residential state supplement administrative agency determines that such an individual has been admitted to a nursing facility, the agency shall notify the long-term care consultation program administrator serving the area in which the individual resides about the determination. The administrator shall determine whether the residential state supplement program is appropriate for the individual and whether the individual would rather participate in the program than continue residing in the nursing facility. If the administrator determines that the residential state supplement program is appropriate for the individual and the individual would rather participate in the program than continue residing in the nursing facility, the administrator shall so notify the department of mental health. On receipt of the notice from the administrator, the department of mental health shall approve the individual's enrollment in the residential state supplement program in accordance with the priorities specified in rules adopted under division ~~(F)~~(G) of section 5119.69 of the Revised Code. Each quarter, the department of mental health shall certify to the director of budget and management the estimated increase in costs of the residential state supplement program resulting from enrollment of individuals in the program pursuant to this section.

Sec. 5119.99. ~~(A)~~ Whoever violates section 5119.21 of the Revised Code is guilty of a misdemeanor of the first degree.

~~(B) Whoever violates division (A)(1) of section 5119.86 of the Revised Code shall be fined two thousand dollars for a first offense; for each subsequent offense, such person shall be fined five thousand dollars.~~

~~(C) Whoever violates division (C) of section 5119.81 or division (A)(2), (3), (4), (5), or (6), (B), (C), (D), (E), or (F) of section 5119.86 of the Revised Code shall be fined five hundred dollars for a first offense; for each subsequent offense, such person shall be fined one thousand dollars.~~

Sec. 5120.036. (A) The department of rehabilitation and correction shall provide risk reduction programming and treatment for inmates whom a court under section 2929.143 of the Revised Code recommends serve a risk reduction sentence and who meet the eligibility criteria described in division (B) of this section.

(B) If an offender is sentenced to a term of imprisonment in a state correctional institution and the sentencing court recommended that the offender serve a risk reduction sentence, the department of rehabilitation and correction shall conduct a validated and objective assessment of the person's needs and risk of reoffending. If the offender cooperates with the risk assessment and agrees to participate in any programming or treatment ordered by the department, the department shall provide programming and treatment to the offender to address the risks and needs identified in the assessment.

(C) If the department determines that an offender serving a term of incarceration for whom the sentencing court recommended a risk reduction sentence under section 2929.143 of the Revised Code has successfully completed the assessment and treatment or programming required by the department under division (B) of this section, the department shall release the offender to ~~supervised release~~ post-release control under one or more post-release control sanctions after the offender has served each mandatory prison term to which the offender was sentenced, if any, and a minimum of eighty per cent of the aggregated nonmandatory prison terms to which the offender was sentenced. The placement under post-release control sanctions shall be under terms set by the parole board in accordance with section 2967.28 of the Revised Code and shall be subject to the provisions of that section and sections 2929.141 and 2967.15 of the Revised Code regarding violation of post-release control sanctions. No mandatory prison term shall be reduced by, or as a result of, an offender's service of a risk reduction sentence. The department shall notify the sentencing court that the offender has successfully completed the terms of the risk reduction sentence at least thirty days prior to the date upon which the offender is to be released.

(D) As used in this section:

(1) "Mandatory prison term" has the same meaning as in section 2929.01 of the Revised Code.

(2) "Nonmandatory prison term" means a prison term that is not a mandatory prison term.

(3) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code.

Sec. 5120.105. (A) ~~The department of administrative services~~ Ohio

facilities construction commission shall provide for the construction of a halfway house facility in conformity with Chapter 153. of the Revised Code, except that construction services may be provided by the department of rehabilitation and correction.

(B) The director of rehabilitation and correction may enter into an agreement with a halfway house organization for the management of a halfway house facility. The halfway house organization that occupies, will occupy, or is responsible for the management of a halfway house facility shall pay the costs of management of and general building services for the halfway house facility as provided in an agreement between the department of rehabilitation and correction and the halfway house organization.

(C) No state funds, including state bond proceeds, shall be spent on the construction of a halfway house facility under sections 5120.102 to 5120.105 of the Revised Code, unless the general assembly has specifically authorized the spending of money on, or has made an appropriation to the department of rehabilitation and correction for, the construction of the halfway house facility or rental payments relating to the financing of the construction of that facility. An authorization to spend money or an appropriation for planning a halfway house facility does not constitute an authorization to spend money on, or an appropriation for, the construction of that facility. Capital funds for the construction of halfway house facilities under sections 5120.102 to 5120.105 of the Revised Code shall be paid from the adult correctional building fund created in division (F) of section 154.24 of the Revised Code.

Sec. 5120.132. (A) There is hereby created in the state treasury the prisoner programs fund. The director of rehabilitation and correction shall deposit in the fund all moneys received by the department from commissions on telephone systems ~~established for the use of prisoners and~~ services provided to prisoners in relation to electronic mail, prisoner trust fund deposits, and the purchase of music, digital music players, and other electronic devices. The money in the fund shall be used only to pay for the costs of the following:

(1) The purchase of material, supplies, and equipment used in any library program, educational program, religious program, recreational program, or pre-release program operated by the department for the benefit of prisoners;

(2) The construction, alteration, repair, or reconstruction of buildings and structures owned by the department for use in any library program, educational program, religious program, recreational program, or pre-release program operated by the department for the benefit of prisoners;

(3) The payment of salary, wages, and other compensation to employees of the department who are employed in any library program, educational program, religious program, recreational program, or pre-release program operated by the department for the benefit of prisoners;

(4) The compensation to vendors that contract with the department for the provision of services for the benefit of prisoners in any library program, educational program, religious program, recreational program, or pre-release program operated by the department;

(5) The payment of prisoner release payments in an appropriate amount as determined pursuant to rule;

(6) The purchase of other goods and the payment of other services that are determined, in the discretion of the director, to be goods and services that may provide additional benefit to prisoners.

(B) The director shall establish rules for the operation of the prisoner programs fund.

Sec. 5120.66. (A) Within ninety days after November 23, 2005, but not before January 1, 2006, the department of rehabilitation and correction shall establish and operate on the internet a database that contains all of the following:

(1) For each inmate in the custody of the department under a sentence imposed for a conviction of or plea of guilty to any offense, all of the following information:

(a) The inmate's name;

(b) For each offense for which the inmate was sentenced to a prison term or term of imprisonment and is in the department's custody, the name of the offense, the Revised Code section of which the offense is a violation, the gender of each victim of the offense if those facts are known, whether each victim of the offense was an adult or child if those facts are known, the range of the possible prison terms or term of imprisonment that could have been imposed for the offense, the actual prison term or term of imprisonment imposed for the offense, the county in which the offense was committed, the date on which the inmate began serving the prison term or term of imprisonment imposed for the offense, and either the date on which the inmate will be eligible for parole relative to the offense if the prison term or term of imprisonment is an indefinite term or life term or the date on which the term ends if the prison term is a definite term;

(c) All of the following information that is applicable regarding the inmate:

(i) If known to the department prior to the conduct of any hearing for judicial release of the defendant pursuant to section 2929.20 of the Revised

Code in relation to any prison term or term of imprisonment the inmate is serving for any offense or any hearing for release of the defendant pursuant to section 2967.19 of the Revised Code in relation to any such term, notice of the fact that the inmate will be having a hearing regarding a possible grant of judicial release or release, the date of the hearing, and the right of any person pursuant to division (J) of section 2929.20 or division (H) of section 2967.19 of the Revised Code, whichever is applicable, to submit to the court a written statement regarding the possible judicial release or release. The department also shall post notice of the filing submission to a sentencing court of any ~~petition~~ recommendation for early release of the inmate pursuant to section 2967.19 of the Revised Code, as required by division (E) of that section.

(ii) If the inmate is serving a prison term pursuant to division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, prior to the conduct of any hearing pursuant to section 2971.05 of the Revised Code to determine whether to modify the requirement that the inmate serve the entire prison term in a state correctional facility in accordance with division (C) of that section, whether to continue, revise, or revoke any existing modification of that requirement, or whether to terminate the prison term in accordance with division (D) of that section, notice of the fact that the inmate will be having a hearing regarding those determinations and of the date of the hearing;

(iii) At least three weeks before the adult parole authority recommends a pardon or commutation of sentence for the inmate or at least three weeks prior to a hearing before the adult parole authority regarding a grant of parole to the inmate in relation to any prison term or term of imprisonment the inmate is serving for any offense, notice of the fact that the inmate might be under consideration for a pardon or commutation of sentence or will be having a hearing regarding a possible grant of parole, of the date of any hearing regarding a possible grant of parole, and of the right of any person to submit a written statement regarding the pending action;

(iv) At least three weeks before the inmate is transferred to transitional control under section 2967.26 of the Revised Code in relation to any prison term or term of imprisonment the inmate is serving for any offense, notice of the pendency of the transfer, of the date of the possible transfer, and of the right of any person to submit a statement regarding the possible transfer;

(v) Prompt notice of the inmate's escape from any facility in which the inmate was incarcerated and of the capture of the inmate after an escape;

(vi) Notice of the inmate's death while in confinement;

(vii) Prior to the release of the inmate from confinement, notice of the

fact that the inmate will be released, of the date of the release, and, if applicable, of the standard terms and conditions of the release;

(viii) Notice of the inmate's judicial release pursuant to section 2929.20 of the Revised Code or release pursuant to section 2967.19 of the Revised Code.

(2) Information as to where a person can send written statements of the types referred to in divisions (A)(1)(c)(i), (iii), and (iv) of this section.

(B)(1) The department shall update the database required under division (A) of this section every twenty-four hours to ensure that the information it contains is accurate and current.

(2) The database required under division (A) of this section is a public record open for inspection under section 149.43 of the Revised Code. The department shall make the database searchable by inmate name and by the county and zip code where the offender intends to reside after release from a state correctional institution if this information is known to the department.

(3) The database required under division (A) of this section may contain information regarding inmates who are listed in the database in addition to the information described in that division.

(4) No information included on the database required under division (A) of this section shall identify or enable the identification of any victim of any offense committed by an inmate.

(C) The failure of the department to comply with the requirements of division (A) or (B) of this section does not give any rights or any grounds for appeal or post-conviction relief to any inmate.

(D) This section, and the related provisions of sections 2929.20, 2967.03, 2967.12, and 2967.26 of the Revised Code enacted in the act in which this section was enacted, shall be known as "Laura's Law."

Sec. 5122.31. (A) All certificates, applications, records, and reports made for the purpose of this chapter and sections 2945.38, 2945.39, 2945.40, 2945.401, and 2945.402 of the Revised Code, other than court journal entries or court docket entries, and directly or indirectly identifying a patient or former patient or person whose hospitalization has been sought under this chapter, shall be kept confidential and shall not be disclosed by any person except:

(1) If the person identified, or the person's legal guardian, if any, or if the person is a minor, the person's parent or legal guardian, consents, and if the disclosure is in the best interests of the person, as may be determined by the court for judicial records and by the chief clinical officer for medical records;

(2) When disclosure is provided for in this chapter or section 5123.60 of

the Revised Code;

(3) That hospitals, boards of alcohol, drug addiction, and mental health services, and community mental health agencies may release necessary medical information to insurers and other third-party payers, including government entities responsible for processing and authorizing payment, to obtain payment for goods and services furnished to the patient;

(4) Pursuant to a court order signed by a judge;

(5) That a patient shall be granted access to the patient's own psychiatric and medical records, unless access specifically is restricted in a patient's treatment plan for clear treatment reasons;

(6) That hospitals and other institutions and facilities within the department of mental health may exchange psychiatric records and other pertinent information with other hospitals, institutions, and facilities of the department, and with community mental health agencies and boards of alcohol, drug addiction, and mental health services with which the department has a current agreement for patient care or services. Records and information that may be released pursuant to this division shall be limited to medication history, physical health status and history, financial status, summary of course of treatment in the hospital, summary of treatment needs, and a discharge summary, if any.

(7) That hospitals within the department, other institutions and facilities within the department, hospitals licensed by the department under section 5119.20 of the Revised Code, and community mental health agencies may exchange psychiatric records and other pertinent information with payers and other providers of treatment and health services if the purpose of the exchange is to facilitate continuity of care for a patient;

(8) That a patient's family member who is involved in the provision, planning, and monitoring of services to the patient may receive medication information, a summary of the patient's diagnosis and prognosis, and a list of the services and personnel available to assist the patient and the patient's family, if the patient's treating physician determines that the disclosure would be in the best interests of the patient. No such disclosure shall be made unless the patient is notified first and receives the information and does not object to the disclosure.

(9) That community mental health agencies may exchange psychiatric records and certain other information with the board of alcohol, drug addiction, and mental health services and other agencies in order to provide services to a person involuntarily committed to a board. Release of records under this division shall be limited to medication history, physical health status and history, financial status, summary of course of treatment,

summary of treatment needs, and discharge summary, if any.

(10) That information may be disclosed to the executor or the administrator of an estate of a deceased patient when the information is necessary to administer the estate;

(11) That records in the possession of the Ohio historical society may be released to the closest living relative of a deceased patient upon request of that relative;

(12) That information may be disclosed to staff members of the appropriate board or to staff members designated by the director of mental health for the purpose of evaluating the quality, effectiveness, and efficiency of services and determining if the services meet minimum standards. Information obtained during such evaluations shall not be retained with the name of any patient.

(13) That records pertaining to the patient's diagnosis, course of treatment, treatment needs, and prognosis shall be disclosed and released to the appropriate prosecuting attorney if the patient was committed pursuant to section 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code, or to the attorney designated by the board for proceedings pursuant to involuntary commitment under this chapter.

(14) That the department of mental health may exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with the department of rehabilitation and correction to ensure continuity of care for inmates who are receiving mental health services in an institution of the department of rehabilitation and correction and may exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with boards of alcohol, drug addiction, and mental health services and community mental health agencies to ensure continuity of care for inmates or offenders who are receiving mental health services in an institution and are scheduled for release within six months. ~~The department shall not disclose those records unless the inmate is notified, receives the information, and does not object to the disclosure.~~ The release of records under this division is limited to records regarding an inmate's or offender's medication history, physical health status and history, summary of course of treatment, summary of treatment needs, and a discharge summary, if any.

(15) That a community mental health agency that ceases to operate may transfer to either a community mental health agency that assumes its caseload or to the board of alcohol, drug addiction, and mental health services of the service district in which the patient resided at the time services were most recently provided any treatment records that have not

been transferred elsewhere at the patient's request.

(B) Before records are disclosed pursuant to divisions (A)(3), (6), ~~(7)~~, and (9) of this section, the custodian of the records shall attempt to obtain the patient's consent for the disclosure. No person shall reveal the contents of a medical record of a patient except as authorized by law.

(C) The managing officer of a hospital who releases necessary medical information under division (A)(3) of this section to allow an insurance carrier or other third party payor to comply with section 5121.43 of the Revised Code shall neither be subject to criminal nor civil liability.

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 the mentally retarded 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 the mentally retarded, 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 the mentally retarded 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 mental retardation or a developmental disability, 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 (B)(1) of section 5111.87 of the Revised Code provided under the medicaid waiver components the department of developmental disabilities administers pursuant to section 5111.871 of the Revised Code. ~~However~~ 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 only to the extent, if any, provided by the contract required by section 5111.871 of the Revised Code regarding the waiver.

(H) "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.

(I) "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 the mentally retarded.

(J) "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.

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

(L) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

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

(N) "Mentally retarded person" means a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.

(O) "Mentally retarded person subject to institutionalization by court order" means a person eighteen years of age or older who is at least moderately mentally retarded and in relation to whom, because of the person's retardation, either of the following conditions exist:

(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) "A person who is at least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate degree and to be functioning at the moderate level of intellectual functioning in accordance with standard measurements as recorded in the most current revision of the manual of terminology and classification in mental retardation published by the American association on mental retardation.

(Q) As used in this division, "substantial functional limitation," "developmental delay," and "established risk" have the meanings established pursuant to section 5123.011 of the Revised Code.

"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 or an established risk;

(b) In the case of a person at least three years of age but under six years of age, at least two developmental delays or an established risk;

(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.

(R) "Developmentally disabled person" means a person with a developmental disability.

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

(T) "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, financial assistance under 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, 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, financial assistance under Chapter 5115. 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.

(U)(1) "Resident" means, subject to division (R)(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.

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

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

(X) "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.

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

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

Sec. 5123.033. The program fee fund is hereby created in the state treasury. All fees collected pursuant to sections 5123.161, 5123.164, and 5123.19, ~~and 5126.25~~ of the Revised Code shall be credited to the fund. Money credited to the fund shall be used solely for the department of developmental disabilities' duties under sections 5123.16 to ~~5123.169~~ 5123.1610, and 5123.19, ~~and 5126.25~~ of the Revised Code and to provide continuing education and professional training to ~~employees of county boards of developmental disabilities for the purpose of section 5126.25 of the Revised Code and other~~ providers of services to individuals with mental retardation or a developmental disability. If the money credited to the fund is inadequate to pay all of the department's costs in performing those duties and providing the continuing education and professional training, the department may use other available funds appropriated to the department to

pay the remaining costs of performing those duties and providing the continuing education and professional training.

Sec. 5123.042. ~~(A) The~~ Except as provided in section 5123.197 of the Revised Code, each person or government entity seeking to develop new or modify existing residential services shall submit to the department of developmental disabilities a plan for the development or modification. The department shall approve a plan that is submitted in accordance with rules adopted under this section and meets the uniform standards for plans established in those rules.

The director of developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing the following:

(1)(A) Procedures for submitting plans under this section;

(B) Uniform standards under which:

~~(a) A person or agency shall submit plans to the county board of developmental disabilities for the development of residential services for individuals with mental retardation or a developmental disability within the county;~~

~~(b) The county board must review the plans and recommend providers for the services for the plans.~~

~~(2) The eligibility criteria for selecting persons and agencies to provide residential services, which shall take into consideration the recommendations of the county board.~~

~~(B) The county board, in accordance with its comprehensive service plan, shall review all proposals for the development of residential services that are submitted to it and shall, if the proposals are acceptable to the county board, recommend providers for the development of residential services within the county. The department shall approve proposals for the development of residential services within counties based upon the availability of funds and in accordance with rules adopted under division (A)(2) of this section.~~

~~No county board shall recommend providers for the development of residential services if the county board is an applicant to provide services. In cases of possible conflict of interest, the director shall appoint a committee that shall, in accordance with the approved county comprehensive service plan, review and recommend to the director providers for the services.~~

~~If a county board fails to establish an approved comprehensive service plan, the director may establish residential services development goals for the county board based on documented need as determined by the department. If a county board fails to develop or implement such a plan in~~

~~accordance with the rules adopted under this section, the department may, without the involvement of the county board, review and select providers for the development of residential services in the county.~~

Sec. 5123.044. The department of developmental disabilities shall determine whether county boards of developmental disabilities ~~are in compliance with~~ violate the rights that individuals with mental retardation or other developmental disabilities have under section 5126.046 of the Revised Code to obtain home and community-based services, nonmedicaid residential services, or nonmedicaid supported living from qualified and willing providers. The department shall provide assistance to an individual with mental retardation or other developmental disability who requests assistance with the individual's ~~right~~ rights under ~~that section 5126.046 of the Revised Code to choose a provider of habilitation, vocational, community employment, residential, or supported living services if the department is notified of a county board's alleged violation of the individual's right to choose such a provider~~ rights under that section.

Sec. 5123.0412. (A) The department of developmental disabilities shall charge each county board of developmental disabilities an annual fee equal to one and one-quarter per cent of the total value of all medicaid paid claims for home and community-based services provided during the year to an individual eligible for services from the county board. However, the department shall not charge the fee for home and community-based services provided under the medicaid waiver component known as the transitions developmental disabilities waiver. No county board shall pass the cost of a fee charged to the county board under this section on to another provider of these services.

(B) The fees collected under this section shall be deposited into the ODDD administration and oversight fund and the ODJFS administration and oversight fund, both of which are hereby created in the state treasury. The portion of the fees to be deposited into the ODDD administration and oversight fund and the portion of the fees to be deposited into the ODJFS administration and oversight fund shall be the portion specified in an interagency agreement entered into under division (C) of this section. The department of developmental disabilities shall use the money in the ODDD administration and oversight fund and the department of job and family services shall use the money in the ODJFS administration and oversight fund for both of the following purposes:

(1) Medicaid administrative costs, including administrative and oversight costs of medicaid case management services and home and community-based services. The administrative and oversight costs of

medicaid case management services and home and community-based services shall include costs for staff, systems, and other resources the departments need and dedicate solely to the following duties associated with the services:

- (a) Eligibility determinations;
- (b) Training;
- (c) Fiscal management;
- (d) Claims processing;
- (e) Quality assurance oversight;
- (f) Other duties the departments identify.

(2) Providing technical support to county boards' local administrative authority under section 5126.055 of the Revised Code for the services.

(C) The departments of developmental disabilities and job and family services shall enter into an interagency agreement to do both of the following:

(1) Specify which portion of the fees collected under this section is to be deposited into the ODDD administration and oversight fund and which portion is to be deposited into the ODJFS administration and oversight fund;

(2) Provide for the departments to coordinate the staff whose costs are paid for with money in the ODDD administration and oversight fund and the ODJFS administration and oversight fund.

(D) The departments shall submit an annual report to the director of budget and management certifying how the departments spent the money in the ODDD administration and oversight fund and the ODJFS administration and oversight fund for the purposes specified in division (B) of this section.

Sec. 5123.0414. (A) When the director of developmental disabilities, under section 119.07 of the Revised Code, sends a party a notice by registered mail, return receipt requested, that the director intends to take action against the party authorized by section ~~5123.082~~, 5123.166, 5123.168, 5123.19, 5123.45, 5123.51, or 5126.25 of the Revised Code and the notice is returned to the director with an endorsement indicating that the notice was refused or unclaimed, the director shall resend the notice by ordinary mail to the party.

(B) If the original notice was refused, the notice shall be deemed received as of the date the director resends the notice.

(C) If the original notice was unclaimed, the notice shall be deemed received as of the date the director resends the notice unless, not later than thirty days after the date the director sent the original notice, the resent notice is returned to the director for failure of delivery.

If the notice concerns taking action under section 5123.51 of the

Revised Code and the resent notice is returned to the director for failure of delivery not later than thirty days after the date the director sent the original notice, the director shall cause the notice to be published in a newspaper of general circulation in the county of the party's last known residence or business and shall mail a dated copy of the published notice to the party at the last known address. The notice shall be deemed received as of the date of the publication.

If the notice concerns taking action under section ~~5123.082~~, 5123.166, 5123.168, 5123.19, 5123.45, or 5126.25 of the Revised Code and the resent notice is returned to the director for failure of delivery not later than thirty days after the date the director sent the original notice, the director shall resend the notice to the party a second time. The notice shall be deemed received as of the date the director resends the notice the second time.

Sec. 5123.0415. ~~As used in this section, "license" means a license, certificate, or evidence of registration.~~

Each person and each government entity that applies for or holds a valid license, certification, or registration issued under section ~~5123.082~~, 5123.161, 5123.19, 5123.45, or 5126.25, ~~or 5126.252~~ of the Revised Code shall notify the director of developmental disabilities of any change in the ~~person~~ person's or government entity's address.

Sec. 5123.081. (A) As used in this section:

(1)(a) "Applicant" means a any of the following:

(i) A person who is under final consideration for appointment to or employment with the department of developmental disabilities, including, but not limited to, a or a county board of developmental disabilities;

(ii) A person who is being transferred to the department and an or a county board;

(iii) An employee who is being recalled to or reemployed by the department or a county board after a layoff;

(iv) A person under final consideration for a direct services position with a provider or subcontractor.

(b) Neither of the following is an applicant:

(i) A person who is employed by a responsible entity in a position for which a criminal records check is required by this section and either is being considered for a different position with the responsible entity or is returning after a leave of absence or seasonal break in employment, unless the responsible entity has reason to believe that the person has committed a disqualifying offense;

(ii) A person who is to provide only respite care under a family support services program established under section 5126.11 of the Revised Code if a

family member of the individual with mental retardation or a developmental disability who is to receive the respite care selects the person.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(3) "Direct services position" means an employment position in which the employee has the opportunity to be alone with or exercises supervision or control over one or more individuals with mental retardation or a developmental disability.

(4) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(5)(a) "Employee" means either of the following:

(i) A person appointed to or employed by the department of developmental disabilities or a county board of developmental disabilities;

(ii) A person employed in a direct services position by a provider or subcontractor.

(b) "Employee" does not mean a person who provides only respite care under a family support services program established under section 5126.11 of the Revised Code if a family member of the individual with mental retardation or a developmental disability who receives the respite care selected the person.

(6) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(7) "Provider" means a person that provides specialized services to individuals with mental retardation or a developmental disability and employs one or more persons in direct services positions.

(8) "Responsible entity" means the following:

(a) The department of developmental disabilities in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for appointment to or employment with the department, being transferred to the department, or being recalled to or reemployed by the department after a layoff;

(ii) A person who is an employee because the person is appointed to or employed by the department.

(b) A county board of developmental disabilities in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for appointment to or employment with the county board, being transferred to the county board, or being recalled to or reemployed by

the county board after a layoff:

(ii) A person who is an employee because the person is appointed to or employed by the county board.

(c) A provider in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for a direct services position with the provider;

(ii) A person who is an employee because the person is employed in a direct services position by the provider.

(d) A subcontractor in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for a direct services position with the subcontractor;

(ii) A person who is an employee because the person is employed in a direct services position by the subcontractor.

(9) "Specialized services" means any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by an entity licensed or certified by the department of developmental disabilities. If there is a question as to whether a provider or subcontractor is providing specialized services, the provider or subcontractor may request that the director of developmental disabilities make a determination. The director's determination is final.

(10) "Subcontractor" means a person to which both of the following apply:

(a) The person has either of the following:

(i) A subcontract with a provider to provide specialized services included in the contract between the provider and the department of developmental disabilities or a county board of developmental disabilities;

(ii) A subcontract with another subcontractor to provide specialized services included in a subcontract between the other subcontractor and a provider or other subcontractor.

(b) The person employs one or more persons in direct services positions.

(B) ~~The director of developmental disabilities~~ A responsible entity shall not employ an applicant or continue to employ an employee if either of the following applies:

(1) The applicant or employee fails to comply with division (D)(3) of this section.

(2) Except as provided in rules adopted under this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(C) Before employing an applicant in a position for which a criminal records check is required by this section, a responsible entity shall require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The responsible entity also shall require the applicant to sign an agreement under which the applicant agrees to notify the responsible entity within fourteen calendar days if, while employed by the responsible entity, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement shall provide that the applicant's failure to provide the notification may result in termination of the applicant's employment.

(D)(1) As a condition of employing any applicant in a position for which a criminal records check is required by this section, a responsible entity shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check with respect to each applicant, except that the director is not required to request a criminal records check for an employee of the department who is being considered for a different position or is returning after a leave of absence or seasonal break in employment, as long as the director has no reason to believe that the employee has committed any of the offenses listed or described in division (E) of this section.

If the of the applicant. If rules adopted under this section require an employee to undergo a criminal records check, a responsible entity shall request the superintendent to conduct a criminal records check of the employee at times specified in the rules as a condition of the responsible entity's continuing to employ the employee in a position for which a criminal records check is required by this section. If an applicant or employee does not present proof that the applicant or employee has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested, the director responsible entity shall request that the superintendent of the bureau obtain information from the federal bureau of investigation as a part of the criminal records check for the applicant. If the applicant or employee presents proof that the applicant or employee has been a resident of this state for that five-year period, the director responsible entity may request that the superintendent of the bureau include information from the federal bureau of investigation in the criminal records check. For purposes of this division, an applicant or employee may provide proof of residency in this state by presenting, with a notarized statement asserting that the applicant or employee has been a

resident of this state for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's or employee's permanent residence, or any other document the ~~director~~ responsible entity considers acceptable.

~~(C) The director~~ (2) A responsible entity shall provide do all of the following:

(a) Provide to each applicant and employee for whom a criminal records check is required by this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code, provide to each applicant and a standard impression sheet to obtain fingerprint impressions prescribed pursuant to division (C)(2) of section 109.572 of the Revised Code, obtain;

(b) Obtain the completed form and standard impression sheet from each the applicant, and forward or employee;

(c) Forward the completed form and standard impression sheet to the superintendent of the bureau of criminal identification and investigation at the time the criminal records check is requested.

(3) Any applicant or employee who receives pursuant to this division a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a copy of ~~an~~ the standard impression sheet prescribed pursuant to division (C)(2) of that section and who is requested to complete the form and provide a set of the applicant's or employee's fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall provide the ~~material~~ standard impression sheet with the impressions of the applicant's or employee's fingerprints. ~~If an applicant, upon request, fails to provide the information necessary to complete the form or fails to provide impressions of the applicant's fingerprints, the director shall not employ the applicant.~~

~~(D) The director~~ (4) A responsible entity shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check requested and conducted pursuant to this section.

(E) A responsible entity may request any other state or federal agency to supply the director responsible entity with a written report regarding the criminal record of each an applicant or employee. With regard to an applicant who becomes a department employee, if the If an employee holds an occupational or professional license or other credentials, the director responsible entity may request that the state or federal agency that regulates the employee's occupation or profession supply the director responsible

entity with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials. The responsible entity may consider the reports when determining whether to employ the applicant or to continue to employ the employee.

~~(E) Except as provided in division (K)(2) of this section and in rules adopted by the director in accordance with division (M) of this section, the director shall not employ a person to fill a position with the department who has been convicted of or pleaded guilty to any of the following:~~

~~(1) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2903.341, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation occurred prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;~~

~~(2) A felony contained in the Revised Code that is not listed in this division, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled;~~

~~(3) Any offense contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the department;~~

~~(4) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in division (E)(1), (2), or (3) of this section.~~

~~(F) Prior to employing an applicant, the director shall require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of this section. The director also~~

~~shall require the applicant to sign an agreement under which the applicant agrees to notify the director within fourteen calendar days if, while employed with the department, the applicant is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in division (E) of this section. The agreement shall inform the applicant that failure to report formal charges, a conviction, or a guilty plea may result in being dismissed from employment. As a condition of employing an applicant in a position for which a criminal records check is required by this section and that involves transporting individuals with mental retardation or developmental disabilities or operating a responsible entity's vehicles for any purpose, the responsible entity shall obtain the applicant's driving record from the bureau of motor vehicles. If rules adopted under this section require a responsible entity to obtain an employee's driving record, the responsible entity shall obtain the employee's driving record from the bureau at times specified in the rules as a condition of continuing to employ the employee. The responsible entity may consider the applicant's or employee's driving record when determining whether to employ the applicant or to continue to employ the employee.~~

~~(G) The director shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check requested and conducted pursuant to this section. A responsible entity may employ an applicant conditionally pending receipt of a report regarding the applicant requested under this section. The responsible entity shall terminate the applicant's employment if it is determined from a report that the applicant failed to inform the responsible entity that the applicant had been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.~~

~~(H) A responsible entity may charge an applicant a fee for costs the responsible entity incurs in obtaining a report regarding the applicant under this section if the responsible entity notifies the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the responsible entity will not consider the applicant for employment. The fee shall not exceed the amount of the fee, if any, the responsible entity pays for the report.~~

~~(I)(1) Any report obtained pursuant to this section is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person, other than the following:~~

~~(a) The applicant or employee who is the subject of the records check or criminal records check report or the applicant's or employee's representative;~~

~~the department;~~

~~(b) The responsible entity that requested the report or its representative, a county board of developmental disabilities, and any;~~

~~(c) The department if a county board, provider, or subcontractor is the responsible entity that requested the report and the department requests the responsible entity to provide a copy of the report to the department;~~

~~(d) A county board if a provider or subcontractor is the responsible entity that requested the report and the county board requests the responsible entity to provide a copy of the report to the county board;~~

~~(e) Any court, hearing officer, or other necessary individual involved in a case dealing with the any of the following:~~

~~(i) The denial of employment to the applicant or the employee;~~

~~(ii) The denial, suspension, or revocation of a certificate or evidence of registration under section 5123.082 5123.166 or 5123.45 of the Revised Code;~~

~~(iii) A civil or criminal action regarding the medicaid program or a program the department administers.~~

(2) An individual applicant or employee for whom the director responsible entity has obtained reports under this section may submit a written request to the director responsible entity to have copies of the reports sent to any state agency, entity of local government, or private entity. The individual applicant or employee shall specify in the request the agencies or entities to which the copies are to be sent. On receiving the request, the director responsible entity shall send copies of the reports to the agencies or entities specified.

~~The director~~ (3) A responsible entity may request that a state agency, entity of local government, or private entity send copies to the director responsible entity of any report regarding a records check or criminal records check that the agency or entity possesses, if the director responsible entity obtains the written consent of the individual who is the subject of the report.

~~(I) The director shall request the registrar of motor vehicles to supply the director with a certified abstract regarding the record of convictions for violations of motor vehicle laws of each applicant who will be required by the applicant's employment to transport individuals with mental retardation or a developmental disability or to operate the department's vehicles for any other purpose. For each abstract provided under this section, the director shall pay the amount specified in section 4509.05 of the Revised Code.~~

~~(J) The director~~ (4) A responsible entity shall provide each applicant and employee with a copy of any report or abstract obtained about the applicant

or employee under this section.

~~(K)(1) The director shall inform each person, at the time of the person's initial application for employment, that the person is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed in accordance with section 109.572 of the Revised Code if the person comes under final consideration for employment as a precondition to employment in a position.~~

~~(2) The director may employ an applicant pending receipt of reports requested under this section. The director shall terminate employment of any such applicant if it is determined from the reports that the applicant failed to inform the director that the applicant had been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of this section.~~

~~(L) The director may charge an applicant a fee for costs the director incurs in obtaining reports, abstracts, or fingerprint impressions under this section. A fee charged under this division shall not exceed the amount of the fees the director pays under divisions (G) and (I) of this section. If a fee is charged under this division, the director shall notify the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the director will not consider the applicant for employment.~~

~~(M)(J) The director of developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section, including rules specifying.~~

(1) The rules may do the following:

(a) Require employees to undergo criminal records checks under this section;

(b) Require responsible entities to obtain the driving records of employees under this section;

(c) If the rules require employees to undergo criminal records checks, require responsible entities to obtain the driving records of employees, or both, exempt one or more classes of employees from the requirements.

(2) The rules shall do both of the following:

(a) If the rules require employees to undergo criminal records checks, require responsible entities to obtain the driving records of employees, or both, specify the times at which the criminal records checks are to be conducted and the driving records are to be obtained;

(b) Specify circumstances under which the director a responsible entity may employ a person who has an applicant or employee who is found by a

criminal records check required by this section to have been convicted of or, pleaded guilty to an, or been found eligible for intervention in lieu of conviction for a disqualifying offense listed or described in division (E) of this section but who meets standards in regard to rehabilitation set by the director.

Sec. 5123.16. (A) As used in sections 5123.16 to ~~5123.169~~ 5123.1610 of the Revised Code:

(1) "Applicant" means any of the following:

(a) The chief executive officer of a business that applies under section 5123.161 of the Revised Code for a certificate to provide supported living;

(b) The chief executive officer of a business that seeks renewal of the business's supported living certificate under section 5123.164 of the Revised Code;

(c) An individual who applies under section 5123.161 of the Revised Code for a certificate to provide supported living as an independent provider;

(d) An independent provider who seeks renewal of the independent provider's supported living certificate under section 5123.164 of the Revised Code.

(2)(a) "Business" means either of the following:

(i) An association, corporation, nonprofit organization, partnership, trust, or other group of persons;

(ii) An individual who employs, directly or through contract, one or more other individuals to provide supported living.

(b) "Business" does not mean an independent provider.

(3) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(4) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(5) "Independent provider" means a provider who provides supported living on a self-employed basis and does not employ, directly or through contract, another individual to provide the supported living.

(6) "Provider" means a person or government entity certified by the director of developmental disabilities to provide supported living.

(2)(7) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(8) "Related party" means any of the following:

(a) In the case of a provider who is an individual, any of the following:

(i) The spouse of the provider;

- (ii) A parent or stepparent of the provider or provider's spouse;
- (iii) A child of the provider or provider's spouse;
- (iv) A sibling, half sibling, or stepsibling of the provider or provider's spouse;
- (v) A grandparent of the provider or provider's spouse;
- (vi) A grandchild of the provider or provider's spouse;
- (vii) An employee or employer of the provider or provider's spouse.
- (b) In the case of a provider that is a person other than an individual, any of the following:
 - (i) An employee of the person;
 - (ii) An officer of the provider, including the chief executive officer, president, vice-president, secretary, and treasurer;
 - (iii) A member of the provider's board of directors or trustees;
 - (iv) A person owning a financial interest of five per cent or more in the provider;
 - (v) A corporation that has a subsidiary relationship with the provider;
 - (vi) A person or government entity that has control over the provider's day-to-day operation;
 - (vii) A person over which the provider has control of the day-to-day operation.
- (c) In the case of a provider that is a government entity, any of the following:
 - (i) An employee of the provider;
 - (ii) An officer of the provider;
 - (iii) A member of the provider's governing board;
 - (iv) A government entity that has control over the provider's day-to-day operation;
 - (v) A person or government entity over which the provider has control of the day-to-day operation.

(B) No person or government entity may provide supported living without a valid supported living certificate issued by the director of developmental disabilities.

(C) A county board of developmental disabilities may provide supported living only to the extent permitted by rules adopted under section ~~5123.169~~ 5123.1610 of the Revised Code.

Sec. 5123.161. A person or government entity that seeks to provide supported living shall apply to the director of developmental disabilities for a supported living certificate.

Except as provided in ~~section~~ sections 5123.166 and 5123.169 of the Revised Code, the director shall issue to the applicant person or government

entity a supported living certificate if the ~~applicant~~ person or government entity follows the application process established in rules adopted under section ~~5123.169~~ 5123.1610 of the Revised Code, meets the applicable certification standards established in those rules, and pays the certification fee established in those rules.

Sec. 5123.162. The director of developmental disabilities may conduct surveys of persons and government entities that seek a supported living certificate to determine whether the persons and government entities meet the certification standards. The director may also conduct surveys of providers to determine whether the providers continue to meet the certification standards. The director shall conduct the surveys in accordance with rules adopted under section ~~5123.169~~ 5123.1610 of the Revised Code.

The records of surveys conducted under this section are public records for the purpose of section 149.43 of the Revised Code and shall be made available on the request of any person or government entity.

Sec. 5123.163. A supported living certificate is valid for a period of time established in rules adopted under section ~~5123.169~~ 5123.1610 of the Revised Code, unless any of the following occur before the end of that period of time:

(A) The director of developmental disabilities issues an order requiring that action be taken against the certificate holder under section 5123.166 of the Revised Code.

(B) The director issues an order terminating the certificate under section 5123.168 of the Revised Code.

(C) The certificate holder voluntarily surrenders the certificate to the director.

Sec. 5123.164. Except as provided in ~~section~~ sections 5123.166 and ~~5123.169~~ of the Revised Code, the director of developmental disabilities shall renew a supported living certificate if the certificate holder follows the renewal process established in rules adopted under section ~~5123.169~~ 5123.1610 of the Revised Code, continues to meet the applicable certification standards established in those rules, and pays the renewal fee established in those rules.

Sec. 5123.166. (A) If good cause exists as specified in division (B) of this section and determined in accordance with procedures established in rules adopted under section ~~5123.169~~ 5123.1610 of the Revised Code, the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:

(1) Refusal to issue or renew a supported living certificate;

- (2) Revocation of a supported living certificate;
- (3) Suspension of a supported living certificate holder's authority to do either or both of the following:
 - (a) Continue to provide supported living to one or more individuals from one or more counties who receive supported living from the certificate holder at the time the director takes the action;
 - (b) Begin to provide supported living to one or more individuals from one or more counties who do not receive supported living from the certificate holder at the time the director takes the action.
- (B) The following constitute good cause for taking action under division (A) of this section against a person or government entity seeking or holding a supported living certificate:
 - (1) The person or government entity's failure to meet or continue to meet the applicable certification standards established in rules adopted under section ~~5123.169~~ 5123.1610 of the Revised Code;
 - (2) The person or government entity violates section 5123.165 of the Revised Code;
 - (3) The person or government entity's failure to satisfy the requirements of section 5123.081 or 5123.52, ~~5126.28~~, or ~~5126.281~~ of the Revised Code;
 - (4) Mifeasance;
 - (5) Malfeasance;
 - (6) Nonfeasance;
 - (7) Confirmed abuse or neglect;
 - (8) Financial irresponsibility;
 - (9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.
- (C) Except as provided in division (D) of this section, the director shall issue an adjudication order under division (A) of this section in accordance with Chapter 119. of the Revised Code.
- (D)(1) The director may issue an order requiring that action specified in division (A)(3) of this section be taken before a provider is provided notice and an opportunity for a hearing if all of the following are the case:
 - (a) The director determines such action is warranted by the provider's failure to continue to meet the applicable certification standards;
 - (b) The director determines that the failure either represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who receives or would receive supported living from the provider;
 - (c) If the order will suspend the provider's authority to continue to

provide supported living to an individual who receives supported living from the provider at the time the director issues the order, both of the following are the case:

(i) The director makes the individual, or the individual's guardian, aware of the director's determination under division (D)(1)(b) of this section and the individual or guardian does not select another provider.

(ii) A county board of developmental disabilities has filed a complaint with a probate court under section ~~5123.33~~ 5126.33 of the Revised Code that includes facts describing the nature of abuse or neglect that the individual has suffered due to the provider's actions that are the basis for the director making the determination under division (D)(1)(b) of this section and the probate court does not issue an order authorizing the county board to arrange services for the individual pursuant to an individualized service plan developed for the individual under section ~~5123.34~~ 5126.31 of the Revised Code.

(2) If the director issues an order under division (D)(1) of this section, sections 119.091 to 119.13 of the Revised Code and all of the following apply:

(a) The director shall send the provider notice of the order by registered mail, return receipt requested, not later than twenty-four hours after issuing the order and shall include in the notice the reasons for the order, the citation to the law or rule directly involved, and a statement that the provider will be afforded a hearing if the provider requests it within ten days of the time of receiving the notice.

(b) If the provider requests a hearing within the required time and the provider has provided the director the provider's current address, the director shall immediately set, and notify the provider of, the date, time, and place for the hearing.

(c) The date of the hearing shall be not later than thirty days after the director receives the provider's timely request for the hearing.

(d) The hearing shall be conducted in accordance with section 119.09 of the Revised Code, except for all of the following:

(i) The hearing shall continue uninterrupted until its close, except for weekends, legal holidays, and other interruptions the provider and director agree to.

(ii) If the director appoints a referee or examiner to conduct the hearing, the referee or examiner, not later than ten days after the date the referee or examiner receives a transcript of the testimony and evidence presented at the hearing or, if the referee or examiner does not receive the transcript or no such transcript is made, the date that the referee or examiner closes the

record of the hearing, shall submit to the director a written report setting forth the referee or examiner's findings of fact and conclusions of law and a recommendation of the action the director should take.

(iii) The provider may, not later than five days after the date the director, in accordance with section 119.09 of the Revised Code, sends the provider or the provider's attorney or other representative of record a copy of the referee or examiner's report and recommendation, file with the director written objections to the report and recommendation.

(iv) The director shall approve, modify, or disapprove the referee or examiner's report and recommendation not earlier than six days, and not later than fifteen days, after the date the director, in accordance with section 119.09 of the Revised Code, sends a copy of the report and recommendation to the provider or the provider's attorney or other representative of record.

(3) The director may lift an order issued under division (D)(1) of this section even though a hearing regarding the order is occurring or pending if the director determines that the provider has taken action eliminating the good cause for issuing the order. The hearing shall proceed unless the provider withdraws the request for the hearing in a written letter to the director.

(4) The director shall lift an order issued under division (D)(1) of this section if both of the following are the case:

(a) The provider provides the director a plan of compliance the director determines is acceptable.

(b) The director determines that the provider has implemented the plan of compliance correctly.

Sec. 5123.169. (A) The director of developmental disabilities shall not issue a supported living certificate to an applicant or renew an applicant's supported living certificate if either of the following applies:

(1) The applicant fails to comply with division (C)(2) of this section;

(2) Except as provided in rules adopted under section 5123.1610 of the Revised Code, the applicant is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(B) Before issuing a supported living certificate to an applicant or renewing an applicant's supported living certificate, the director shall require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The director also shall require the applicant to sign an agreement under which the applicant agrees to notify the director within fourteen calendar days if

while holding a supported living certificate, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement shall provide that the applicant's failure to provide the notification may result in action being taken by the director against the applicant under section 5123.166 of the Revised Code.

(C)(1) As a condition of receiving a supported living certificate or having a supported living certificate renewed, an applicant shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check of the applicant. If an applicant does not present proof to the director that the applicant has been a resident of this state for the five-year period immediately prior to the date that the applicant applies for issuance or renewal of the supported living certificate, the director shall require the applicant to request that the superintendent obtain information from the federal bureau of investigation as a part of the criminal records check. If the applicant presents proof to the director that the applicant has been a resident of this state for that five-year period, the director may require the applicant to request that the superintendent include information from the federal bureau of investigation in the criminal records check. For purposes of this division, an applicant may provide proof of residency in this state by presenting, with a notarized statement asserting that the applicant has been a resident of this state for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the director considers acceptable.

(2) Each applicant shall do all of the following:

(a) Obtain a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet prescribed pursuant to division (C)(2) of section 109.572 of the Revised Code;

(b) Complete the form and provide the applicant's fingerprint impressions on the standard impression sheet;

(c) Forward the completed form and standard impression sheet to the superintendent at the time the criminal records check is requested;

(d) Instruct the superintendent to submit the completed report of the criminal records check directly to the director;

(e) Pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check of the applicant requested and conducted pursuant to this section.

(D) The director may request any other state or federal agency to supply the director with a written report regarding the criminal record of an applicant. The director may consider the reports when determining whether to issue a supported living certificate to the applicant or to renew an applicant's supported living certificate.

(E) An applicant who seeks to be an independent provider or is an independent provider seeking renewal of the applicant's supported living certificate shall obtain the applicant's driving record from the bureau of motor vehicles and provide a copy of the record to the director if the supported living that the applicant will provide involves transporting individuals with mental retardation or developmental disabilities. The director may consider the applicant's driving record when determining whether to issue the applicant a supported living certificate or to renew the applicant's supported living certificate.

(F)(1) A report obtained pursuant to this section is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person, other than the following:

(a) The applicant who is the subject of the report or the applicant's representative;

(b) The director or the director's representative;

(c) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

(i) The denial of a supported living certificate or refusal to renew a supported living certificate;

(ii) The denial, suspension, or revocation of a certificate under section 5123.45 of the Revised Code;

(iii) A civil or criminal action regarding the medicaid program.

(2) An applicant for whom the director has obtained reports under this section may submit a written request to the director to have copies of the reports sent to any person or state or local government entity. The applicant shall specify in the request the person or entities to which the copies are to be sent. On receiving the request, the director shall send copies of the reports to the persons or entities specified.

(3) The director may request that a person or state or local government entity send copies to the director of any report regarding a records check or criminal records check that the person or entity possesses, if the director obtains the written consent of the individual who is the subject of the report.

(4) The director shall provide each applicant with a copy of any report obtained about the applicant under this section.

Sec. 5123.169 5123.1610. The director of developmental disabilities

shall adopt rules under Chapter 119. of the Revised Code establishing all of the following:

(A) The extent to which a county board of developmental disabilities may provide supported living;

(B) The application process for obtaining a supported living certificate under section 5123.161 of the Revised Code;

(C) The certification standards a person or government entity must meet to obtain a supported living certificate to provide supported living;

(D) The certification fee for a supported living certificate, which shall be deposited into the program fee fund created under section 5123.033 of the Revised Code;

(E) The period of time a supported living certificate is valid;

(F) The process for renewing a supported living certificate under section 5123.164 of the Revised Code;

(G) The renewal fee for a supported living certificate, which shall be deposited into the program fee fund created under section 5123.033 of the Revised Code;

(H) Procedures for conducting surveys under section 5123.162 of the Revised Code;

(I) Procedures for determining whether there is good cause to take action under section 5123.166 of the Revised Code against a person or government entity seeking or holding a supported living certificate;

(J) Circumstances under which the director may issue a supported living certificate to an applicant or renew an applicant's supported living certificate if the applicant is found by a criminal records check required by section 5123.169 of the Revised Code to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense but meets standards in regard to rehabilitation set by the director.

Sec. 5123.171. As used in this section, "respite care" means appropriate, short-term, temporary care provided to a mentally retarded or developmentally disabled person to sustain the family structure or to meet planned or emergency needs of the family.

The department of developmental disabilities shall provide respite care services to persons with mental retardation or a developmental disability for the purpose of promoting self-sufficiency and normalization, preventing or reducing inappropriate institutional care, and furthering the unity of the family by enabling the family to meet the special needs of a mentally retarded or developmentally disabled person.

In order to be eligible for respite care services under this section, the

mentally retarded or developmentally disabled person must be in need of habilitation services as defined in section 5126.01 of the Revised Code.

Respite care may be provided in a residential facility licensed under section 5123.19 of the Revised Code ~~or (including a residential facility certified as an intermediate care facility for the mentally retarded under Title XIX of the "Social Security Act," 49 79 Stat. 620 344 (1935 1965), 42 U.S.C. 301 1396, et seq., as amended, or certified as)~~ and a respite care home certified under section 5126.05 of the Revised Code.

The department shall develop a system for locating vacant beds that are available for respite care and for making information on vacant beds available to users of respite care services. Facilities certified as intermediate care facilities for the mentally retarded shall report vacant beds to the department but shall not be required to accept respite care clients.

The director of developmental disabilities shall adopt, and may amend or rescind, rules in accordance with Chapter 119. of the Revised Code for both of the following:

(A) Certification by county boards of developmental disabilities of respite care homes;

(B) Provision of respite care services authorized by this section. Rules adopted under this division shall establish all of the following:

(1) A formula for distributing funds appropriated for respite care services;

(2) Standards for supervision, training and quality control in the provision of respite care services;

(3) Eligibility criteria for emergency respite care services.

Sec. 5123.19. (A) As used in ~~this section and in sections 5123.191, 5123.194, 5123.196, 5123.197, 5123.198, and 5123.19 to 5123.20~~ of the Revised Code:

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

(b) ~~"Intermediate care facility for the mentally retarded" means a residential facility that is considered an intermediate care facility for the mentally retarded for the purposes of Chapter 5111. of the Revised Code.~~

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

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

~~(4)(2) "Intermediate care facility for the mentally retarded" has the same meaning as in section 1905(d) of the "Social Security Act," 101 Stat. 1330-204 (1987), 42 U.S.C. 1396d(d), as amended.~~

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

~~(4) "Political subdivision" means a municipal corporation, county, or township.~~

(5) "Related party" has the same meaning as in section 5123.16 of the Revised Code except that "provider" as used in the definition of "related party" means a person or government entity that held or applied for a license to operate a residential facility, rather than a person or government entity certified to provide supported living.

~~(6)(a) Except as provided in division (A)(6)(b) of this section, "residential facility" means a home or facility, including a facility certified as an intermediate care facility for the mentally retarded, in which an individual with mental retardation or a developmental disability resides.~~

~~(b) "Residential facility" does not mean any of the following:~~

~~(i) The home of a relative or legal guardian in which an individual with mental retardation or a developmental disability resides;~~

~~(ii) A respite care home certified under section 5126.05 of the Revised Code;~~

~~(iii) A county home or district home operated pursuant to Chapter 5155. of the Revised Code;~~

~~(iv) A dwelling in which the only residents with mental retardation or developmental disabilities are in independent living arrangements or are being provided supported living.~~

(B) Every person or government agency desiring to operate a residential facility shall apply for licensure of the facility to the director of developmental disabilities unless the residential facility is subject to section 3721.02, ~~5119.73~~, 5103.03, ~~or 5119.20~~, or division (A)(9)(b) of section

5119.22 of the Revised Code. ~~Notwithstanding Chapter 3721. of the Revised Code, a nursing home that is certified as an intermediate care facility for the mentally retarded under Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1396, as amended, shall apply for licensure of the portion of the home that is certified as an intermediate care facility for the mentally retarded.~~

(C) Subject to section 5123.196 of the Revised Code, the director of developmental disabilities shall license the operation of residential facilities. An initial license shall be issued for a period that does not exceed one year, unless the director denies the license under division (D) of this section. A license shall be renewed for a period that does not exceed three years, unless the director refuses to renew the license under division (D) of this section. The director, when issuing or renewing a license, shall specify the period for which the license is being issued or renewed. A license remains valid for the length of the licensing period specified by the director, unless the license is terminated, revoked, or voluntarily surrendered.

(D) If it is determined that an applicant or licensee is not in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, the director may deny issuance of a license, refuse to renew a license, terminate a license, revoke a license, issue an order for the suspension of admissions to a facility, issue an order for the placement of a monitor at a facility, issue an order for the immediate removal of residents, or take any other action the director considers necessary consistent with the director's authority under this chapter regarding residential facilities. In the director's selection and administration of the sanction to be imposed, all of the following apply:

(1) The director may deny, refuse to renew, or revoke a license, if the director determines that the applicant or licensee has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of residents of a residential facility.

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

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

The director shall lift an order for the suspension of admissions when the director determines that the violation that formed the basis for the order has been corrected.

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

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

(6) When the director initiates license revocation proceedings, no opportunity for submitting a plan of correction shall be given. The director shall notify the licensee by letter of the initiation of the proceedings. The letter shall list the deficiencies of the residential facility and inform the licensee that no plan of correction will be accepted. The director shall also send a copy of the letter to the county board of developmental disabilities. The county board shall send a copy of the letter to each of the following:

- (a) Each resident who receives services from the licensee;
- (b) The guardian of each resident who receives services from the licensee if the resident has a guardian;
- (c) The parent or guardian of each resident who receives services from the licensee if the resident is a minor.

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

(8) In determining whether a residential facility is being operated in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, or whether conditions at a residential facility present an immediate danger of physical or

psychological harm to the residents, the director may rely on information obtained by a county board of developmental disabilities or other governmental agencies.

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

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

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

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

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

(b) If a timely request for a hearing that includes the licensee's current address is made, the hearing shall commence not later than thirty days after the department receives the request.

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

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

after the last of the following:

- (i) The close of the hearing;
- (ii) If a transcript of the proceedings is ordered, the hearing examiner receives the transcript;
- (iii) If post-hearing briefs are timely filed, the hearing examiner receives the briefs.

(e) A copy of the written report and recommendation of the hearing examiner shall be sent, by certified mail, to the licensee and the licensee's attorney, if applicable, not later than five days after the report is filed.

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

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

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

(G) Neither a person or government agency whose application for a license to operate a residential facility is denied nor a related party of the person or government agency may apply for a license to operate a residential facility before the date that is one year after the date of the denial. Neither a licensee whose residential facility license is revoked nor a related party of the licensee may apply for a residential facility license before the date that is five years after the date of the revocation.

(H) In accordance with Chapter 119. of the Revised Code, the director shall adopt and may amend and rescind rules for licensing and regulating the operation of residential facilities, ~~including intermediate care facilities for the mentally retarded~~. The rules for residential facilities that are intermediate care facilities for the mentally retarded may differ from those for other residential facilities. The rules shall establish and specify the following:

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

(2) Procedures and criteria for denying, refusing to renew, terminating, and revoking licenses and for ordering the suspension of admissions to a facility, placement of a monitor at a facility, and the immediate removal of residents from a facility;

(3) Fees for issuing and renewing licenses, which shall be deposited into the program fee fund created under section 5123.033 of the Revised Code;

- (4) Procedures for surveying residential facilities;
- (5) Requirements for the training of residential facility personnel;
- (6) Classifications for the various types of residential facilities;
- (7) Certification procedures for licensees and management contractors that the director determines are necessary to ensure that they have the skills and qualifications to properly operate or manage residential facilities;
- (8) The maximum number of persons who may be served in a particular type of residential facility;
- (9) Uniform procedures for admission of persons to and transfers and discharges of persons from residential facilities;
- (10) Other standards for the operation of residential facilities and the services provided at residential facilities;
- (11) Procedures for waiving any provision of any rule adopted under this section.

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

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

Following each survey, unless the director initiates a license revocation proceeding, the director or the director's designee shall provide the licensee with a report listing any deficiencies, specifying a timetable within which the licensee shall submit a plan of correction describing how the deficiencies will be corrected, and, when appropriate, specifying a timetable within which the licensee must correct the deficiencies. After a plan of correction is submitted, the director or the director's designee shall approve or disapprove the plan. A copy of the report and any approved plan of correction shall be provided to any person who requests it.

The director shall initiate disciplinary action against any department employee who notifies or causes the notification to any unauthorized person

of an unannounced survey of a residential facility by an authorized representative of the department.

(J) In addition to any other information which may be required of applicants for a license pursuant to this section, the director shall require each applicant to provide a copy of an approved plan for a proposed residential facility pursuant to section 5123.042 of the Revised Code. This division does not apply to renewal of a license or to an applicant for an initial or modified license who meets the requirements of section ~~5123.193~~ or 5123.197 of the Revised Code.

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

Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may require notification to the department of any significant change in the ownership of a residential facility or in the identity of the licensee or management contractor. If the director determines that a significant change of ownership is proposed, the director shall consider the proposed change to be an application for development by a new operator pursuant to section 5123.042 of the Revised Code and shall advise the applicant within sixty days of the notification that the current license shall continue in effect or a new license will be required pursuant to this section. If the director requires a new license, the director shall permit the facility to continue to operate under the current license until the new license is issued, unless the current license is revoked, refused to be renewed, or terminated in accordance with Chapter 119. of the Revised Code.

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

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for the receipt, referral, investigation, and disposition of complaints filed with the department under this division.

(M) The department shall establish procedures for the notification of interested parties of the transfer or interim care of residents from residential

facilities that are closing or are losing their license.

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

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

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

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

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

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

(P) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen persons with mental retardation or a developmental disability as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or

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

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

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

(3) Limit excessive concentration of these residential facilities.

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

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

(S)(1) The director may issue an interim license to operate a residential facility to an applicant for a license under this section if either of the following is the case:

(a) The director determines that an emergency exists requiring immediate placement of persons in a residential facility, that insufficient licensed beds are available, and that the residential facility is likely to receive a permanent license under this section within thirty days after issuance of the interim license.

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

(2) To be eligible to receive an interim license, an applicant must meet the same criteria that must be met to receive a permanent license under this section, except for any differing procedures and time frames that may apply to issuance of a permanent license.

(3) An interim license shall be valid for thirty days and may be renewed by the director for a period not to exceed one hundred fifty days.

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

of interim licenses.

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

(U) The director or the director's designee may enter at any time, for purposes of investigation, any home, facility, or other structure that has been reported to the director or that the director has reasonable cause to believe is being operated as a residential facility without a license issued under this section.

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

Sec. 5123.192. (A) A person or government agency operating, on the effective date of this section, an intermediate care facility for the mentally retarded pursuant to a nursing home license issued under Chapter 3721. of the Revised Code shall do both of the following as a condition of continuing to operate the facility on and after July 1, 2013:

(1) Not later than February 1, 2013, apply to the director of developmental disabilities for a residential facility license under section 5123.19 of the Revised Code for the facility;

(2) Not later than July 1, 2013, obtain the residential facility license for the facility.

(B) The nursing home license of an intermediate care facility for the mentally retarded shall cease to be valid at the earliest of the following:

(1) The date that the facility's nursing home license is revoked or voided under section 3721.07 of the Revised Code;

(2) The date that a residential facility license is obtained for the facility under section 5123.19 of the Revised Code;

(3) July 1, 2013.

(C) Except for existing nursing home beds not certified as intermediate

care facility for the mentally retarded beds and relocated in accordance with a move authorized by a certificate of need under Chapter 3702. of the Revised Code, no bed that is part of an intermediate care facility for the mentally retarded that is licensed as a nursing home on the effective date of this section may be used as part of a nursing home on and after the earlier of the following:

(1) The date that a residential facility license is obtained for the facility under section 5123.19 of the Revised Code;

(2) July 1, 2013.

Sec. 5123.31. (A) The department of developmental disabilities shall ~~keep in its office, accessible only to its employees, except by the consent of the department or the order of the judge of a court of record,~~ a record showing the name, residence, sex, age, nativity, occupation, condition, and date of entrance or commitment of every resident in the institutions governed by it; the date, cause, and terms of discharge and the condition of such person at the time of leaving, and also a record of all transfers from one institution to another, and, if such person dies while in the care or custody of the department, the date and cause of death. These and such other facts as the department requires shall be furnished by the managing officer of each institution within ten days after the commitment, entrance, death, or discharge of a resident.

Except as provided in division (C) of this section, the department shall maintain the records described in this division in its office. The department shall make the records accessible only to its employees, except by the consent of the department or the order of the judge of a court of record.

(B) In case of an accident or injury or peculiar death of a an institution resident the managing officer shall make a special report to the department within twenty-four hours thereafter, giving the circumstances as fully as possible.

(C) After a period of time determined by the department, the records described in division (A) of this section may be deposited with the Ohio historical society. Neither the records nor the information contained in them shall be disclosed by the historical society, except as provided in section 5123.89 of the Revised Code.

Sec. 5123.38. (A) Except as provided in division (B) ~~and (C)~~ of this section, if an individual receiving supported living or home and community-based services funded by a county board of developmental disabilities is committed to a state-operated intermediate care facility for the mentally retarded pursuant to sections 5123.71 to 5123.76 of the Revised Code, ~~the department of developmental disabilities shall use the funds~~

~~otherwise allocated to the county board as is responsible for the nonfederal share of medicaid expenditures for the individual's care in the state-operated facility. The department of developmental disabilities shall collect the amount of the nonfederal share from the county board by either withholding that amount from funds the department has otherwise allocated to the county board or submitting an invoice for payment of that amount to the county board.~~

(B) Division (A) of this section does not apply ~~if the~~ under any of the following circumstances:

(1) The county board, not later than ninety days after the date of the commitment of a person receiving supported ~~services~~ living, commences funding of supported living for an individual who resides in a state-operated intermediate care facility for the mentally retarded on the date of the commitment or another eligible individual designated by the department.

~~(C) Division (A) of this section does not apply if the~~ (2) The county board, not later than ninety days after the date of the commitment of a person receiving home and community-based services, commences funding of home and community-based services for an individual who resides in a state-operated intermediate care facility for the mentally retarded on the date of the commitment or another eligible individual designated by the department.

(3) The director of developmental disabilities, after determining that circumstances warrant granting a waiver in an individual's case, grants the county board a waiver that exempts the county board from responsibility for the nonfederal share for that case.

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

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

(B) "Certified supported living provider" means a person or government entity certified under section 5123.161 of the Revised Code.

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

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

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

- (1) Taking vital signs;
- (2) Application of clean dressings that do not require health assessment;
- (3) Basic measurement of bodily intake and output;
- (4) Oral suctioning;

- (5) Use of glucometers;
- (6) External urinary catheter care;
- (7) Emptying and replacing colostomy bags;
- (8) Collection of specimens by noninvasive means.

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

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

- (1) Through direct employment with the department of developmental disabilities or a county board of developmental disabilities;
- (2) Through an entity under contract with the department of developmental disabilities or a county board of developmental disabilities;
- (3) Through direct employment or by being under contract with private entities, including private entities that operate residential facilities.

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

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

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

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

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

Sec. 5123.50. As used in ~~this section and sections 5123.51, 5123.52, and 5123.541~~ 5123.50 to 5123.542 of the Revised Code:

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

- (1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;
- (2) Sexual abuse;
- (3) Verbal abuse.

(B) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means

prohibited by the Revised Code, including violations of Chapter 2911. or 2913. of the Revised Code.

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

- (1) An employee of the department of developmental disabilities;
- (2) An employee of a county board of developmental disabilities;
- (3) An employee in a position that includes providing specialized services to an individual with mental retardation or another developmental disability;

(4) An independent provider as defined in section 5123.16 of the Revised Code.

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

(E) "Offense of violence" has the same meaning as in section 2901.01 of the Revised Code.

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

~~(F)~~(G) "Prescribed medication" has the same meaning as in section 5123.41 of the Revised Code.

(H) "Sexual abuse" means unlawful sexual conduct or sexual contact.

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

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

~~(I)~~(K) "Sexual conduct," "sexual contact," and "spouse" have the same meanings as in section 2907.01 of the Revised Code.

Sec. 5123.51. (A) In addition to any other action required by sections 5123.61 and 5126.31 of the Revised Code, the department of developmental disabilities shall review each report the department receives of abuse or neglect of an individual with mental retardation or a developmental disability or misappropriation of an individual's property that includes an allegation that an MR/DD employee committed or was responsible for the abuse, neglect, or misappropriation. The department shall review a report it receives from a public children services agency only after the agency completes its investigation pursuant to section 2151.421 of the Revised Code. On receipt of a notice under section 2930.061 or 5123.541 of the

Revised Code, the department shall review the notice.

(B) The department shall do both of the following:

(1) Investigate the allegation or adopt the findings of an investigation or review of the allegation conducted by another person or government entity and determine whether there is a reasonable basis for the allegation;

(2) If the department determines that there is a reasonable basis for the allegation, conduct an adjudication pursuant to Chapter 119. of the Revised Code.

(C)(1) The department shall appoint an independent hearing officer to conduct any hearing conducted pursuant to division (B)(2) of this section, except that, if the hearing is regarding an employee of the department who is represented by a union, the department and a representative of the union shall jointly select the hearing officer.

(2)(a) Except as provided in division (C)(2)(b) of this section, no hearing shall be conducted under division (B)(2) of this section until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded.

(b) The department may conduct a hearing pursuant to division (B)(2) of this section before a criminal proceeding concerning the same allegation is concluded if both of the following are the case:

(i) The department notifies the prosecutor responsible for the criminal proceeding that the department proposes to conduct a hearing.

(ii) The prosecutor consents to the hearing.

(3) In conducting a hearing pursuant to division (B)(2) of this section, the hearing officer shall do all of the following:

(a) Determine whether there is clear and convincing evidence that the MR/DD employee has done any of the following:

(i) Misappropriated property of one or more individuals with mental retardation or a developmental disability that has a value, either separately or taken together, of one hundred dollars or more;

(ii) Misappropriated property of an individual with mental retardation or a developmental disability that is designed to be used as a check, draft, negotiable instrument, credit card, charge card, or device for initiating an electronic fund transfer at a point of sale terminal, automated teller machine, or cash dispensing machine;

(iii) Misappropriated prescribed medication of an individual with mental retardation or a developmental disability;

(iv) Knowingly abused such an individual;

~~(iv)~~ (v) Recklessly abused or neglected such an individual, with resulting physical harm;

~~(v)~~(vi) Negligently abused or neglected such an individual, with resulting serious physical harm;

~~(vi)~~(vii) Recklessly neglected such an individual, creating a substantial risk of serious physical harm;

~~(vii)~~(viii) Engaged in sexual conduct or had sexual contact with an individual with mental retardation or another developmental disability who was not the MR/DD employee's spouse and for whom the MR/DD employee was employed or under a contract to provide care;

~~(viii)~~(ix) Unreasonably failed to make a report pursuant to division (C) of section 5123.61 of the Revised Code when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual with mental retardation or a developmental disability;

(x) Been convicted of or entered a plea of guilty to any of the following if the victim of the offense is an individual with mental retardation or a developmental disability: an offense of violence, a violation of a section contained in Chapter 2907. or Chapter 2913. of the Revised Code, or a violation of section 2903.16, 2903.34, 2903.341, or 2919.22 of the Revised Code.

(b) Give weight to the decision in any collective bargaining arbitration regarding the same allegation;

(c) Give weight to any relevant facts presented at the hearing.

(D)(1) Unless the director of developmental disabilities determines that there are extenuating circumstances and except as provided in division (E) of this section, if the director, after considering all of the factors listed in division (C)(3) of this section, finds that there is clear and convincing evidence that an MR/DD employee has done one or more of the things described in division (C)(3)(a) of this section the director shall include the name of the employee in the registry established under section 5123.52 of the Revised Code.

(2) Extenuating circumstances the director must consider include the use of physical force by an MR/DD employee that was necessary as self-defense.

(3) If the director includes an MR/DD employee in the registry established under section 5123.52 of the Revised Code, the director shall notify the employee, the person or government entity that employs or contracts with the employee, the individual with mental retardation or a developmental disability who was the subject of the report and that individual's legal guardian, if any, the attorney general, and the prosecuting attorney or other law enforcement agency. If the MR/DD employee holds a license, certificate, registration, or other authorization to engage in a

profession issued pursuant to Title XLVII of the Revised Code, the director shall notify the appropriate agency, board, department, or other entity responsible for regulating the employee's professional practice.

(4) If an individual whose name appears on the registry is involved in a court proceeding or arbitration arising from the same facts as the allegation resulting in the individual's placement on the registry, the disposition of the proceeding or arbitration shall be noted in the registry next to the individual's name.

(E) In the case of an allegation concerning an employee of the department, after the hearing conducted pursuant to division (B)(2) of this section, the director of health or that director's designee shall review the decision of the hearing officer to determine whether the standard described in division (C)(3) of this section has been met. If the director or designee determines that the standard has been met and that no extenuating circumstances exist, the director or designee shall notify the director of developmental disabilities that the MR/DD employee is to be included in the registry established under section 5123.52 of the Revised Code. If the director of developmental disabilities receives such notification, the director shall include the MR/DD employee in the registry and shall provide the notification described in division (D)(3) of this section.

(F) If the department is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and the MR/DD employee subject to the notice does not timely request a hearing in accordance with section 119.07 or 5123.0414 of the Revised Code, the department is not required to hold a hearing.

(G) Files and records of investigations conducted pursuant to this section are not public records as defined in section 149.43 of the Revised Code, but, on request, the department shall provide copies of those files and records to the attorney general, a prosecuting attorney, or a law enforcement agency.

Sec. 5123.542. (A) Each of the following shall annually provide a written notice to each of its MR/DD employees explaining the conduct for which an MR/DD employee may be included in the registry established under section 5123.52 of the Revised Code:

- (1) The department of developmental disabilities;
- (2) Each county board of developmental disabilities;
- (3) Each ~~contracting entity~~ provider and subcontractor, as defined in section ~~5126.281~~ 5123.081 of the Revised Code;
- (4) Each owner, operator, or administrator of a residential facility, as defined in section 5123.19 of the Revised Code;

(5) Each owner, operator, or administrator of a program certified by the department to provide supported living.

(B) The department of developmental disabilities or a county board of developmental disabilities shall provide the notice required by division (A) of this section to an MR/DD employee who is an independent provider as defined in section 5123.16 of the Revised Code.

(C) The notice described in division (A) of this section shall be in a form and provided in a manner prescribed by the department of developmental disabilities. The form shall be the same for all persons and entities required to provide notice under division (A) of this section.

(C) The fact that an MR/DD employee does not receive the notice required by this section does not exempt the employee from inclusion in the registry established under section 5123.52 of the Revised Code.

Sec. 5123.61. (A) As used in this section:

(1) "Law enforcement agency" means the state highway patrol, the police department of a municipal corporation, or a county sheriff.

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

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

(B) The department of developmental disabilities shall establish a registry office for the purpose of maintaining reports of abuse, neglect, and other major unusual incidents made to the department under this section and reports received from county boards of developmental disabilities under section 5126.31 of the Revised Code. The department shall establish committees to review reports of abuse, neglect, and other major unusual incidents.

(C)(1) Any person listed in division (C)(2) of this section, having reason to believe that a person with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that person, shall immediately report or cause reports to be made of such information to the entity specified in this division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or to the county board of developmental disabilities. If the report concerns a resident of a facility operated by the department of developmental disabilities the report shall be made either to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of developmental disabilities,

the report immediately shall be made to the department and to the county board.

(2) All of the following persons are required to make a report under division (C)(1) of this section:

(a) Any physician, including a hospital intern or resident, any dentist, podiatrist, chiropractor, practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code, hospital administrator or employee of a hospital, nurse licensed under Chapter 4723. of the Revised Code, employee of an ambulatory health facility as defined in section 5101.61 of the Revised Code, employee of a home health agency, employee of an ~~adult care~~ residential facility licensed under ~~Chapter 3722. section 5119.22~~ of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults, or employee of a community mental health facility;

(b) Any school teacher or school authority, social worker, psychologist, attorney, peace officer, coroner, or residents' rights advocate as defined in section 3721.10 of the Revised Code;

(c) A superintendent, board member, or employee of a county board of developmental disabilities; an administrator, board member, or employee of a residential facility licensed under section 5123.19 of the Revised Code; an administrator, board member, or employee of any other public or private provider of services to a person with mental retardation or a developmental disability, or any MR/DD employee, as defined in section 5123.50 of the Revised Code;

(d) A member of a citizen's advisory council established at an institution or branch institution of the department of developmental disabilities under section 5123.092 of the Revised Code;

(e) A ~~clergyman~~ member of the clergy who is employed in a position that includes providing specialized services to an individual with mental retardation or another developmental disability, while acting in an official or professional capacity in that position, or a person who is employed in a position that includes providing specialized services to an individual with mental retardation or another developmental disability and who, while acting in an official or professional capacity, renders spiritual treatment through prayer in accordance with the tenets of an organized religion.

(3)(a) The reporting requirements of this division do not apply to members of the legal rights service commission or to employees of the legal rights service.

(b) An attorney or physician is not required to make a report pursuant to division (C)(1) of this section concerning any communication the attorney

or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding, except that the client or patient is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to that communication and the attorney or physician shall make a report pursuant to division (C)(1) of this section, if both of the following apply:

(i) The client or patient, at the time of the communication, is a person with mental retardation or a developmental disability.

(ii) The attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(4) Any person who fails to make a report required under division (C) of this section and who is an MR/DD employee, as defined in section 5123.50 of the Revised Code, shall be eligible to be included in the registry regarding misappropriation, abuse, neglect, or other specified misconduct by MR/DD employees established under section 5123.52 of the Revised Code.

(D) The reports required under division (C) of this section shall be made forthwith by telephone or in person and shall be followed by a written report. The reports shall contain the following:

(1) The names and addresses of the person with mental retardation or a developmental disability and the person's custodian, if known;

(2) The age of the person with mental retardation or a developmental disability;

(3) Any other information that would assist in the investigation of the report.

(E) When a physician performing services as a member of the staff of a hospital or similar institution has reason to believe that a person with mental retardation or a developmental disability has suffered injury, abuse, or physical neglect, the physician shall notify the person in charge of the institution or that person's designated delegate, who shall make the necessary reports.

(F) Any person having reasonable cause to believe that a person with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering abuse or neglect may report or cause a report to be made of that belief to the entity specified in this division. Except as

provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or the county board of developmental disabilities. If the person is a resident of a facility operated by the department of developmental disabilities, the report shall be made to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of developmental disabilities, the report immediately shall be made to the department and to the county board.

(G)(1) Upon the receipt of a report concerning the possible abuse or neglect of a person with mental retardation or a developmental disability, the law enforcement agency shall inform the county board of developmental disabilities or, if the person is a resident of a facility operated by the department of developmental disabilities, the director of the department or the director's designee.

(2) On receipt of a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the department of developmental disabilities shall notify the law enforcement agency.

(3) When a county board of developmental disabilities receives a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the superintendent of the board or an individual the superintendent designates under division (H) of this section shall notify the law enforcement agency. The superintendent or individual shall notify the department of developmental disabilities when it receives any report under this section.

(4) When a county board of developmental disabilities receives a report under this section and believes that the degree of risk to the person is such that the report is an emergency, the superintendent of the board or an employee of the board the superintendent designates shall attempt a face-to-face contact with the person with mental retardation or a developmental disability who allegedly is the victim within one hour of the board's receipt of the report.

(H) The superintendent of the board may designate an individual to be responsible for notifying the law enforcement agency and the department when the county board receives a report under this section.

(I) An adult with mental retardation or a developmental disability about whom a report is made may be removed from the adult's place of residence only by law enforcement officers who consider that the adult's immediate removal is essential to protect the adult from further injury or abuse or in accordance with the order of a court made pursuant to section 5126.33 of the

Revised Code.

(J) A law enforcement agency shall investigate each report of abuse or neglect it receives under this section. In addition, the department, in cooperation with law enforcement officials, shall investigate each report regarding a resident of a facility operated by the department to determine the circumstances surrounding the injury, the cause of the injury, and the person responsible. The investigation shall be in accordance with the memorandum of understanding prepared under section 5126.058 of the Revised Code. The department shall determine, with the registry office which shall be maintained by the department, whether prior reports have been made concerning an adult with mental retardation or a developmental disability or other principals in the case. If the department finds that the report involves action or inaction that may constitute a crime under federal law or the law of this state, it shall submit a report of its investigation, in writing, to the law enforcement agency. If the person with mental retardation or a developmental disability is an adult, with the consent of the adult, the department shall provide such protective services as are necessary to protect the adult. The law enforcement agency shall make a written report of its findings to the department.

If the person is an adult and is not a resident of a facility operated by the department, the county board of developmental disabilities shall review the report of abuse or neglect in accordance with sections 5126.30 to 5126.33 of the Revised Code and the law enforcement agency shall make the written report of its findings to the county board.

(K) Any person or any hospital, institution, school, health department, or agency participating in the making of reports pursuant to this section, any person participating as a witness in an administrative or judicial proceeding resulting from the reports, or any person or governmental entity that discharges responsibilities under sections 5126.31 to 5126.33 of the Revised Code shall be immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of such actions except liability for perjury, unless the person or governmental entity has acted in bad faith or with malicious purpose.

(L) No employer or any person with the authority to do so shall discharge, demote, transfer, prepare a negative work performance evaluation, reduce pay or benefits, terminate work privileges, or take any other action detrimental to an employee or retaliate against an employee as a result of the employee's having made a report under this section. This division does not preclude an employer or person with authority from taking action with regard to an employee who has made a report under this section

if there is another reasonable basis for the action.

(M) Reports made under this section are not public records as defined in section 149.43 of the Revised Code. Information contained in the reports on request shall be made available to the person who is the subject of the report, to the person's legal counsel, and to agencies authorized to receive information in the report by the department or by a county board of developmental disabilities.

(N) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding the injuries or physical neglect of a person with mental retardation or a developmental disability or the cause thereof in any judicial proceeding resulting from a report submitted pursuant to this section.

Sec. 5123.89. (A) All certificates, applications, records, and reports made for the purpose of this chapter, other than court journal entries or court docket entries, which directly or indirectly identify a resident or former resident of an institution for the mentally retarded or person whose institutionalization has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except in the following situations:

(1) It is the judgment of the court for judicial records, and the managing officer for institution records, that disclosure is in the best interest of the person identified, and that person or that person's guardian or, if that person is a minor, that person's parent or guardian consents.

(2) Disclosure is provided for in other sections of this chapter.

(3) It is the judgment of the managing officer for institution records that disclosure to a mental health facility is in the best interest of the person identified.

(4) Disclosure is of a record deposited with the Ohio historical society pursuant to division (C) of section 5123.31 of the Revised Code and the disclosure is made to the closest living relative of the person identified, on the relative's request.

(B) The department of developmental disabilities shall adopt rules with respect to the systematic and periodic destruction of residents' records.

(C)(1) As used in this division, "family" means a parent, brother, sister, spouse, son, daughter, grandparent, aunt, uncle, or cousin.

(2) Upon the death of a resident or former resident of an institution for the mentally retarded or a person whose institutionalization was sought under this chapter, the managing officer of an institution shall provide access to the certificates, applications, records, and reports made for the purposes of this chapter to the resident's, former resident's, or person's

guardian if the guardian makes a written request. If a deceased resident, former resident, or person whose institutionalization was sought under this chapter did not have a guardian at the time of death, the managing officer shall provide access to the certificates, applications, records, and reports made for purposes of this chapter to a member of the person's family, upon that family member's written request.

(D) No person shall reveal the contents of a record of a resident except as authorized by this chapter.

Sec. 5126.023. ~~(A)~~ None of the following individuals may serve as a member of a county board of developmental disabilities:

~~(1)(A)~~ An elected public official, except for a township trustee, township fiscal officer, or individual excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code;

~~(2)(B)~~ An immediate family member of ~~another~~ a member of the same county board member;

~~(3) A county board~~ (C) An employee of any county board;

~~(D) An immediate family member of a county board~~ an employee of the same county board;

~~(4)(E)~~ A former employee of the a county board whose employment ~~with the county board~~ ceased less than ~~one~~ four calendar year ~~years~~ before the former employee would begin to serve as a member of the same county board;

~~(5) An~~ (F) A former employee of a county board whose employment ceased less than two years before the former employee would begin to serve as a member of a different county board;

(G) Unless there is no conflict of interest, an individual who or whose immediate family member is a board member or an employee of an agency licensed or certified by the department of developmental disabilities to provide services to individuals with mental retardation or developmental disabilities or an individual who or whose immediate family member is an employee of such an agency;

~~(6) An individual who or whose immediate family member is a board member or employee of an agency contracting with the county board that is not licensed or certified by the department of developmental disabilities to provide services to individuals with mental retardation or developmental disabilities unless there is no conflict of interest;~~

~~(7)(H)~~ An individual with an immediate family member who serves as a county commissioner of a county served by the county board unless the individual was a member of the county board before October 31, 1980.

~~(B) All questions relating to the existence of a conflict of interest for the~~

~~purpose of division (A)(6) of this section shall be submitted to the local prosecuting attorney for resolution. The Ohio ethics commission may examine any issues arising under Chapter 102. and sections 2921.42, 2921.421, and 2921.43 of the Revised Code.~~

Sec. 5126.0220. (A) The superintendent of the county board of developmental disabilities shall do all of the following:

- ~~(A)~~(1) Administer the work of the board, subject to the board's rules;
- ~~(B)~~(2) Recommend to the board the changes necessary to increase the effectiveness of the programs and services offered pursuant to Chapters 3323. and 5126. of the Revised Code;
- ~~(C)~~(3) Employ persons for all positions authorized by the board, approve contracts of employment for management employees that are for a term of one year or less, and approve personnel actions that involve employees in the classified civil service as may be necessary for the work of the board;
- ~~(D)~~(4) Approve compensation for employees within the limits set by the salary schedule and budget set by the board ~~and in accordance with section 5126.26 of the Revised Code~~, and ensure that all employees and consultants are properly reimbursed for actual and necessary expenses incurred in the performance of official duties;
- ~~(E)~~(5) Provide consultation to public agencies as defined in division (C) of section 102.01 of the Revised Code, including other county boards of developmental disabilities, and to individuals, agencies, or organizations providing services supported by the board.

(B) The superintendent may authorize the payment of board obligations by the county auditor.

Sec. 5126.0221. (A) As used in this section, "specialized services" has the same meaning as in section ~~5126.281~~ 5123.081 of the Revised Code.

(B) Except as provided in division (C) of section 5126.033 of the Revised Code, none of the following individuals may be employed by a county board of developmental disabilities:

- (1) An employee of an agency contracting with the county board;
- (2) An immediate family member of an employee of an agency contracting with the county board unless the county board adopts a resolution authorizing the immediate family member's employment with the county board or the employment is consistent with a policy adopted by the board establishing parameters for such employment and the policy is consistent with Chapter 102. and sections 2921.42, 2921.421, and 2921.43 of the Revised Code;
- (3) An individual with an immediate family member who serves as a

county commissioner of any of the counties served by the county board unless the individual was an employee of the county board before October 31, 1980;

(4) An individual who is employed by, has an ownership interest in, performs or provides administrative duties for, or is a member of the governing board of an entity that provides specialized services, regardless of whether the entity contracts with the county board to provide specialized services.

~~Sec. 5126.043. When an individual with mental retardation or other developmental disability is required within this chapter to consent, refuse to give consent, or withdraw consent for services and the individual has been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code, the guardian for the individual appointed under that chapter and functioning in accordance with the appointment shall be responsible for giving, refusing to give, or withdrawing the consent for services.~~

Individuals (A) Unless a guardian has been appointed for the individual, when a decision regarding receipt of a service or participation in a program provided for or funded under this chapter or Chapter 5123. of the Revised Code by an individual with mental retardation or other developmental disability must be made, the individual shall be permitted to make the decision. The individual may obtain support and guidance from an adult family member or other person, but doing so does not affect the right of the individual to make the decision.

(B) An individual with mental retardation or other developmental disability may authorize an adult to make a decision described in division (A) of this section on the individual's behalf, as long as the adult does not have a financial interest in the decision. The authorization shall be made in writing.

(C) If a guardian has been appointed for an individual with mental retardation or other developmental disability, the guardian shall make any decision described in division (A) of this section on behalf of the individual. This section does not require appointment of a guardian.

(D) Individuals with mental retardation and other developmental disabilities, including those who have been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code, have the right to participate in decisions that affect their lives and to have their needs, desires, and preferences considered. An adult or guardian who makes a decision pursuant to division (B) or (C) of this section shall make a decision that is in the best interests of the individual on whose behalf the decision is made and that is consistent with the needs, desires, and preferences of that individual.

Sec. 5126.046. (A) ~~Each county board of developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for habilitation, vocational, or community employment services provided as part of home and community-based services shall create a list of all persons and government entities eligible to provide such habilitation, vocational, or community employment services. If the county board chooses and is eligible to provide such habilitation, vocational, or community employment services, the county board shall include itself on the list. The county board shall make the list available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such habilitation, vocational, or community employment services. The county board shall also make the list available to such individuals' families.~~

~~Am~~ Except as otherwise provided by 42 C.F.R. 431.51, an individual with mental retardation or other developmental disability who is eligible for habilitation, vocational, or community employment home and community-based services may choose the has the right to obtain the services from any provider of the services.

~~(B) Each month, the department of developmental disabilities shall create a list of all persons and government entities eligible to provide residential services and supported living. The department shall include on the list all residential facilities licensed under section 5123.19 of the Revised Code and all supported living providers certified under section 5123.161 of the Revised Code. The department shall distribute the monthly lists to county boards that have local administrative authority under division (A) of section 5126.055 of the Revised Code for residential services and supported living provided as part of home and community-based services. A county board that receives a list shall make it available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such residential services or supported living. The county board shall also make the list available to the families of those individuals that is qualified to furnish the services and is willing to furnish the services to the individual. A county board of developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services and refuses to permit an individual to obtain home and community-based services from a qualified and willing provider shall provide the individual timely notice that the individual may request a hearing under section 5101.35 of the Revised Code.~~

(B) An individual with mental retardation or other developmental

disability who is eligible for nonmedicaid residential services or nonmedicaid supported living may choose the has the right to obtain the services from any provider of the residential services or supported living that is qualified to furnish the residential services or supported living and is willing to furnish the residential services or supported living to the individual.

~~(C) If a county board that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services violates the right established by this section of an individual to choose a provider that is qualified and willing to provide services to the individual, the individual shall receive timely notice that the individual may request a hearing under section 5101.35 of the Revised Code. The department of developmental disabilities shall make available to the public on its internet web site an up-to-date list of all providers of home and community-based services, nonmedicaid residential services, and nonmedicaid supported living. County boards shall assist individuals with mental retardation or other developmental disabilities and the families of such individuals access the list on the department's internet web site.~~

(D) The ~~departments~~ director of developmental disabilities ~~and job and family services~~ shall adopt rules in accordance with Chapter 119. of the Revised Code governing the implementation of this section. The rules shall include procedures for individuals to choose their ~~service~~ providers. The rules shall not be limited by a provider selection system established under section 5126.42 of the Revised Code, including any pool of providers created pursuant to a provider selection system.

Sec. 5126.055. (A) Except as provided in section 5126.056 of the Revised Code, a county board of developmental disabilities has medicaid local administrative authority to, and shall, do all of the following for an individual with mental retardation or other developmental disability who resides in the county that the county board serves and seeks or receives home and community-based services:

(1) Perform assessments and evaluations of the individual. As part of the assessment and evaluation process, the county board shall do all of the following:

(a) Make a recommendation to the department of developmental disabilities on whether the department should approve or deny the individual's application for the services, including on the basis of whether the individual needs the level of care an intermediate care facility for the mentally retarded provides;

(b) If the individual's application is denied because of the county board's

recommendation and the individual requests a hearing under section 5101.35 of the Revised Code, present, with the department of developmental disabilities or department of job and family services, whichever denies the application, the reasons for the recommendation and denial at the hearing;

(c) If the individual's application is approved, recommend to the departments of developmental disabilities and job and family services the services that should be included in the individual's individualized service plan and, if either department approves, reduces, denies, or terminates a service included in the individual's individualized service plan under section 5111.871 of the Revised Code because of the county board's recommendation, present, with the department that made the approval, reduction, denial, or termination, the reasons for the recommendation and approval, reduction, denial, or termination at a hearing under section 5101.35 of the Revised Code.

(2) ~~In accordance with the rules adopted under section 5126.046 of the Revised Code, perform the county board's~~ Perform any duties assigned to the county board in rules adopted under that section 5126.046 of the Revised Code regarding ~~assisting~~ the individual's right to choose a qualified and willing provider of the services and, at a hearing under section 5101.35 of the Revised Code, present evidence of the process for appropriate assistance in choosing providers;

(3) If the county board is certified under section 5123.161 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services, furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires;

(4) Monitor the services provided to the individual and ensure the individual's health, safety, and welfare. The monitoring shall include quality assurance activities. If the county board provides the services, the department of developmental disabilities shall also monitor the services.

(5) Develop, with the individual and the provider of the individual's services, an effective individualized service plan that includes coordination of services, recommend that the departments of developmental disabilities and job and family services approve the plan, and implement the plan unless either department disapproves it. The individualized service plan shall include a summary page, agreed to by the county board, provider, and individual receiving services, that clearly outlines the amount, duration, and scope of services to be provided under the plan.

(6) Have an investigative agent conduct investigations under section

5126.313 of the Revised Code that concern the individual;

(7) Have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.

(B) A county board shall perform its medicaid local administrative authority under this section in accordance with all of the following:

(1) The county board's plan that the department of developmental disabilities approves under section 5123.046 of the Revised Code;

(2) All applicable federal and state laws;

(3) All applicable policies of the departments of developmental disabilities and job and family services and the United States department of health and human services;

(4) The department of job and family services' supervision under its authority under section 5111.01 of the Revised Code to act as the single state medicaid agency;

(5) The department of developmental disabilities' oversight.

(C) The departments of developmental disabilities and job and family services shall communicate with and provide training to county boards regarding medicaid local administrative authority granted by this section. The communication and training shall include issues regarding audit protocols and other standards established by the United States department of health and human services that the departments determine appropriate for communication and training. County boards shall participate in the training. The departments shall assess the county board's compliance against uniform standards that the departments shall establish.

(D) A county board may not delegate its medicaid local administrative authority granted under this section but may contract with a person or government entity, including a council of governments, for assistance with its medicaid local administrative authority. A county board that enters into such a contract shall notify the director of developmental disabilities. The notice shall include the tasks and responsibilities that the contract gives to the person or government entity. The person or government entity shall comply in full with all requirements to which the county board is subject regarding the person or government entity's tasks and responsibilities under the contract. The county board remains ultimately responsible for the tasks and responsibilities.

(E) A county board that has medicaid local administrative authority under this section shall, through the departments of developmental disabilities and job and family services, reply to, and cooperate in arranging compliance with, a program or fiscal audit or program violation exception

that a state or federal audit or review discovers. The department of job and family services shall timely notify the department of developmental disabilities and the county board of any adverse findings. After receiving the notice, the county board, in conjunction with the department of developmental disabilities, shall cooperate fully with the department of job and family services and timely prepare and send to the department a written plan of correction or response to the adverse findings. The county board is liable for any adverse findings that result from an action it takes or fails to take in its implementation of medicaid local administrative authority.

(F) If the department of developmental disabilities or department of job and family services determines that a county board's implementation of its medicaid local administrative authority under this section is deficient, the department that makes the determination shall require that county board do the following:

(1) If the deficiency affects the health, safety, or welfare of an individual with mental retardation or other developmental disability, correct the deficiency within twenty-four hours;

(2) If the deficiency does not affect the health, safety, or welfare of an individual with mental retardation or other developmental disability, receive technical assistance from the department or submit a plan of correction to the department that is acceptable to the department within sixty days and correct the deficiency within the time required by the plan of correction.

Sec. 5126.13. (A) A county board of developmental disabilities may enter into an agreement with one or more other county boards of developmental disabilities to establish a regional council in accordance with Chapter 167. of the Revised Code. The agreement shall specify the duties and functions to be performed by the council, which may include any duty or function a county board is required or authorized to perform under this chapter. ~~If directed to do so by a resolution adopted by a county board that is a member of a regional council, the department of developmental disabilities shall make any distributions of money for that county for the duties or functions performed by the council pursuant to its agreement that are otherwise required to be made to the county board under this chapter to the fiscal officer of the council designated under section 167.04 of the Revised Code.~~

A county board may also enter into an agreement with one or more school districts or other political subdivisions to establish a regional council in accordance with Chapter 167. of the Revised Code.

(B) On or before the thirtieth day of March, the fiscal officer of a regional council described in this section shall report to the department of

developmental disabilities, in the format specified by the department, all income and operating expenditures of the council for the immediately preceding calendar year.

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

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

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

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

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

(2) Assess individual needs for services;

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

included in the plans are funded through medicaid;

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

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

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

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

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

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

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

Sec. 5126.20. As used in this section and sections 5126.21 to ~~5126.29~~ 5126.25 of the Revised Code:

(A) "Service employee" means a person employed by a county board of developmental disabilities in a position which may require ~~evidence of~~ registration under section 5126.25 of the Revised Code but for which a bachelor's degree from an accredited college or university is not required, and includes employees in the positions listed in division (C) of section 5126.22 of the Revised Code.

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

(a) A person employed by a board in a position for which either a bachelor's degree from an accredited college or university or a license or certificate issued under Title XLVII of the Revised Code is a minimum requirement;

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

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

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

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

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

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

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

~~(H)~~(G) "Investigative agent" means an individual who conducts investigations under section 5126.313 of the Revised Code.

Sec. 5126.21. As used in this section, "management employee" does not include the superintendent of a county board of developmental disabilities.

(A)(1) Each management employee of a county board of developmental disabilities shall hold a limited contract for a period of not less than one year and not more than five years, except that a management employee hired after the beginning of a program year may be employed under a limited contract expiring at the end of the program year. The board shall approve all contracts of employment for management employees that are for a term of more than one year. A management employee shall receive notice of the superintendent's intention not to rehire the employee at least ninety days prior to the expiration of the contract. ~~If the superintendent fails to notify a~~

~~management employee, the employee shall be reemployed under a limited contract of one year at the same salary plus any authorized salary increases.~~

(2) During the term of a contract a management employee's salary may be increased, but shall not be reduced unless the reduction is part of a uniform plan affecting all employees of the board.

(B) All management employees may be removed, suspended, or demoted for cause pursuant to section 5126.23 of the Revised Code.

(C) All management employees shall receive employee benefits ~~that shall include sick leave, vacation leave, holiday pay, and such other benefits as are~~ established by the board. Sections 124.38 and 325.19 of the Revised Code do not apply to management employees.

(D) The superintendent of a county board of developmental disabilities shall notify all management employees of the board of their salary no later than thirty days before the first day of the new contract year.

~~(E) All management employees of a county board of developmental disabilities who were given continuing contract status prior to the effective date of this section have continuing contract status so long as they maintain employment with the board.~~

~~(F) All management employees who were probationary employees on the effective date of this section shall, upon completion of their probationary period, be granted continuing contract status if retained in employment.~~

~~(G) Each county board of developmental disabilities shall establish a lay-off policy to be followed if it determines a reduction in the number of management employees is necessary.~~

Sec. 5126.22. (A) Employees who hold the following positions in a county board of developmental disabilities are management employees:

- assistant superintendent
- director of business
- director of personnel
- adult services director
- workshop director
- habilitation manager
- director of residential services
- principal (director of children services)
- program or service supervisor
- plant manager
- production manager
- service and support administration supervisor
- investigative agent
- confidential employees as defined in section 4117.01 of the Revised

Code

positions designated by the director of developmental disabilities as having managerial or supervisory responsibilities and duties

positions designated by the county board in accordance with division (D) of this section.

(B) Employees who hold the following positions in a board are professional employees:

personnel licensed or certified pursuant to Chapter 3319. of the Revised Code

early intervention specialist

physical development specialist

habilitation specialist

work adjustment specialist

placement specialist

vocational evaluator

psychologist

occupational therapist

speech and language pathologist

recreation specialist

behavior management specialist

physical therapist

supportive home services specialist

licensed practical nurse or registered nurse

rehabilitation counselor

doctor of medicine and surgery or of osteopathic medicine and surgery

dentist

service and support administrator

conditional status service and support administrator

social worker

any position that is not a management position and for which the standards for certification established by the director of developmental disabilities under section 5126.25 of the Revised Code require a bachelor's or higher degree

professional positions designated by the director

professional positions designated by the county board in accordance with division (D) of this section.

(C) Employees who hold positions in a board that are neither management positions nor professional positions are service employees. Service employee positions include:

workshop specialist

workshop specialist assistant
contract procurement specialist
community employment specialist
any assistant to a professional employee certified to provide, or supervise the provision of, adult services or service and support administration

service positions designated by the director

service positions designated by a county board in accordance with division (D) of this section.

(D) A county board may designate a position only if the position does not include directly providing, or supervising employees who directly provide, service or instruction to individuals with mental retardation or developmental disabilities.

(E) If a county board desires to have a position established that is not specifically listed in this section that includes directly providing, or supervising employees who directly provide, services or instruction to individuals with mental retardation or developmental disabilities, the board shall submit to the director a written description of the position and request that the director designate the position as a management, professional, or service position under this section. The director shall consider each request submitted under this division and respond within thirty days. If the director approves the request, the director shall designate the position as a management, professional, or service position.

(F) A county board shall not terminate its employment of any management, professional, or service employee solely because a position is added to or eliminated from those positions listed in this section or because a position is designated or no longer designated by the director or a county board.

Sec. 5126.25. (A) The director of developmental disabilities shall adopt rules ~~in accordance with Chapter 119. of the Revised Code~~ under division (C) of this section establishing uniform standards and procedures for the certification and registration of persons for employment by county boards of developmental disabilities as superintendents, management employees, and professional employees and uniform standards and procedures for the registration of persons for employment by county boards as registered service employees. As part of the rules, the director may establish continuing education and professional training requirements for renewal of certificates and evidence of registration and shall establish such requirements for renewal of an investigative agent certificate. In the rules, the director shall establish certification standards for employment in the

~~position of investigative agent that require an individual to have or obtain no less than an associate degree from an accredited college or university or have or obtain comparable experience or training. The director shall not adopt rules that require any service employee to have or obtain a bachelor's or higher degree.~~

~~The director shall adopt the rules in a manner that provides for the issuance of certificates and evidence of registration according to categories, levels, and grades. The rules shall describe each category, level, and grade.~~

~~The rules adopted under this division shall apply to persons employed or seeking employment in a position that includes directly providing, or supervising persons who directly provide, services or instruction to or on behalf of individuals with mental retardation or developmental disabilities, except that the rules shall not apply to persons who hold a valid license issued under Chapter 3319. of the Revised Code and perform no duties other than teaching or supervision of a teaching program or persons who hold a valid license or certificate issued under Title XLVII of the Revised Code and perform only those duties governed by the license or certificate. The rules shall specify the positions that require certification or registration. The rules shall specify that the position of investigative agent requires certification, other than the persons described in division (I) of this section, who are seeking employment with or are employed by either of the following:~~

~~(1) A county board of developmental disabilities;~~

~~(2) An entity that contracts with a county board to operate programs and services for individuals with mental retardation or developmental disabilities.~~

~~(B) No person shall be employed in a position for which certification or registration is required pursuant to the rules adopted under this section without the certification or registration that is required for that position. The person shall not be employed or shall not continue to be employed if the required certification or registration is denied, revoked, or not renewed.~~

~~(B)(C) The director shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for approval of courses of study to prepare persons to meet certification requirements. The director shall approve courses of study meeting the standards and provide for the inspection of the courses to ensure the maintenance of satisfactory training procedures. The director shall approve courses of study only if given by a state university or college as defined in section 3345.32 of the Revised Code, a state university or college of another state, or an institution that has received a certificate of authorization to confer degrees from the board of~~

regents pursuant to Chapter 1713. of the Revised Code or from a comparable agency of another state as the director considers necessary to implement and administer this section, including rules establishing all of the following:

(1) Positions of employment that are subject to this section and, for each position, whether a person must receive certification or receive registration to be employed in that position;

(2) Requirements that must be met to receive the certification or registration required to be employed in a particular position, including standards regarding education, specialized training, and experience, taking into account the needs of individuals with mental retardation or developmental disabilities and the specialized techniques needed to serve them, except that the rules shall not require a person designated as a service employee under section 5126.22 of the Revised Code to have or obtain a bachelor's or higher degree;

(3) Procedures to be followed in applying for initial certification or registration and for renewing the certification or registration.

(4) Requirements that must be met for renewal of certification or registration, which may include continuing education and professional training requirements;

(5) Subject to section 5126.23 of the Revised Code, grounds for which certification or registration may be denied, suspended, or revoked and procedures for appealing the denial, suspension, or revocation.

~~(C)(D)~~ Each applicant for a certificate for employment or evidence of person seeking certification or registration for employment by a county board shall apply to the department of developmental disabilities on forms that the director of the department shall prescribe and provide. The application shall be accompanied by the application fee in the manner established in rules adopted under this section.

~~(D)~~ The director shall issue a certificate for employment to each applicant who meets the standards for certification established under this section and shall issue evidence of registration for employment to each applicant who meets the standards for registration established under this section. Each certificate or evidence of registration shall state the category, level, and grade for which it is issued.

The director shall issue, renew, deny, suspend, or revoke certificates and evidence of registration in accordance with rules adopted under this section. The director shall deny, suspend, or revoke a certificate or evidence of registration if the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the applicant for or

~~holder of the certificate or evidence of registration is guilty of intemperate, immoral, or other conduct unbecoming to the applicant's or holder's position, or is guilty of incompetence or negligence within the scope of the applicant's or holder's duties. The director shall deny or revoke a certificate or evidence of registration if the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the applicant for or holder of the certificate or evidence of registration has been convicted of or pleaded guilty to any of the offenses described in division (E) of section 5126.28 of the Revised Code, unless the individual meets standards for rehabilitation that the director establishes in the rules adopted under that section. Evidence supporting such allegations shall be presented to the director in writing and the director shall provide prompt notice of the allegations to the person who is the subject of the allegations. A denial, suspension, or revocation may be appealed in accordance with procedures the director shall establish in the rules adopted under this section.~~

(E)(1) Except as provided in division (E)(2) of this section, the superintendent of each county board is responsible for taking all actions regarding certification and registration of employees, other than the position of superintendent or investigative agent. For the position of superintendent or investigative agent, the director of developmental disabilities is responsible for taking all such actions.

Actions that may be taken by the superintendent or director include issuing, renewing, denying, suspending, and revoking certification and registration. All actions shall be taken in accordance with the rules adopted under this section.

The superintendent may charge a fee to persons applying for certification or registration. The superintendent shall establish the amount of the fee according to the costs the county board incurs in administering its program for certification and registration of employees.

A person subject to the denial, suspension, or revocation of certification or registration may appeal the decision. The appeal shall be made in accordance with the rules adopted under this section.

(2) Pursuant to division (C) of section 5126.05 of the Revised Code, the superintendent may enter into a contract with any other entity under which the entity is given authority to carry out all or part of the superintendent's responsibilities under division (E)(1) of this section.

(F) A person holding a with valid certificate certification or registration under this section on the effective date of any rules adopted under this section that increase the standards applicable to the certification standards or registration shall have such period as the rules prescribe, but not less than

one year after the effective date of the rules, to meet the new certification or registration standards.

~~A person who is registered under this section on the effective date of any rule that changes the standards adopted under this section shall have such period as the rules prescribe, but not less than one year, to meet the new registration standards.~~

~~(2) If an applicant for a certificate for employment has not completed the courses of instruction necessary to meet the department's standards for certification, the department shall inform the applicant of the courses the applicant must successfully complete to meet the standards and shall specify the time within which the applicant must complete the courses. The department shall grant the applicant at least one year to complete the courses and shall not require the applicant to complete more than four courses in any one year. The applicant is not subject to any changes regarding the courses required for certification that are made after the department informs the applicant of the courses the applicant must complete, unless the applicant does not successfully complete the courses within the time specified by the department.~~

~~(F)(G)~~ A person who holds a certificate with valid certification or evidence of registration, other than one designated as temporary, is qualified to be employed according to that certificate certification or evidence of registration by any county board or entity contracting with a county board.

~~(G)(H)~~ The director shall monitor county boards to ensure that their employees ~~who must be certified or registered~~ are appropriately certified or registered and and the employees of their contracting entities have the applicable certification or registration required under this section and that the employees are performing only those functions they are authorized to perform under their certificate the certification or evidence of registration.

~~(H)~~ A county board superintendent or the superintendent's designee may certify to the director that county board employees who are required to meet continuing education or professional training requirements as a condition of renewal of certificates or evidence of registration have met the requirements. The superintendent of each county board or the superintendent's designee shall maintain in appropriate personnel files evidence acceptable to the director that the employees have met the requirements ~~and permit. On request, representatives of the department of developmental disabilities shall be given access to the evidence on request.~~

~~(I)~~ All fees collected pursuant to this section shall be deposited in the state treasury to the credit of the program fee fund created under section 5123.033 of the Revised Code.

~~(J) Employees of entities that contract with county boards of developmental disabilities to operate programs and services for individuals with mental retardation and developmental disabilities are subject to the certification and registration requirements established under section 5123.082 of the Revised Code. The certification and registration requirements of this section and the rules adopted under it do not apply to either of the following:~~

~~(1) A person who holds a valid license issued or certificate issued under Chapter 3319. of the Revised Code and performs no duties other than teaching or supervision of a teaching program;~~

~~(2) A person who holds a valid license or certificate issued under Title XLVII of the Revised Code and performs only those duties governed by the license or certificate.~~

Sec. 5126.251. On receipt of a notice pursuant to section 3123.43 of the Revised Code, the director of developmental disabilities or the superintendent of a county board of developmental disabilities shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a certificate a person's certification or evidence of registration issued pursuant to this chapter under section 5126.25 of the Revised Code.

Sec. 5126.51. As used in sections 5126.51 to 5126.62 of the Revised Code:

(A) "Develop" or "development," in contexts not referring to developmental disabilities, means construction or rehabilitation.

(B) "Eligible lending institution" means a financial institution that meets all of the following requirements:

- (1) Is eligible to make commercial loans;
- (2) Has an office located within the territorial limits of the county;
- (3) Is an institution into which the county's investing authority may deposit the public moneys of the county;
- (4) Holds itself out as participating in the residential facility linked deposit program.

(C) "Eligible organization" means ~~either of the following:~~

~~(1) A nonprofit corporation that has as its primary activity the development or operation of a residential facility;~~

~~(2) A nonprofit corporation certified under section 5123.192 of the Revised Code.~~

(D) "Investing authority" has the same meaning as in section 135.31 of the Revised Code.

(E) "Residential facility" has the same meaning as in section 5123.19 of

~~the Revised Code and also includes a residence where a nonprofit corporation certified under section 5123.192 of the Revised Code provides or proposes to provide supported living for individuals with mental retardation or developmental disabilities.~~

(F) "Residential facility linked deposit program" means the linked deposit program provided for in sections 5126.51 to 5126.62 of the Revised Code. A "residential facility linked deposit" is a deposit of public moneys of the county under, and for the purposes of, the residential facility linked deposit program. A "residential facility linked deposit loan" is a loan under, and for the purposes of, the residential facility linked deposit program.

Sec. 5139.41. The appropriation made to the department of youth services for care and custody of felony delinquents shall be expended in accordance with the following procedure that the department shall use for each year of a biennium. The procedure shall be consistent with sections 5139.41 to 5139.43 of the Revised Code and shall be developed in accordance with the following guidelines:

(A) The line item appropriation for the care and custody of felony delinquents shall provide funding for operational costs for the following:

(1) Institutions and the diagnosis, care, or treatment of felony delinquents at facilities pursuant to contracts entered into under section 5139.08 of the Revised Code;

(2) Community corrections facilities constructed, reconstructed, improved, or financed as described in section 5139.36 of the Revised Code for the purpose of providing alternative placement and services for felony delinquents who have been diverted from care and custody in institutions;

(3) County juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation services and programs that are provided for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children;

(4) Administrative expenses the department incurs in connection with the felony delinquent care and custody programs described in section 5139.43 of the Revised Code.

(B) From the appropriated line item for the care and custody of felony delinquents, the department, with the advice of the RECLAIM advisory committee established under section 5139.44 of the Revised Code, shall allocate annual operational funds for county juvenile programs, institutional care and custody, community corrections facilities care and custody, and administrative expenses incurred by the department associated with felony delinquent care and custody programs. The department, with the advice of

the RECLAIM advisory committee, shall adjust these allocations, when modifications to this line item are made by legislative or executive action.

(C) The department shall divide county juvenile program allocations among county juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation that are provided for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children. The department shall base funding on the county's previous year's ratio of the department's institutional and community correctional facilities commitments to that county's ~~four-year~~ average of felony adjudications, as specified in the following formula:

(1) The department shall give to each county a proportional allocation of commitment credits. The proportional allocation of commitment credits shall be calculated by the following procedures:

(a) The department shall determine for each county and for the state a ~~four-year~~ an average of felony adjudications. Beginning July 1, 2012, the average shall include felony adjudications for fiscal year 2007 and for each subsequent fiscal year through fiscal year 2016. Beginning July 1, 2017, the most recent felony adjudication data shall be included and the oldest fiscal year data shall be removed so that a ten-year average of felony adjudication data will be maintained.

(b) The department shall determine for each county and for the state the number of charged bed days, for both the department and community correctional facilities, from the previous year.

(c) The department shall divide the statewide total number of charged bed days by the statewide total number of felony adjudications, which quotient shall then be multiplied by a factor determined by the department.

(d) The department shall calculate the county's allocation of credits by multiplying the number of adjudications for each court by the result determined pursuant to division (C)(1)(c) of this section.

(2) The department shall subtract from the allocation determined pursuant to division (C)(1) of this section a credit for every chargeable bed day a youth stays in a department institution and two-thirds of credit for every chargeable bed day a youth stays in a community correctional facility, except for public safety beds. At the end of the year, the department shall divide the amount of remaining credits of that county's allocation by the total number of remaining credits to all counties, to determine the county's percentage, which shall then be applied to the total county allocation to determine the county's payment for the fiscal year.

(3) The department shall pay counties three times during the fiscal year

to allow for credit reporting and audit adjustments, and modifications to the appropriated line item for the care and custody of felony delinquents, as described in this section. The department shall pay fifty per cent of the payment by the fifteenth of July of each fiscal year, twenty-five per cent by the fifteenth of January of that fiscal year, and twenty-five per cent of the payment by the fifteenth of June of that fiscal year.

~~(D) In fiscal year 2004, the payment of county juvenile programs shall be based on the following procedure:~~

~~(1) The department shall divide the funding earned by each court in fiscal year 2003 by the aggregate funding of all courts, resulting in a percentage.~~

~~(2) The department shall apply the percentage determined under division (D)(1) of this section to the total county juvenile program allocation for fiscal year 2004 to determine each court's total payment.~~

~~(3) The department shall make payments in accordance with the schedule established in division (C)(3) of this section.~~

Sec. 5139.43. (A) The department of youth services shall operate a felony delinquent care and custody program that shall be operated in accordance with the formula developed pursuant to section 5139.41 of the Revised Code, subject to the conditions specified in this section.

(B)(1) Each juvenile court shall use the moneys disbursed to it by the department of youth services pursuant to division (B) of section 5139.41 of the Revised Code in accordance with the applicable provisions of division (B)(2) of this section and shall transmit the moneys to the county treasurer for deposit in accordance with this division. The county treasurer shall create in the county treasury a fund that shall be known as the felony delinquent care and custody fund and shall deposit in that fund the moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code. The county treasurer also shall deposit into that fund the state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code. The moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to this division in the felony delinquent care and custody fund shall not be commingled with any other county funds except state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code; shall not be used for any capital construction projects; upon an order of the juvenile court and subject to appropriation by the board of county commissioners, shall be disbursed to the juvenile court for use in accordance with the applicable provisions of division (B)(2) of this section; shall not revert to the county general fund at the end of any fiscal year; and shall carry over in the

felony delinquent care and custody fund from the end of any fiscal year to the next fiscal year. The maximum balance carry-over at the end of each respective fiscal year in the felony delinquent care and custody fund in any county from funds allocated to the county pursuant to sections 5139.34 and 5139.41 of the Revised Code in the previous fiscal year shall not exceed an amount to be calculated as provided in the formula set forth in this division, unless that county has applied for and been granted an exemption by the director of youth services. Beginning June 30, 2008, the maximum balance carry-over at the end of each respective fiscal year shall be determined by the following formula: for fiscal year 2008, the maximum balance carry-over shall be one hundred per cent of the allocation for fiscal year 2007, to be applied in determining the fiscal year 2009 allocation; for fiscal year 2009, it shall be fifty per cent of the allocation for fiscal year 2008, to be applied in determining the fiscal year 2010 allocation; for fiscal year 2010, it shall be twenty-five per cent of the allocation for fiscal year 2009, to be applied in determining the fiscal year 2011 allocation; and for each fiscal year subsequent to fiscal year 2010, it shall be twenty-five per cent of the allocation for the immediately preceding fiscal year, to be applied in determining the allocation for the next immediate fiscal year. The department shall withhold from future payments to a county an amount equal to any moneys in the felony delinquent care and custody fund of the county that exceed the total maximum balance carry-over that applies for that county for the fiscal year in which the payments are being made and shall reallocate the withheld amount. The department shall adopt rules for the withholding and reallocation of moneys disbursed under sections 5139.34 and 5139.41 of the Revised Code and for the criteria and process for a county to obtain an exemption from the withholding requirement. The moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to this division in the felony delinquent care and custody fund shall be in addition to, and shall not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, or juvenile traffic offenders.

(2)(a) A county and the juvenile court that serves the county shall use the moneys in its felony delinquent care and custody fund in accordance with rules that the department of youth services adopts pursuant to division (D) of section 5139.04 of the Revised Code and as follows:

(i) The moneys in the fund that represent state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code shall be used to

aid in the support of prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children or delinquent children or for children who are at risk of becoming unruly children or delinquent children. The county shall not use for capital improvements more than fifteen per cent of the moneys in the fund that represent the applicable annual grant of those state subsidy funds.

(ii) The moneys in the fund that were disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to division (B)(1) of this section in the fund shall be used to provide programs and services for the training, treatment, or rehabilitation of felony delinquents that are alternatives to their commitment to the department, including, but not limited to, community residential programs, day treatment centers, services within the home, and electronic monitoring, and shall be used in connection with training, treatment, rehabilitation, early intervention, or other programs or services for any delinquent child, unruly child, or juvenile traffic offender who is under the jurisdiction of the juvenile court.

The fund also may be used for prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children, delinquent children, or juvenile traffic offenders or for children who are at risk of becoming unruly children, delinquent children, or juvenile traffic offenders. Consistent with division (B)(1) of this section, a county and the juvenile court of a county shall not use any of those moneys for capital construction projects.

(iii) Moneys in the fund shall not be used to support programs or services that do not comply with federal juvenile justice and delinquency prevention core requirements or to support programs or services that research has shown to be ineffective. ~~Moneys in the fund shall be prioritized to research-supported~~ Research-supported, outcome-based programs and services, ~~to the extent they are available, shall be encouraged.~~

(iv) The county and the juvenile court that serves the county may use moneys in the fund to provide out-of-home placement of children only in detention centers, community rehabilitation centers, or community corrections facilities approved by the department pursuant to standards adopted by the department, licensed by an authorized state agency, or accredited by the American correctional association or another national organization recognized by the department.

(b) Each juvenile court shall comply with division (B)(3)(d) of this section as implemented by the department. If a juvenile court fails to comply with division (B)(3)(d) of this section, the department shall not be required

to make any disbursements in accordance with division (C) ~~or (D)~~ of section 5139.41 or division (C)(2) of section 5139.34 of the Revised Code.

(3) In accordance with rules adopted by the department pursuant to division (D) of section 5139.04 of the Revised Code, each juvenile court and the county served by that juvenile court shall do all of the following that apply:

(a) The juvenile court shall prepare an annual grant agreement and application for funding that satisfies the requirements of this section and section 5139.34 of the Revised Code and that pertains to the use, upon an order of the juvenile court and subject to appropriation by the board of county commissioners, of the moneys in its felony delinquent care and custody fund for specified programs, care, and services as described in division (B)(2)(a) of this section, shall submit that agreement and application to the county family and children first council, the regional family and children first council, or the local intersystem services to children cluster as described in sections 121.37 and 121.38 of the Revised Code, whichever is applicable, and shall file that agreement and application with the department for its approval. The annual grant agreement and application for funding shall include a method of ensuring equal access for minority youth to the programs, care, and services specified in it.

The department may approve an annual grant agreement and application for funding only if the juvenile court involved has complied with the preparation, submission, and filing requirements described in division (B)(3)(a) of this section. If the juvenile court complies with those requirements and the department approves that agreement and application, the juvenile court and the county served by the juvenile court may expend the state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code only in accordance with division (B)(2)(a) of this section, the rules pertaining to state subsidy funds that the department adopts pursuant to division (D) of section 5139.04 of the Revised Code, and the approved agreement and application.

(b) By the thirty-first day of August of each year, the juvenile court shall file with the department a report that contains all of the statistical and other information for each month of the prior state fiscal year. If the juvenile court fails to file the report required by division (B)(3)(b) of this section by the thirty-first day of August of any year, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised Code the applicable allocation until the juvenile court fully complies with division

(B)(3)(b) of this section.

(c) If the department requires the juvenile court to prepare monthly statistical reports and to submit the reports on forms provided by the department, the juvenile court shall file those reports with the department on the forms so provided. If the juvenile court fails to prepare and submit those monthly statistical reports within the department's timelines, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised Code the applicable allocation until the juvenile court fully complies with division (B)(3)(c) of this section. If the juvenile court fails to prepare and submit those monthly statistical reports within one hundred eighty days of the date the department establishes for their submission, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised Code the applicable allocation, and the state subsidy funds and the remainder of the applicable allocation shall revert to the department. If a juvenile court states in a monthly statistical report that the juvenile court adjudicated within a state fiscal year five hundred or more children to be delinquent children for committing acts that would be felonies if committed by adults and if the department determines that the data in the report may be inaccurate, the juvenile court shall have an independent auditor or other qualified entity certify the accuracy of the data on a date determined by the department.

(d) If the department requires the juvenile court and the county to participate in a fiscal monitoring program or another monitoring program that is conducted by the department to ensure compliance by the juvenile court and the county with division (B) of this section, the juvenile court and the county shall participate in the program and fully comply with any guidelines for the performance of audits adopted by the department pursuant to that program and all requests made by the department pursuant to that program for information necessary to reconcile fiscal accounting. If an audit that is performed pursuant to a fiscal monitoring program or another monitoring program described in this division determines that the juvenile court or the county used moneys in the county's felony delinquent care and custody fund for expenses that are not authorized under division (B) of this section, within forty-five days after the department notifies the county of the unauthorized expenditures, the county either shall repay the amount of the unauthorized expenditures from the county general revenue fund to the

state's general revenue fund or shall file a written appeal with the department. If an appeal is timely filed, the director of the department shall render a decision on the appeal and shall notify the appellant county or its juvenile court of that decision within forty-five days after the date that the appeal is filed. If the director denies an appeal, the county's fiscal agent shall repay the amount of the unauthorized expenditures from the county general revenue fund to the state's general revenue fund within thirty days after receiving the director's notification of the appeal decision.

(C) The determination of which county a reduction of the care and custody allocation will be charged against for a particular youth shall be made as outlined below for all youths who do not qualify as public safety beds. The determination of which county a reduction of the care and custody allocation will be charged against shall be made as follows until each youth is released:

(1) In the event of a commitment, the reduction shall be charged against the committing county.

(2) In the event of a recommitment, the reduction shall be charged against the original committing county until the expiration of the minimum period of institutionalization under the original order of commitment or until the date on which the youth is admitted to the department of youth services pursuant to the order of recommitment, whichever is later. Reductions of the allocation shall be charged against the county that recommitted the youth after the minimum expiration date of the original commitment.

(3) In the event of a revocation of a release on parole, the reduction shall be charged against the county that revokes the youth's parole.

(D) A juvenile court is not precluded by its allocation amount for the care and custody of felony delinquents from committing a felony delinquent to the department of youth services for care and custody in an institution or a community corrections facility when the juvenile court determines that the commitment is appropriate.

Sec. 5139.511. Before a youth is released from a secure facility under the control of the department of youth services, the department of youth services shall attempt to verify the youth's identification and social security number. If the department is able to verify the youth's identity with a verified birth certificate and social security number, the department shall issue an identification card that the youth may present to the registrar or deputy registrar of motor vehicles. If the department is not able to verify the youth's identity with both a verified birth certificate and social security number, the youth shall not receive an identification card under this section.

Sec. 5149.311. (A) The department of rehabilitation and correction shall

establish and administer the probation improvement grant and the probation incentive grant for ~~court of common pleas~~ probation departments that supervise ~~felony~~ offenders sentenced by courts of common pleas or municipal courts.

(B)(1) The probation improvement grant shall provide funding to court ~~of common pleas~~ probation departments to adopt policies and practices based on the latest research on how to reduce the number of ~~felony~~ offenders on probation supervision who violate the conditions of their supervision.

(2) The department shall adopt rules for the distribution of the probation improvement grant, including the formula for the allocation of the subsidy based on the number of ~~felony~~ offenders placed on probation annually in each jurisdiction.

(C)(1) The probation incentive grant shall provide a performance-based level of funding to court ~~of common pleas~~ probation departments that are successful in reducing the number of felony offenders on probation supervision whose terms of supervision are revoked.

(2) The department shall calculate annually any cost savings realized by the state from a reduction in the percentage of people who are incarcerated because their terms of supervised probation were revoked. The cost savings estimate shall be calculated for each county jurisdiction served by the probation department eligible for a grant under this section and be based on the difference from fiscal year 2010 and the fiscal year under examination.

(3) The department shall adopt rules that specify the subsidy amount to be appropriated to court ~~of common pleas~~ probation departments that successfully reduce the percentage of people on probation who are incarcerated because their terms of supervision are revoked.

(D) The following stipulations apply to both the probation improvement grant and the probation incentive grant:

(1) In order to be eligible for the probation improvement grant and the probation incentive grant, courts of common pleas must satisfy all requirements under sections 2301.27 and 2301.30 of the Revised Code ~~and, except. Except~~ for sentencing decisions made by a court when use of the risk assessment tool is discretionary, in order to be eligible for the probation improvement grant and the probation incentive grant, a court must utilize the single validated risk assessment tool selected by the department of rehabilitation and correction under section 5120.114 of the Revised Code.

(2) The department may deny a subsidy under this section to any applicant if the applicant fails to comply with the terms of any agreement entered into pursuant to any of the provisions of this section.

(3) The department shall evaluate or provide for the evaluation of the policies, practices, and programs the court ~~of common pleas~~ probation departments utilize with the programs of subsidies established under this section and establish means of measuring their effectiveness.

(4) The department shall specify the policies, practices, and programs for which court ~~of common pleas~~ probation departments may use the program subsidy and shall establish minimum standards of quality and efficiency that recipients of the subsidy must follow. The department shall give priority to supporting evidence-based policies and practices, as defined by the department.

Sec. 5155.14. At the request of the superintendent or administrator of the county home, the board of county commissioners or operator shall set apart from the county home fund, a reserve fund not to exceed ~~four hundred~~ five thousand dollars at any time, which, upon the order of the board or operator shall be paid to the superintendent or administrator and expended as needed for emergency supplies and expenses. The superintendent or administrator shall keep an accurate account of the reserve fund, in a book to be provided at the expense of the county for that purpose, and all expenditures from it shall be audited by the board or operator. The county home fund shall be reimbursed by the superintendent or administrator, in full, for any items expended by the superintendent or administrator from the reserve fund, which items are not allowed by the board or operator. When, and as often as such amount is entirely disbursed, on the order of the board or operator, the county auditor shall pay to the superintendent or administrator the amount so appropriated.

Sec. 5501.04. ~~The following divisions are hereby established in the department of transportation:~~

- ~~(A) The division of business services;~~
- ~~(B) The division of engineering policy;~~
- ~~(C) The division of finance;~~
- ~~(D) The division of human resources;~~
- ~~(E) The division of information technology;~~
- ~~(F) The division of multi-modal planning and programs;~~
- ~~(G) The division of project management;~~
- ~~(H) The division of equal opportunity.~~

The Pursuant to section 5501.02 of the Revised Code, the director of transportation shall distribute the duties, powers, and functions of the department among the divisions of the department.

Each division shall be headed by a deputy director, whose title shall be designated by the director, and shall include those other officers and

employees as may be necessary to carry out the work of the division. ~~The director shall appoint the~~ Each deputy director of each division, who shall be in the unclassified civil service of the state and shall serve at the pleasure of the director. ~~The director shall supervise the work of each division and~~ shall be responsible for the determination of general policies in the performance of the duties, powers, and functions of the department and of each division. The director shall have complete executive charge of the department, shall be responsible for the organization, direction, and supervision of the work of the department and the performance of the duties, powers, and functions assigned to each division, and may establish necessary administrative units therein. ~~The~~ Each deputy director of each division, with the approval of the director and subject to Chapter 124. of the Revised Code, shall appoint the necessary employees of the division and may remove such employees for cause.

~~The division of equal opportunity shall ensure that minority groups and all groups protected by state and federal civil rights laws are afforded equal opportunity to be recruited, trained, and work in the employment of or on projects of the department of transportation, and to participate in contracts awarded by the department. The director of transportation each year shall report to the governor and the general assembly on the division's activities and accomplishments.~~

Sec. 5501.07. In addition to those duties, powers, and functions the director of transportation assigns to it, the office of ~~public transportation of the division of multi-modal planning and programs~~ transit:

(A) May issue grants from any public transportation grant appropriation to county transit boards, regional transit authorities, regional transit commissions, counties, municipal corporations, and private nonprofit organizations that operate or will operate a public transportation system.

The director shall establish criteria for the distribution of such grants. These criteria may include and the director may consider each of the following:

- (1) The degree to which comprehensive regional transportation planning goals may be attained through a program for which a grant will be used;
- (2) The amount of local financial or other support of public transportation operations and facilities affected by the program;
- (3) The levels of existing service and fare;
- (4) The degree to which the proposed plan demonstrates approaches of potential value to other local transit boards, authorities, commissions, counties, municipal corporations, and private nonprofit organizations operating public transportation systems;

(5) The degree to which the grant applicant will use state and local funds to match a federal grant;

(6) Such other factors as the director determines.

Any criteria established by the director for the distribution of such grants shall be consistent with the requirements of the United States department of transportation, or any administration in the department, including, but not limited to, the federal transit administration. The director may designate in the criteria certain dates after which applications for specified portions of the appropriations made for this purpose will not be accepted.

(B) May issue grants from any elderly and handicapped transit fare assistance grant appropriation to county transit boards, regional transit authorities, regional transit commissions, counties, municipal corporations, and private nonprofit organizations that operate or will operate public transportation systems for the purpose of reducing the transit or paratransit fares of elderly or handicapped persons. The director shall establish criteria for the distribution of such grants.

(C) May administer provisions of federal public transportation acts or programs applicable within the state, pursuant to an agreement entered into by the director with an appropriate official of the federal agency responsible for implementation of the federal acts or programs. The federal acts or programs shall include, but are not limited to, programs authorized under the "Act of July 5, 1994," 108 Stat. 785, 49 U.S.C.A. 5301, as amended.

(D) Shall furnish, upon request and within the limits of appropriated funds, guidance in technical or policy matters to a county transit board, regional transit authority, regional transit commission, county, municipal corporation, or private nonprofit organization that operates or proposes to operate a public transportation system, and provide assistance and liaison in the preparation and submission of applications for federal and state funds;

(E) May apply for and accept grants or loans from any federal agency for the purpose of providing for the development or improvement of public transportation facilities or for the coordination of any activities related to the development or improvement of such facilities, and may provide any consideration from any public transportation grant appropriation and enter into any contracts that may be required in order to obtain such grants or loans from a federal agency.

Sec. 5502.01. (A) The department of public safety shall administer and enforce the laws relating to the registration, licensing, sale, and operation of motor vehicles and the laws pertaining to the licensing of drivers of motor vehicles.

The department shall compile, analyze, and publish statistics relative to motor vehicle accidents and the causes of them, prepare and conduct educational programs for the purpose of promoting safety in the operation of motor vehicles on the highways, and conduct research and studies for the purpose of promoting safety on the highways of this state.

(B) The department shall administer the laws and rules relative to trauma and emergency medical services specified in Chapter 4765. of the Revised Code.

(C) The department shall administer and enforce the laws contained in Chapters 4301. and 4303. of the Revised Code and enforce the rules and orders of the liquor control commission pertaining to retail liquor permit holders.

(D) The department shall administer the laws governing the state emergency management agency and shall enforce all additional duties and responsibilities as prescribed in the Revised Code related to emergency management services.

(E) The department shall conduct investigations pursuant to Chapter 5101. of the Revised Code in support of the duty of the department of job and family services to administer the supplemental nutrition assistance program throughout this state. The department of public safety shall conduct investigations necessary to protect the state's property rights and interests in the supplemental nutrition assistance program.

(F) The department of public safety shall enforce compliance with orders and rules of the public utilities commission and applicable laws in accordance with Chapters ~~4919.~~ 4905., 4921., and 4923. of the Revised Code regarding commercial motor vehicle transportation safety, economic, and hazardous materials requirements.

(G) Notwithstanding Chapter 4117. of the Revised Code, the department of public safety may establish requirements for its enforcement personnel, including its enforcement agents described in section 5502.14 of the Revised Code, that include standards of conduct, work rules and procedures, and criteria for eligibility as law enforcement personnel.

(H) The department shall administer, maintain, and operate the Ohio criminal justice network. The Ohio criminal justice network shall be a computer network that supports state and local criminal justice activities. The network shall be an electronic repository for various data, which may include arrest warrants, notices of persons wanted by law enforcement agencies, criminal records, prison inmate records, stolen vehicle records, vehicle operator's licenses, and vehicle registrations and titles.

(I) The department shall coordinate all homeland security activities of

all state agencies and shall be a liaison between state agencies and local entities for those activities and related purposes.

(J) Beginning July 1, 2004, the department shall administer and enforce the laws relative to private investigators and security service providers specified in Chapter 4749. of the Revised Code.

(K) The department shall administer criminal justice services in accordance with sections 5502.61 to 5502.66 of the Revised Code.

Sec. 5502.011. (A) As used in this section, "department of public safety" and "department" include all divisions within the department of public safety.

(B) The director of ~~the department~~ of public safety is the chief executive and administrative officer of the department. The director may establish policies governing the department, the performance of its employees and officers, the conduct of its business, and the custody, use, and preservation of departmental records, papers, books, documents, and property. The director also may authorize and approve investigations to be conducted by any of the department's divisions. Whenever the Revised Code imposes a duty upon or requires an action of the department, the director may perform the action or duty in the name of the department or direct such performance to be performed by the director's designee.

(C) In addition to any other duties enumerated in the Revised Code, the director or the director's designee shall do all of the following:

(1) Administer and direct the performance of the duties of the department;

(2) Pursuant to Chapter 119. of the Revised Code, approve, adopt, and prescribe such forms and rules as are necessary to carry out the duties of the department;

(3) On behalf of the department and in addition to any authority the Revised Code otherwise grants to the department, have the authority and responsibility for approving and entering into contracts, agreements, and other business arrangements;

(4) Make appointments for the department as needed to comply with requirements of the Revised Code;

(5) Approve employment actions of the department, including appointments, promotions, discipline, investigations, and terminations;

(6) Accept, hold, and use, for the benefit of the department, any gift, donation, bequest, or devise, and may agree to and perform all conditions of the gift, donation, bequest, or devise, that are not contrary to law;

(7) Apply for, allocate, disburse, and account for grants made available under federal law or from other federal, state, or private sources;

(8) Do all other acts necessary or desirable to carry out this chapter.

(D)(1) The director of public safety may assess a reasonable fee, plus the amount of any charge or fee passed on from a financial institution, on a drawer or indorser for each of the following:

(a) A check, draft, or money order that is returned or dishonored;

(b) An automatic bank transfer that is declined, due to insufficient funds or for any other reason;

(c) Any financial transaction device that is returned or dishonored for any reason.

(2) The director shall deposit any fee collected under this division in an appropriate fund as determined by the director based on the tax, fee, or fine being paid.

(3) As used in this division, "financial transaction device" has the same meaning as in section 113.40 of the Revised Code.

(E) The director shall establish a homeland security advisory council to advise the director on homeland security, including homeland security funding efforts. The advisory council shall include, but not be limited to, state and local government officials who have homeland security or emergency management responsibilities and who represent first responders. The director shall appoint the members of the council, who shall serve without compensation.

~~(F) The director of public safety shall adopt rules in accordance with Chapter 119. of the Revised Code as required by section 2909.28 of the Revised Code and division (A)(1) of section 2909.32 of the Revised Code. The director shall adopt rules as required by division (D) of section 2909.32 of the Revised Code, division (E) of section 2909.33 of the Revised Code, and division (D) of section 2909.34 of the Revised Code. The director may adopt rules pursuant to division (A)(2) of section 2909.32 of the Revised Code, division (A)(2) of section 2909.33 of the Revised Code, and division (A)(2) of section 2909.34 of the Revised Code.~~

~~Sec. 5503.21 5502.05.~~ There is hereby created in the department of public safety, ~~division of state highway patrol;~~ a driver's license examination section ~~to be administered by the superintendent of the state highway patrol.~~

~~The superintendent, with the approval of the~~ director of public safety, may appoint necessary driver's license examiners and clerical personnel necessary to carry out the duties assigned under this section. The examiners shall be citizens of the United States and residents of the state and shall have such additional qualifications as the ~~superintendent, with the approval of the~~ director, prescribes.

The salaries and classifications of examiners and personnel shall be

fixed in accordance with section 124.15 or 124.152 of the Revised Code.

Sec. ~~5503.22~~ 5502.06. Driver's license examiners assigned to the driver's license examination section shall conduct all examinations for driver's licenses as required by sections 4507.01 to 4507.36 of the Revised Code, subject to the ~~regulations~~ rules issued by the registrar of motor vehicles.

Sec. ~~5503.23~~ 5502.07. The ~~superintendent of the state highway patrol, with the approval of the~~ director of public safety, may conduct training schools for prospective driver's license examiners. ~~The superintendent and~~ may establish rules governing the qualifications for admission to such schools and provide for competitive examinations to determine the fitness of such students for prospective examiners, not inconsistent with the rules of the director of administrative services.

Sec. 5503.02. (A) The state highway patrol shall enforce the laws of the state relating to the titling, registration, and licensing of motor vehicles; enforce on all roads and highways, notwithstanding section 4513.39 of the Revised Code, the laws relating to the operation and use of vehicles on the highways; enforce and prevent the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed for the protection of the highway pavements and structures on the highways; investigate and enforce rules and laws of the public utilities commission governing the transportation of persons and property by motor carriers and report violations of such rules and laws to the commission; enforce against any motor ~~transportation company~~ carrier as defined in section 4921.02 ~~4923.01~~ of the Revised Code, ~~any contract carrier by motor vehicle as defined in section 4923.02 of the Revised Code, any private motor carrier as defined in section 4923.20 of the Revised Code, and any motor carrier as defined in section 4919.75 of the Revised Code~~ those rules and laws that, if violated, may result in a forfeiture as provided in section 4905.83, ~~4919.99, 4921.99, or 4923.99~~ of the Revised Code; investigate and report violations of all laws relating to the collection of excise taxes on motor vehicle fuels; and regulate the movement of traffic on the roads and highways of the state, notwithstanding section 4513.39 of the Revised Code.

The patrol, whenever possible, shall determine the identity of the persons who are causing or who are responsible for the breaking, damaging, or destruction of any improved surfaced roadway, structure, sign, marker, guardrail, or other appurtenance constructed or maintained by the department of transportation and shall arrest the persons who are responsible for the breaking, damaging, or destruction and bring them before the proper officials for prosecution.

State highway patrol troopers shall investigate and report all motor vehicle accidents on all roads and highways outside of municipal corporations. The superintendent of the patrol or any state highway patrol trooper may arrest, without a warrant, any person, who is the driver of or a passenger in any vehicle operated or standing on a state highway, whom the superintendent or trooper has reasonable cause to believe is guilty of a felony, under the same circumstances and with the same power that any peace officer may make such an arrest.

The superintendent or any state highway patrol trooper may enforce the criminal laws on all state properties and state institutions, owned or leased by the state, and, when so ordered by the governor in the event of riot, civil disorder, or insurrection, may, pursuant to sections 2935.03 to 2935.05 of the Revised Code, arrest offenders against the criminal laws wherever they may be found within the state if the violations occurred upon, or resulted in injury to person or property on, state properties or state institutions, or under the conditions described in division (B) of this section. This authority of the superintendent and any state highway patrol trooper to enforce the criminal laws shall extend to the Lake Erie Correctional Institution, to the same extent as if that prison were owned by this state.

(B) In the event of riot, civil disorder, or insurrection, or the reasonable threat of riot, civil disorder, or insurrection, and upon request, as provided in this section, of the sheriff of a county or the mayor or other chief executive of a municipal corporation, the governor may order the state highway patrol to enforce the criminal laws within the area threatened by riot, civil disorder, or insurrection, as designated by the governor, upon finding that law enforcement agencies within the counties involved will not be reasonably capable of controlling the riot, civil disorder, or insurrection and that additional assistance is necessary. In cities in which the sheriff is under contract to provide exclusive police services pursuant to section 311.29 of the Revised Code, in villages, and in the unincorporated areas of the county, the sheriff has exclusive authority to request the use of the patrol. In cities in which the sheriff does not exclusively provide police services, the mayor, or other chief executive performing the duties of mayor, has exclusive authority to request the use of the patrol.

The superintendent or any state highway patrol trooper may enforce the criminal laws within the area designated by the governor during the emergency arising out of the riot, civil disorder, or insurrection until released by the governor upon consultation with the requesting authority. State highway patrol troopers shall never be used as peace officers in connection with any strike or labor dispute.

When a request for the use of the patrol is made pursuant to this division, the requesting authority shall notify the law enforcement authorities in contiguous communities and the sheriff of each county within which the threatened area, or any part of the threatened area, lies of the request, but the failure to notify the authorities or a sheriff shall not affect the validity of the request.

(C) Any person who is arrested by the superintendent or a state highway patrol trooper shall be taken before any court or magistrate having jurisdiction of the offense with which the person is charged. Any person who is arrested or apprehended within the limits of a municipal corporation shall be brought before the municipal court or other tribunal of the municipal corporation.

(D)(1) State highway patrol troopers have the same right and power of search and seizure as other peace officers.

No state official shall command, order, or direct any state highway patrol trooper to perform any duty or service that is not authorized by law. The powers and duties conferred on the patrol are supplementary to, and in no way a limitation on, the powers and duties of sheriffs or other peace officers of the state.

(2)(a) A state highway patrol trooper, pursuant to the policy established by the superintendent of the state highway patrol under division (D)(2)(b) of this section, may render emergency assistance to any other peace officer who has arrest authority under section 2935.03 of the Revised Code, if both of the following apply:

(i) There is a threat of imminent physical danger to the peace officer, a threat of physical harm to another person, or any other serious emergency situation;

(ii) Either the peace officer requests emergency assistance, or it appears that the peace officer is unable to request emergency assistance and the circumstances observed by the state highway patrol trooper reasonably indicate that emergency assistance is appropriate, or the peace officer requests emergency assistance and in the request the peace officer specifies a particular location and the state highway patrol trooper arrives at that location prior to the time that the peace officer arrives at that location and the circumstances observed by the state highway patrol trooper reasonably indicate that emergency assistance is appropriate.

(b) The superintendent of the state highway patrol shall establish, within sixty days of August 8, 1991, a policy that sets forth the manner and procedures by which a state highway patrol trooper may render emergency assistance to any other peace officer under division (D)(2)(a) of this section.

The policy shall include a provision that a state highway patrol trooper never be used as a peace officer in connection with any strike or labor dispute.

(3)(a) A state highway patrol trooper who renders emergency assistance to any other peace officer under the policy established by the superintendent pursuant to division (D)(2)(b) of this section shall be considered to be performing regular employment for the purposes of compensation, pension, indemnity fund rights, workers' compensation, and other rights or benefits to which the trooper may be entitled as incident to regular employment.

(b) A state highway patrol trooper who renders emergency assistance to any other peace officer under the policy established by the superintendent pursuant to division (D)(2)(b) of this section retains personal immunity from liability as specified in section 9.86 of the Revised Code.

(c) A state highway patrol trooper who renders emergency assistance under the policy established by the superintendent pursuant to division (D)(2)(b) of this section has the same authority as the peace officer for or with whom the state highway patrol trooper is providing emergency assistance.

(E)(1) Subject to the availability of funds specifically appropriated by the general assembly for security detail purposes, the state highway patrol shall provide security as follows:

(a) For the governor;

(b) At the direction of the governor, for other officials of the state government of this state; officials of the state governments of other states who are visiting this state; officials of the United States government who are visiting this state; officials of the governments of foreign countries or their political subdivisions who are visiting this state; or other officials or dignitaries who are visiting this state, including, but not limited to, members of trade missions;

(c) For the capitol square, as defined in section 105.41 of the Revised Code;

(d) For other state property.

(2) To carry out the security responsibilities of the patrol listed in division (E)(1) of this section, the superintendent may assign state highway patrol troopers to a separate unit that is responsible for security details. The number of troopers assigned to particular security details shall be determined by the superintendent.

(3) The superintendent and any state highway patrol trooper, when providing security pursuant to division (E)(1)(a) or (b) of this section, have the same arrest powers as other peace officers to apprehend offenders

against the criminal laws who endanger or threaten the security of any person being protected, no matter where the offense occurs.

The superintendent, any state highway patrol trooper, and any special police officer designated under section 5503.09 of the Revised Code, when providing security pursuant to division (E)(1)(c) of this section, shall enforce any rules governing capitol square adopted by the capitol square review and advisory board.

(F) The governor may order the state highway patrol to undertake major criminal investigations that involve state property interests. If an investigation undertaken pursuant to this division results in either the issuance of a no bill or the filing of an indictment, the superintendent shall file a complete and accurate report of the investigation with the president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives within fifteen days after the issuance of the no bill or the filing of an indictment. If the investigation does not have as its result any prosecutorial action, the superintendent shall, upon reporting this fact to the governor, file a complete and accurate report of the investigation with the president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives.

(G) The superintendent may purchase or lease real property and buildings needed by the patrol, negotiate the sale of real property owned by the patrol, rent or lease real property owned or leased by the patrol, and make or cause to be made repairs to all property owned or under the control of the patrol. Any instrument by which real property is acquired pursuant to this division shall identify the agency of the state that has the use and benefit of the real property as specified in section 5301.012 of the Revised Code.

Sections 123.01 and 125.02 of the Revised Code do not limit the powers granted to the superintendent by this division.

Sec. 5503.04. Forty-five per cent of the fines collected from or moneys arising from bail forfeited by persons apprehended or arrested by state highway patrol troopers shall be paid into the state treasury to be credited to the general revenue fund, five per cent shall be paid into the state treasury to be credited to the trauma and emergency medical services ~~grants~~ fund created by ~~division (E) of~~ section 4513.263 of the Revised Code, and fifty per cent shall be paid into the treasury of the municipal corporation where the case is prosecuted, if in a mayor's court. If the prosecution is in a trial court outside a municipal corporation, or outside the territorial jurisdiction of a municipal court, the fifty per cent of the fines and moneys that is not paid into the state treasury shall be paid into the treasury of the county

where the case is prosecuted. The fines and moneys paid into a county treasury and the fines and moneys paid into the treasury of a municipal corporation shall be deposited one-half to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles, and one-half to the general fund of such county or municipal corporation.

If the prosecution is in a municipal court, forty-five per cent of the fines and moneys shall be paid into the state treasury to be credited to the general revenue fund, five per cent shall be paid into the state treasury to be credited to the trauma and emergency medical services grants fund created by division (E) of section 4513.263 of the Revised Code, ten per cent shall be paid into the county treasury to be credited to the general fund of the county, and forty per cent shall be paid into the municipal treasury to be credited to the general fund of the municipal corporation. In the Auglaize county, Clermont county, Crawford county, Hocking county, Jackson county, Lawrence county, Madison county, Miami county, Ottawa county, Portage county, and Wayne county municipal courts, that portion of money otherwise paid into the municipal treasury shall be paid into the county treasury.

The trial court shall make remittance of the fines and moneys as prescribed in this section, and at the same time as the remittance is made of the state's portion to the state treasury, the trial court shall notify the superintendent of the state highway patrol of the case and the amount covered by the remittance.

This section does not apply to fines for violations of division (B) of section 4513.263 of the Revised Code, or for violations of any municipal ordinance that is substantively comparable to that division, all of which shall be delivered to the treasurer of state as provided in division (E) of section 4513.263 of the Revised Code.

Sec. 5503.34. There is hereby created in the department of public safety, division of state highway patrol, a motor carrier enforcement unit, to be administered by the superintendent of the state highway patrol. This unit shall be responsible for enforcement of commercial motor vehicle transportation safety, ~~economic~~, and hazardous materials requirements.

The superintendent, with the approval of the director of public safety, may appoint and maintain necessary staff to carry out the duties assigned under this section.

Employees of the motor carrier enforcement unit shall cooperate with the public utilities commission to enforce compliance with orders and rules of the commission, applicable laws under Chapters ~~4919~~ 4905, 4921., and

4923. of the Revised Code, and any other applicable laws or rules.

Uniformed employees of the motor carrier enforcement unit may stop commercial motor vehicles for the exclusive purpose of inspecting such vehicles to enforce compliance with orders and rules of the public utilities commission as required by division (F) of section 5502.01 of the Revised Code.

Sec. 5701.13. (A) As used in this section:

(1) "Nursing home" means a nursing home or a home for the aging, as those terms are defined in section 3721.01 of the Revised Code, that is issued a license pursuant to section 3721.02 of the Revised Code.

(2) "Residential care facility" means a residential care facility, as defined in section 3721.01 of the Revised Code, that is issued a license pursuant to section 3721.02 of the Revised Code.

(3) "~~Adult care~~ Residential facility" means ~~an adult care~~ a residential facility as defined in licensed under section ~~5119.70~~ 5119.22 of the Revised Code that ~~is issued a license pursuant to section 5119.73 of the Revised Code~~ provides accommodations, supervision, and personal care services for three to sixteen unrelated adults.

(B) As used in Title LVII of the Revised Code, and for the purpose of other sections of the Revised Code that refer specifically to Chapter 5701. or section 5701.13 of the Revised Code, a "home for the aged" means either of the following:

(1) A place of residence for aged and infirm persons that satisfies divisions (B)(1)(a) to (e) of this section:

(a) It is a nursing home, residential care facility, or ~~adult care~~ residential facility.

(b) It is owned by a corporation, unincorporated association, or trust of a charitable, religious, or fraternal nature, which is organized and operated not for profit, which is not formed for the pecuniary gain or profit of, and whose net earnings or any part of whose net earnings is not distributable to, its members, trustees, officers, or other private persons, and which is exempt from federal income taxation under section 501 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1.

(c) It is open to the public without regard to race, color, or national origin.

(d) It does not pay, directly or indirectly, compensation for services rendered, interest on debts incurred, or purchase price for land, building, equipment, supplies, or other goods or chattels, which compensation, interest, or purchase price is unreasonably high.

(e) It provides services for the life of each resident without regard to the

resident's ability to continue payment for the full cost of the services.

(2) A place of residence that satisfies divisions (B)(1)(b), (d), and (e) of this section; that satisfies the definition of "nursing home" or "residential care facility" under section 3721.01 of the Revised Code or the definition of "~~adult care~~ residential facility" under ~~section 5119.70 of the Revised Code~~ division (A)(3) of this section regardless of whether it is licensed as such a home or facility; and that is provided at no charge to individuals on account of their service without compensation to a charitable, religious, fraternal, or educational institution, which individuals are aged or infirm and are members of the corporation, association, or trust that owns the place of residence. For the purposes of division (B)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

Exemption from taxation shall be accorded, on proper application, only to those homes or parts of homes which meet the standards and provide the services specified in this section.

Nothing in this section shall be construed as preventing a home from requiring a resident with financial need to apply for any applicable financial assistance or requiring a home to retain a resident who willfully refuses to pay for services for which the resident has contracted even though the resident has sufficient resources to do so.

(C)(1) If a corporation, unincorporated association, or trust described in division (B)(1)(b) of this section is granted a certificate of need pursuant to section 3702.52 of the Revised Code to construct, add to, or otherwise modify a nursing home, or is given approval pursuant to section 3791.04 of the Revised Code to construct, add to, or otherwise modify a residential care facility or ~~adult care~~ residential facility and if the corporation, association, or trust submits an affidavit to the tax commissioner stating that, commencing on the date of licensure and continuing thereafter, the home or facility will be operated in accordance with the requirements of divisions (B)(1)(a) to (e) of this section, the corporation, association, or trust shall be considered to be operating a "home for the aged" within the meaning of division (B)(1) of this section, beginning on the first day of January of the year in which such certificate is granted or approval is given.

(2) If a corporation, association, or trust is considered to be operating a "home for the aged" pursuant to division (C)(1) of this section, the corporation, association, or trust shall notify the tax commissioner in writing upon the occurrence of any of the following events:

(a) The corporation, association, or trust no longer intends to complete

the construction of, addition to, or modification of the home or facility, to obtain the appropriate license for the home or facility, or to commence operation of the home or facility in accordance with the requirements of divisions (B)(1)(a) to (e) of this section;

(b) The certificate of approval referred to in division (C)(1) of this section expires, is revoked, or is otherwise terminated prior to the completion of the construction of, addition to, or modification of the home or facility;

(c) The license to operate the home or facility is not granted by the director of health within one year following completion of the construction of, addition to, or modification of the home or facility;

(d) The license to operate the home or facility is not granted by the director of health within four years following the date upon which the certificate or approval referred to in division (C)(1) of this section was granted or given;

(e) The home or facility is granted a license to operate as a nursing home, residential care facility, or ~~adult care~~ residential facility.

(3) Upon the occurrence of any of the events referred to in divisions (C)(2)(a), (b), (c), (d), and (e) of this section, the corporation, association, or trust shall no longer be considered to be operating a "home for the aged" pursuant to division (C)(1) of this section, except that the tax commissioner, for good cause shown and to the extent the commissioner considers appropriate, may extend the time period specified in division (C)(2)(c) or (d) of this section, or both. Nothing in division (C)(3) of this section shall be construed to prevent a nursing home, residential care facility, or ~~adult care~~ residential facility from qualifying as a "home for the aged" if, upon proper application made pursuant to division (B) of this section, it is found to meet the requirements of divisions (A) and (B) of this section.

Sec. 5703.05. All powers, duties, and functions of the department of taxation are vested in and shall be performed by the tax commissioner, which powers, duties, and functions shall include, but shall not be limited to, the following:

(A) Prescribing all blank forms which the department is authorized to prescribe, and to provide such forms and distribute the same as required by law and the rules of the department.

(B) Exercising the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes or assessments, including penalties and interest thereon, illegally or erroneously assessed or collected, or for any other reason overpaid, and in addition, the commissioner may on written application of any person, firm, or corporation

claiming to have overpaid to the treasurer of state at any time within five years prior to the making of such application any tax payable under any law which the department of taxation is required to administer which does not contain any provision for refund, or on the commissioner's own motion investigate the facts and make in triplicate a written statement of the commissioner's findings, and, if the commissioner finds that there has been an overpayment, issue in triplicate a certificate of abatement payable to the taxpayer, the taxpayer's assigns, or legal representative which shows the amount of the overpayment and the kind of tax overpaid. One copy of such statement shall be entered on the journal of the commissioner, one shall be certified to the attorney general, and one certified copy shall be delivered to the taxpayer. All copies of the certificate of abatement shall be transmitted to the attorney general, and if the attorney general finds it to be correct the attorney general shall so certify on each copy, and deliver one copy to the taxpayer, one copy to the commissioner, and the third copy to the treasurer of state. Except as provided in ~~sections~~ section 5725.08 and ~~5725.16~~ of the Revised Code, the taxpayer's copy of any certificates of abatement may be tendered by the payee or transferee thereof to the treasurer of state, or to the commissioner on behalf of the treasurer, as payment, to the extent of the amount thereof, of any tax payable to the treasurer of state.

(C) Exercising the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(D) Exercising the authority provided by law relative to the use of alternative tax bases by taxpayers in the making of personal property tax returns;

(E) Exercising the authority provided by law relative to authorizing the prepayment of taxes on retail sales of tangible personal property or on the storage, use, or consumption of personal property, and waiving the collection of such taxes from the consumers;

(F) Exercising the authority provided by law to revoke licenses;

(G) Maintaining a continuous study of the practical operation of all taxation and revenue laws of the state, the manner in which and extent to which such laws provide revenues for the support of the state and its political subdivisions, the probable effect upon such revenue of possible changes in existing laws, and the possible enactment of measures providing for other forms of taxation. For this purpose the commissioner may establish and maintain a division of research and statistics, and may appoint necessary employees who shall be in the unclassified civil service; the results of such study shall be available to the members of the general assembly and the public.

(H) Making all tax assessments, valuations, findings, determinations, computations, and orders the department of taxation is by law authorized and required to make and, pursuant to time limitations provided by law, on the commissioner's own motion, reviewing, redetermining, or correcting any tax assessments, valuations, findings, determinations, computations, or orders the commissioner has made, but the commissioner shall not review, redetermine, or correct any tax assessment, valuation, finding, determination, computation, or order which the commissioner has made as to which an appeal or application for rehearing, review, redetermination, or correction has been filed with the board of tax appeals, unless such appeal or application is withdrawn by the appellant or applicant or dismissed;

(I) Appointing not more than five deputy tax commissioners, who, under such regulations as the rules of the department of taxation prescribe, may act for the commissioner in the performance of such duties as the commissioner prescribes in the administration of the laws which the commissioner is authorized and required to administer, and who shall serve in the unclassified civil service at the pleasure of the commissioner, but if a person who holds a position in the classified service is appointed, it shall not affect the civil service status of such person. The commissioner may designate not more than two of the deputy commissioners to act as commissioner in case of the absence, disability, or recusal of the commissioner or vacancy in the office of commissioner. The commissioner may adopt rules relating to the order of precedence of such designated deputy commissioners and to their assumption and administration of the office of commissioner.

(J) Appointing and prescribing the duties of all other employees of the department of taxation necessary in the performance of the work of the department which the tax commissioner is by law authorized and required to perform, and creating such divisions or sections of employees as, in the commissioner's judgment, is proper;

(K) Organizing the work of the department, which the commissioner is by law authorized and required to perform, so that, in the commissioner's judgment, an efficient and economical administration of the laws will result;

(L) Maintaining a journal, which is open to public inspection, in which the tax commissioner shall keep a record of all final determinations of the commissioner;

(M) Adopting and promulgating, in the manner provided by section 5703.14 of the Revised Code, all rules of the department, including rules for the administration of sections 3517.16, 3517.17, and 5747.081 of the Revised Code;

(N) Destroying any or all returns or assessment certificates in the manner authorized by law;

(O) Adopting rules, in accordance with division (B) of section 325.31 of the Revised Code, governing the expenditure of moneys from the real estate assessment fund under that division.

Sec. 5705.08. On or before the first Monday in May of each year, the fiscal officer of each subdivision ~~that is not a~~, except school ~~district~~ districts and the city of Cincinnati, shall certify to its taxing authority the amount necessary to provide for the payment of final judgments against the subdivision, except in condemnation of property cases. The taxing authority shall place such certified amount in each budget and in the annual appropriation measure for the full amount certified.

On or before the first Monday in November of each year, the fiscal officer of the city of Cincinnati and of each school district shall certify to its ~~board of education~~ taxing authority the amount necessary to provide for the payment of final judgments against the ~~district~~ subdivision, except in condemnation of property cases. The ~~board of education~~ taxing authority shall place such certified amount in each budget and in the annual appropriation measure for the full amount certified.

Sec. 5705.19. This section does not apply to school districts or county school financing districts.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than ninety days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

(A) For current expenses of the subdivision, except that the total levy for current expenses of a detention facility district or district organized under section 2151.65 of the Revised Code shall not exceed two mills and that the total levy for current expenses of a combined district organized under sections 2151.65 and 2152.41 of the Revised Code shall not exceed four mills;

(B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;

(C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;

(D) For a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported;

(E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;

(F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

(G) For the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships;

(H) For parks and recreational purposes;

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.34 of the Revised Code, or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company;

(J) For the purpose of providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, or the payment of salaries of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.33 of the Revised Code, or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or the provision of ambulance or emergency medical services operated by a police department;

(K) For the maintenance and operation of a county home or detention facility;

(L) For community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code, except that the procedure for such levies shall be as provided in section 5705.222 of the Revised Code;

(M) For regional planning;

(N) For a county's share of the cost of maintaining and operating

schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(O) For providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;

(P) For maintaining and operating sewage disposal plants and facilities;

(Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or of making any payment to a board of county commissioners operating a transit system or a county transit board pursuant to section 306.06 of the Revised Code;

(R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(S) For the prevention, control, and abatement of air pollution;

(T) For maintaining and operating cemeteries;

(U) For providing ambulance service, emergency medical service, or both;

(V) For providing for the collection and disposal of garbage or refuse, including yard waste;

(W) For the payment of the police officer employers' contribution or the firefighter employers' contribution required under sections 742.33 and 742.34 of the Revised Code;

(X) For the construction and maintenance of a drainage improvement pursuant to section 6131.52 of the Revised Code;

(Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694, 307.85, 505.70, or 505.706 or division (EE) of section 717.01 of the Revised Code;

(Z) For the provision and maintenance of zoological park services and facilities as authorized under section 307.76 of the Revised Code;

(AA) For the maintenance and operation of a free public museum of art, science, or history;

(BB) For the establishment and operation of a 9-1-1 system, as defined in section 4931.40 of the Revised Code;

(CC) For the purpose of acquiring, rehabilitating, or developing rail property or rail service. As used in this division, "rail property" and "rail service" have the same meanings as in section 4981.01 of the Revised Code. This division applies only to a county, township, or municipal corporation.

(DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;

(EE) For the creation and operation of an office or joint office of economic development, for any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code, or to the extent that the expenses of a county land reutilization corporation organized under Chapter 1724. of the Revised Code are found by the board of county commissioners to constitute the promotion of economic development, for the payment of such operations and expenses;

(FF) For the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing, a township airport, landing field, or other air navigation facility pursuant to section 505.15 of the Revised Code;

(GG) For the payment of costs incurred by a township as a result of a contract made with a county pursuant to section 505.263 of the Revised Code in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement;

(HH) For a board of township trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has an ownership interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving "greenspace" in the resolution, notice of election, or ballot form. Except as otherwise provided in this division, land is not acquired for purposes of recreation, even if the land is used for recreational purposes, so long as no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. Except as otherwise provided in this division, land that previously has been acquired in a township for these greenspace purposes may subsequently be used for recreational purposes if the board of township trustees adopts a resolution approving that use and no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. The authorization to use greenspace land for recreational use does not apply to land located in a township that had a population, at the time it passed its first greenspace levy, of more than thirty-eight thousand within a county that had a population, at that time, of at least eight hundred sixty thousand.

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code;

(JJ) For any or all of the purposes set forth in divisions (I) and (J) of this section. This division applies only to a township.

(KK) For a countywide public safety communications system under section 307.63 of the Revised Code. This division applies only to counties.

(LL) For the support by a county of criminal justice services under section 307.45 of the Revised Code;

(MM) For the purpose of maintaining and operating a jail or other detention facility as defined in section 2921.01 of the Revised Code;

(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold agricultural fairs. This division applies only to a county.

(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements;

(PP) For both of the purposes set forth in divisions (G) and (OO) of this section.

(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township.

(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements.

(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This division applies only to a county.

(TT) For the maintenance and operation of a facility that is organized in whole or in part to promote the sciences and natural history under section 307.761 of the Revised Code.

(UU) For the creation and operation of a county land reutilization corporation and for any programs or activities of the corporation found by the board of directors of the corporation to be consistent with the purposes for which the corporation is organized;

(VV) For construction and maintenance of improvements and expenses of soil and water conservation district programs under Chapter 1515. of the Revised Code;

(WW) For the Ohio cooperative extension service fund created under section 3335.35 of the Revised Code for the purposes prescribed under

section 3335.36 of the Revised Code for the benefit of the citizens of a county. This division applies only to a county.

(XX) For a municipal corporation that withdraws or proposes by resolution to withdraw from a regional transit authority under section 306.55 of the Revised Code to provide transportation services for the movement of persons within, from, or to the municipal corporation.

The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of that increase in rate, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is for any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.65 and 2152.41 of the Revised Code;

(b) For providing a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or under both of those sections.

(3) When the additional rate is for either of the following, the increased rate may be for a continuing period of time:

(a) For the purposes set forth in division (I), (J), (U), or (KK) of this section;

(b) For the maintenance and operation of a joint recreation district.

(4) When the increase is for the purpose or purposes set forth in division (D), (G), (H), (CC), or (PP) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

(5) When the additional rate is for the purpose described in division (Z) of this section, the increased rate shall be for any number of years not exceeding ten.

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2151.65 and 2152.41 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and the other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code, by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds of the tax, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

A resolution adopted by the legislative authority of a municipal corporation that is for the purpose in division (XX) of this section may be combined with the purpose provided in section 306.55 of the Revised Code, by vote of two-thirds of all members of the legislative authority. The legislative authority may certify the resolution to the board of elections as a combined question. The question appearing on the ballot shall be as provided in section 5705.252 of the Revised Code.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election.

When the electors of a subdivision have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with

section 5705.191 or 5705.193 of the Revised Code.

Sec. 5705.25. (A) A copy of any resolution adopted as provided in section 5705.19 or 5705.2111 of the Revised Code shall be certified by the taxing authority to the board of elections of the proper county not less than ninety days before the general election in any year, and the board shall submit the proposal to the electors of the subdivision at the succeeding November election. Except as otherwise provided in this division, a resolution to renew an existing levy, regardless of the section of the Revised Code under which the tax was imposed, shall not be placed on the ballot unless the question is submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year. The limitation of the foregoing sentence does not apply to a resolution to renew and increase or to renew part of an existing levy that was imposed under section 5705.191 of the Revised Code to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: for public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals. The limitation of the second preceding sentence also does not apply to a resolution that proposes to renew two or more existing levies imposed under section 5705.21 of the Revised Code, in which case the question shall be submitted on the date of the general or primary election held during the last year at least one of the levies to be renewed may be extended on the real and public utility property tax list and duplicate, or at any election held during the ensuing year. For purposes of this section, a levy shall be considered to be an "existing levy" through the year following the last year it can be placed on that tax list and duplicate.

The board shall make the necessary arrangements for the submission of such questions to the electors of such subdivision, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for the election of county officers. Notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. The notice shall state the purpose, the proposed increase in rate expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, the number of years during which the increase will be in effect, the first month and year in which the tax will be levied, and the time and

place of the election.

(B) The form of the ballots cast at an election held pursuant to division (A) of this section shall be as follows:

"An additional tax for the benefit of (name of subdivision or public library) for the purpose of (purpose stated in the resolution) at a rate not exceeding mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation, for (life of indebtedness or number of years the levy is to run).

	For the Tax Levy	
	Against the Tax Levy	"

(C) If the levy is to be in effect for a continuing period of time, the notice of election and the form of ballot shall so state instead of setting forth a specified number of years for the levy.

If the tax is to be placed on the current tax list, the form of the ballot shall be modified by adding, after the statement of the number of years the levy is to run, the phrase ", commencing in (first year the tax is to be levied), first due in calendar year (first calendar year in which the tax shall be due)."

If the levy submitted is a proposal to renew, increase, or decrease an existing levy, the form of the ballot specified in division (B) of this section may be changed by substituting for the words "An additional" at the beginning of the form, the words "A renewal of a" in case of a proposal to renew an existing levy in the same amount; the words "A renewal of mills and an increase of mills to constitute a" in the case of an increase; or the words "A renewal of part of an existing levy, being a reduction of mills, to constitute a" in the case of a decrease in the proposed levy.

If the levy submitted is a proposal to renew two or more existing levies imposed under section 5705.21 of the Revised Code, the form of the ballot specified in division (B) of this section shall be modified by substituting for the words "an additional tax" the words "a renewal of(insert the number of levies to be renewed) existing taxes."

If the levy submitted is a levy under section 5705.72 of the Revised Code or a proposal to renew, increase, or decrease an existing levy imposed under that section, the name of the subdivision shall be "the unincorporated area of (name of township)."

The question covered by such resolution shall be submitted as a separate proposition but may be printed on the same ballot with any other proposition

submitted at the same election, other than the election of officers. More than one such question may be submitted at the same election.

(D) A levy voted in excess of the ten-mill limitation under this section shall be certified to the tax commissioner. In the first year of the levy, it shall be extended on the tax lists after the February settlement succeeding the election. If the additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall make the necessary levy and certify it to the county auditor, who shall extend it on the tax lists for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

Sec. 5705.252. (A) If the legislative authority of a municipal corporation adopts a resolution for the purposes provided in section 306.55 of the Revised Code and division (XX) of section 5705.19 of the Revised Code and certifies the resolution to the board of elections as a combined question, the question appearing on the ballot shall read:

"Shall the territory within the (name of municipal corporation) be withdrawn from (name of regional transit authority) and shall an additional tax be levied for the benefit of (name of municipal corporation) for the purpose of providing transportation services for the movement of persons within, from, or to the (name of municipal corporation) at a rate not exceeding mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation, for (number of years the levy is to run)?"

(B) If the board of trustees of a township adopts a resolution for the purposes provided in sections 306.55 and 5705.72 of the Revised Code and certifies the resolution to the board of elections as a combined question, the question appearing on the ballot in the unincorporated area of the township shall read:

"Shall the territory within the unincorporated area of (name of township) be withdrawn from (name of regional transit authority) and shall an additional tax be levied for the benefit of the unincorporated area of (name of township) for the purpose of providing transportation services for the movement of persons within, from, or to the unincorporated area of (name of township) at a rate not exceeding mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation, for (number of years the levy is to run)?"

Sec. 5705.28. (A) Except as provided in division (B)(1) or (2) of this section or in section 5705.281 of the Revised Code, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year:

(1) On or before the fifteenth day of January in the case of a school ~~district~~ districts and the city of Cincinnati;

(2) On or before the fifteenth day of July in the case of all other subdivisions and taxing units.

(B)(1) Before the first day of June in each year, the board of trustees of a school library district entitled to participate in any appropriation or revenue of a school district or to have a tax proposed by the board of education of a school district shall file with the board of education of the school district a tax budget for the ensuing fiscal year. On or before the fifteenth day of July in each year, the board of education of a school district to which a school library district tax budget was submitted under this division shall adopt such tax budget on behalf of the library district, but such budget shall not be part of the school district's tax budget.

(2)(a) The taxing authority of a taxing unit that does not levy a tax is not required to adopt a tax budget pursuant to division (A) of this section. Instead, on or before the fifteenth day of July each year, such taxing authority shall adopt an operating budget for the taxing unit for the ensuing fiscal year. The operating budget shall include an estimate of receipts from all sources, a statement of all taxing unit expenses that are anticipated to occur, and the amount required for debt charges during the fiscal year. The operating budget is not required to be filed with the county auditor or the county budget commission.

(b) Except for this section and sections 5705.36, 5705.38, 5705.40, 5705.41, 5705.43, 5705.44, and 5705.45 of the Revised Code, a taxing unit that does not levy a tax is not a taxing unit for purposes of Chapter 5705. of the Revised Code. Documents prepared in accordance with such sections are not required to be filed with the county auditor or county budget commission.

(c) The total appropriations from each fund of a taxing unit that does not levy a tax shall not exceed the total estimated revenue available for expenditures from the fund, and appropriations shall be made from each fund only for the purposes for which the fund is established.

(C)(1) To assist in the preparation of the tax budget, the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority, or in the case of a municipal corporation, with its chief executive

officer, before the forty-fifth day prior to the date on which the budget must be adopted, an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state. The taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision. In a municipal corporation in which a special levy for a municipal university has been authorized to be levied in excess of the ten-mill limitation, or is required by the charter of the municipal corporation, the taxing authority shall include an amount not less than the estimated yield of such levy, if such amount is requested by the board of directors of the municipal university.

(2) A county board of developmental disabilities may include within its estimate of contemplated revenue and expenditures a reserve balance account in the community developmental disabilities residential services fund. The account shall contain money that is not needed to pay for current expenses for residential services and supported living but will be needed to pay for expenses for such services in the future or may be needed for unanticipated emergency expenses. On the request of the county board of developmental disabilities, the board of county commissioners shall include such an account in its budget of expenditures and appropriate money to the account from residential service moneys for the county board.

(D) The board of trustees of any public library desiring to participate in the distribution of the county public library fund shall adopt appropriate rules extending the benefits of the library service of such library to all the inhabitants of the county on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules to the taxing authority with its estimate of contemplated revenue and expenditures. Where such rules have been so certified or where the adoption of such rules is not required, the taxing authority shall include in its budget of receipts such amounts as are specified by such board as contemplated revenue from the county public library fund, and in its budget of expenditures the full amounts requested therefrom by such board. No library association, incorporated or unincorporated, is entitled to participate in the proceeds of the county public library fund unless such association both was organized and operating prior to January 1, 1968, and participated in the distribution of the proceeds of the county public library fund prior to December 31, 2005.

Sec. 5705.30. This section does not apply to a subdivision for which the

county budget commission has waived the requirement to adopt a tax budget under section 5705.281 of the Revised Code.

In addition to the information required by section 5705.29 of the Revised Code, the budget of each subdivision and school library district shall include such other information as is prescribed by the auditor of state. At least two copies of the budget shall be filed in the office of the fiscal officer of the subdivision for public inspection not less than ten days before its adoption by the taxing authority, and such taxing authority shall hold at least one public hearing thereon, of which public notice shall be given by at least one publication not less than ten days prior to the date of hearing in the official publication of such subdivision, or in a newspaper having general circulation in the subdivision. The budget, after adoption, shall be submitted to the county auditor on or before the twentieth day of July, or in the case of a school district or the city of Cincinnati, by the twentieth day of January. The tax commissioner may prescribe a later date for the submission of a subdivision's tax budget. Any subdivision that fails to submit its budget to the county auditor on or before the ~~twentieth day of July, unless the commissioner on or before the twentieth day of July prescribes~~ date prescribed by this section or a later date for submission of the budget by that subdivision, prescribed by the commissioner shall not receive an apportionment from the undivided local government fund distribution for the ensuing calendar year; ~~unless upon review of the matter the commissioner determines that the budget was adopted by the subdivision on or before the fifteenth fifth day of July before the date prescribed by this section for submitting the budget, but was not submitted to the county auditor by the twentieth day of July~~ date so prescribed or the later time prescribed by the commissioner because of ministerial error by the subdivision or its officers, employees, or other representatives.

Sec. 5705.34. When the budget commission has completed its work with respect to a tax budget or other information required to be provided under section 5705.281 of the Revised Code, it shall certify its action to the taxing authority, together with an estimate by the county auditor of the rate of each tax necessary to be levied by the taxing authority within its subdivision or taxing unit, and what part thereof is in excess of, and what part within, the ten-mill tax limitation. The certification shall also indicate the date on which each tax levied by the taxing authority will expire.

If a taxing authority levies a tax for a fixed sum of money or to pay debt charges for the tax year for which the tax budget is prepared, and a payment on account of that tax is payable to the taxing authority for the tax year under section 5727.85, 5727.86, 5751.21, or 5751.22 of the Revised Code,

the county auditor, when estimating the rate at which the tax shall be levied in the current year, shall estimate the rate necessary to raise the required sum less the estimated amount of any payments made for the tax year to a taxing unit for fixed-sum levies under those sections. The estimated rate shall be the rate of the levy that the budget commission certifies with its action under this section.

Each taxing authority, by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in each year, or at such later date as is approved by the tax commissioner, except that the certification by the legislative authority of the city of Cincinnati or by a board of education shall be made by the first day of April or at such later date as is approved by the commissioner, and except that a township board of park commissioners that is appointed by the board of township trustees and oversees a township park district that contains only unincorporated territory shall authorize only those taxes approved by, and only at the rate approved by, the board of township trustees as required by division (C) of section 511.27 of the Revised Code. If the levying of a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under sections 5705.01 to 5705.47 of the Revised Code; if the rate of a school district tax is increased due to the repeal of a school district income tax and property tax rate reduction at an election held pursuant to section 5748.04 of the Revised Code; or if refunding bonds to refund all or a part of the principal of bonds payable from a tax levy for the ensuing fiscal year are issued or sold and in the process of delivery, the budget commission shall reconsider and revise its action on the budget of the subdivision or school library district for whose benefit the tax is to be levied after the returns of such election are fully canvassed, or after the issuance or sale of such refunding bonds is certified to it.

Sec. 5705.35. (A) The certification of the budget commission to the taxing authority of each subdivision or taxing unit, as set forth in section 5705.34 of the Revised Code, shall show the various funds of such subdivisions other than funds to be created by transfer and shall be filed by the county budget commission with such taxing authority on or before the first day of March in the case of school districts and the city of Cincinnati and on or before the first day of September in each year in the case of all other taxing authorities. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, the rate of the levy, and what portion thereof is within, and what in excess of, the ten-mill tax limitation, and on the debit side, the total appropriations that

may be made therefrom. Subject to division (G) of section 5705.29 of the Revised Code, any reserve balance in an account established under section 5705.13 of the Revised Code for the purpose described in division (A)(1) of that section, and the principal of a nonexpendable trust fund established under section 5705.131 of the Revised Code and any additions to principal arising from sources other than the reinvestment of investment earnings arising from that fund, are not unencumbered balances for the purposes of this section. The balance in a reserve balance account established under section 5705.132 of the Revised Code is not an unencumbered balance for the purposes of this division.

There shall be attached to the certification a summary, which shall be known as the "official certificate of estimated resources," that shall state the total estimated resources of each fund of the subdivision that are available for appropriation in the fiscal year, other than funds to be created by transfer, and a statement of the amount of the total tax duplicate of the school district to be used in the collection of taxes for the following calendar year. Before the end of the fiscal year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget, if one was adopted, so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure.

(B)(1) Except as otherwise provided in division (B)(2) of this section, revenues from real property taxes scheduled to be settled on or before the tenth day of August and the fifteenth day of February of a fiscal year under divisions (A) and (C) of section 321.24 of the Revised Code, and revenue from taxes levied on personal property used in business scheduled to be settled on or before the thirty-first day of October and the thirtieth day of June of a fiscal year under divisions (B) and (D) of section 321.24 of the Revised Code shall not be available for appropriation by a board of education prior to the fiscal year in which such latest scheduled settlement date occurs, except that moneys advanced to the treasurer of a board of education under division (A)(2)(b) of section 321.34 of the Revised Code shall be available for appropriation in the fiscal year in which they are paid to the treasurer under such section. If the date for any settlement of taxes is extended under division (E) of section 321.24 of the Revised Code, the latest date set forth in divisions (A) to (D) of that section shall be used to determine in which fiscal year the revenues are first available for appropriation.

(2) Revenues available for appropriation by a school district during a fiscal year may include amounts borrowed in that fiscal year under section 133.301 of the Revised Code in anticipation of the collection of taxes that are to be included in the settlements made under divisions (C) and (D) of section 321.24 of the Revised Code in the ensuing fiscal year.

Sec. 5705.38. (A) This division does not apply to school district appropriation measures. On or about the first day of each fiscal year, the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget or the official certificate of estimated resources or amendments of the certificate. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit until no later than the first day of April or, in the case of the city of Cincinnati, the first day of October, of the current year, and the appropriations made in the temporary measure shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed.

(B) A board of education shall pass its annual appropriation measure by the first day of October. If, by the first day of October, a board has not received either the amended certificates of estimated resources required by division (B) of section 5705.36 of the Revised Code or certifications that no amended certificates need be issued, the adoption of the annual appropriation measure shall be delayed until the amended certificates or certifications are received. Prior to the passage of the annual appropriation measure, the board may pass a temporary appropriation measure for meeting the ordinary expenses of the district until it passes an annual appropriation measure, and appropriations made in the temporary measure shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed. During the fiscal year and after the passage of the annual appropriation measure, a district may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget or the official certificate of estimated resources or amendments of the certificate. School district appropriation measures shall be in the form as the auditor of state, after consultation with the tax commissioner, prescribes.

(C) Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services. In the case of a municipal university, the board of directors of which have

assumed, in the manner provided by law, custody and control of the funds of the university, funds shall be appropriated as a lump sum for the use of the university.

Sec. 5705.72. (A) As used in this section and in section 5705.25 of the Revised Code with regard to a levy submitted under this section, "electors" means electors of the unincorporated area of a township.

(B) The board of trustees of any township that withdraws or proposes by resolution to withdraw the unincorporated area of the township from a regional transit authority under section 306.55 of the Revised Code, by vote of two-thirds of all the members of the board of trustees, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide transportation services to the unincorporated area of the township and that it is necessary to levy a tax in excess of that limitation within the unincorporated area of that township for the purpose of providing transportation services for the movement of persons within, from, or to the unincorporated area of that township.

The resolution shall specify the necessary amount of the increase in rate to levy, the purpose of such increase, and the number of years, not exceeding ten, during which the rate increase shall be in effect, which may or may not include a levy upon the tax list of the current year.

The resolution shall be submitted to the proper county board of elections not less than ninety days before the date of the election at which the question will appear on the ballot and in the manner provided by section 5705.25 of the Revised Code, except that the question may be submitted to electors at a general election or a special election held on a date consistent with section 3501.01 of the Revised Code.

A resolution adopted by the board of trustees of a township under this section may be combined with a resolution for the withdrawal of the unincorporated area of the township from a regional transit authority as provided in section 306.55 of the Revised Code, by vote of two-thirds of all members of the board. The board may certify the combined resolution to the board of elections as a combined question. The question appearing on the ballot shall be as provided in section 5705.252 of the Revised Code.

When electors have approved a tax levy under this section, the board of township trustees may anticipate a fraction of the proceeds of the levy and issue anticipation notes as authorized by section 5705.191 of the Revised Code for a current expense levy with a fixed term, and may anticipate the collection of current revenue under section 133.10 of the Revised Code.

Sec. 5709.084. Real and personal property comprising a convention center that is constructed or, in the case of personal property, acquired, after

January 1, 2010, are exempt from taxation if the convention center is located in a county having a population, when construction of the convention center commences, of more than one million two hundred thousand according to the most recent federal decennial census, and if the convention center, or the land upon which the convention center is situated, is owned or leased by the county. For the purposes of this section, construction of the convention center commences upon the earlier of issuance of debt to finance all or a portion of the convention center, demolition of existing structures on the site, or grading of the site in preparation for construction.

Real and personal property comprising a convention center owned by the largest city in a county having a population greater than seven hundred thousand but less than nine hundred thousand according to the most recent federal decennial census is exempt from taxation, regardless of whether the property is leased to or otherwise operated or managed by a person other than the city.

Real and personal property comprising a convention center owned by a convention facilities authority in a county having a population greater than one million according to the most recent federal decennial census is exempt from taxation, regardless of whether the property is leased to or otherwise operated or managed by a person other than the convention facilities authority.

As used in this section, "convention center" has the same meaning as in section 307.695 of the Revised Code.

Sec. 5709.12. (A) As used in this section, "independent living facilities" means any residential housing facilities and related property that are not a nursing home, residential care facility, or ~~adult-care~~ residential facility as defined in division (A) of section 5701.13 of the Revised Code.

(B) Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation, including real property belonging to an institution that is a nonprofit 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 and being held for leasing or resale to others. If, at any time during a tax year for which such property is exempted from taxation, the corporation ceases to qualify for such a grant, the director of development shall notify the tax commissioner, and the tax commissioner shall cause the property to be

restored to the tax list beginning with the following tax year. All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, also shall be exempt from taxation.

(C)(1) If a home for the aged described in division (B)(1) of section 5701.13 of the Revised Code is operated in conjunction with or at the same site as independent living facilities, the exemption granted in division (B) of this section shall include kitchen, dining room, clinic, entry ways, maintenance and storage areas, and land necessary for access commonly used by both residents of the home for the aged and residents of the independent living facilities. Other facilities commonly used by both residents of the home for the aged and residents of independent living units shall be exempt from taxation only if the other facilities are used primarily by the residents of the home for the aged. Vacant land currently unused by the home, and independent living facilities and the lands connected with them are not exempt from taxation. Except as provided in division (A)(1) of section 5709.121 of the Revised Code, property of a home leased for nonresidential purposes is not exempt from taxation.

(2) Independent living facilities are exempt from taxation if they are operated in conjunction with or at the same site as a home for the aged described in division (B)(2) of section 5701.13 of the Revised Code; operated by a corporation, association, or trust described in division (B)(1)(b) of that section; operated exclusively for the benefit of members of the corporation, association, or trust who are retired, aged, or infirm; and provided to those members without charge in consideration of their service, without compensation, to a charitable, religious, fraternal, or educational institution. For the purposes of division (C)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

(D)(1) A private corporation established under federal law, defined in 36 U.S.C. 1101, Pub. L. No. 102-199, 105 Stat. 1629, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific knowledge is conclusively presumed to be a charitable or educational institution. A private corporation established as a nonprofit corporation under the laws of a state, that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and has as its

principal purpose one or more of the foregoing objects, also is conclusively presumed to be a charitable or educational institution.

The fact that an organization described in this division operates in a manner that results in an excess of revenues over expenses shall not be used to deny the exemption granted by this section, provided such excess is used, or is held for use, for exempt purposes or to establish a reserve against future contingencies; and, provided further, that such excess may not be distributed to individual persons or to entities that would not be entitled to the tax exemptions provided by this chapter. Nor shall the fact that any scientific information diffused by the organization is of particular interest or benefit to any of its individual members be used to deny the exemption granted by this section, provided that such scientific information is available to the public for purchase or otherwise.

(2) Division (D)(2) of this section does not apply to real property exempted from taxation under this section and division (A)(3) of section 5709.121 of the Revised Code and belonging to a nonprofit corporation described in division (D)(1) of this section that has received a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code during any of the tax years the property was exempted from taxation.

When a private corporation described in division (D)(1) of this section sells all or any portion of a tract, lot, or parcel of real estate that has been exempt from taxation under this section and section 5709.121 of the Revised Code, the portion sold shall be restored to the tax list for the year following the year of the sale and, except in connection with a sale and transfer of such a tract, lot, or parcel to a county land reutilization corporation organized under Chapter 1724. of the Revised Code, a charge shall be levied against the sold property in an amount equal to the tax savings on such property during the four tax years preceding the year the property is placed on the tax list. The tax savings equals the amount of the additional taxes that would have been levied if such property had not been exempt from taxation.

The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law. The charge may also be remitted for all or any portion of such property that the tax commissioner determines is entitled to exemption from real property taxation for the year such property is restored to the tax list under any provision of the Revised Code, other than sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, 5709.63, 5709.71, 5709.73, 5709.78, and 5709.84, upon an application for exemption covering the year such property is restored to the

tax list filed under section 5715.27 of the Revised Code.

(E) Real property held by an organization organized and operated exclusively for charitable purposes as described under section 501(c)(3) of the Internal Revenue Code and exempt from federal taxation under section 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501(a) and (c)(3), as amended, for the purpose of constructing or rehabilitating residences for eventual transfer to qualified low-income families through sale, lease, or land installment contract, shall be exempt from taxation.

The exemption shall commence on the day title to the property is transferred to the organization and shall continue to the end of the tax year in which the organization transfers title to the property to a qualified low-income family. In no case shall the exemption extend beyond the second succeeding tax year following the year in which the title was transferred to the organization. If the title is transferred to the organization and from the organization to a qualified low-income family in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the organization shall be remitted by the county auditor for each day of the year that title is held by the organization.

Upon transferring the title to another person, the organization shall file with the county auditor an affidavit affirming that the title was transferred to a qualified low-income family or that the title was not transferred to a qualified low-income family, as the case may be; if the title was transferred to a qualified low-income family, the affidavit shall identify the transferee by name. If the organization transfers title to the property to anyone other than a qualified low-income family, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer and a charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

The application for exemption shall be filed as otherwise required under section 5715.27 of the Revised Code, except that the organization holding the property shall file with its application documentation substantiating its status as an organization organized and operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code and its qualification for exemption from federal taxation under section 501(a) of the

Internal Revenue Code, and affirming its intention to construct or rehabilitate the property for the eventual transfer to qualified low-income families.

As used in this division, "qualified low-income family" means a family whose income does not exceed two hundred per cent of the official federal poverty guidelines as revised annually in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family whose income is being determined.

(F) Real property held by a county land reutilization corporation organized under Chapter 1724. of the Revised Code shall be exempt from taxation. Notwithstanding section 5715.27 of the Revised Code, a county land reutilization corporation is not required to apply to any county or state agency in order to qualify for the exemption.

The exemption shall commence on the day title to the property is transferred to the corporation and shall continue to the end of the tax year in which the instrument transferring title from the corporation to another owner is recorded, if the use to which the other owner puts the property does not qualify for an exemption under this section or any other section of the Revised Code. If the title to the property is transferred to the corporation and from the corporation in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the corporation shall be remitted by the county auditor for each day of the year that title is held by the corporation.

Upon transferring the title to another person, the corporation shall file with the county auditor an affidavit affirming that the title was transferred to such other person and shall identify the transferee by name. If the corporation transfers title to the property to anyone that does not qualify or the use to which the property is put does not qualify the property for an exemption under this section or any other section of the Revised Code, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer. A charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

In lieu of the application for exemption otherwise required to be filed as required under section 5715.27 of the Revised Code, a count land

reutilization corporation holding the property shall, upon the request of any county or state agency, submit its articles of incorporation substantiating its status as a county land reutilization corporation.

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) 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) 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 has been listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the ten tax years immediately preceding the year in which the property is conveyed through one conveyance or a series of conveyances;

(b) ~~The owner to which the property is conveyed through one conveyance or a series of conveyances~~ leases to an owner that does any of the following:

(i) Leases the property through one lease or a series of leases to the entity that owned or occupied the property for the ten tax years immediately preceding the year in which the property is conveyed or to an affiliate of

~~such prior owner or occupant that entity;~~

(ii) Contracts 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) The property continues to be used for the purposes described in division (A)(1)(a) 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 its 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.

Sec. 5709.212. (A) With every application for an exempt facility certificate filed pursuant to section 5709.21 of the Revised Code, the applicant shall pay a fee equal to one-half of one per cent of the total exempt facility project cost, not to exceed two thousand dollars. One-half of the fee received with applications for exempt facility certificates shall be credited to the exempt facility administrative fund, which is hereby created in the state treasury, for appropriation to the department of taxation for use in administering sections 5709.20 to 5709.27 of the Revised Code. If the director of environmental protection is required to provide the opinion for an application, one-half of the fee shall be credited to the non-Title V clean air

fund created in section 3704.035 of the Revised Code for use in administering section 5709.211 of the Revised Code, unless the application is for an industrial water pollution control facility. If the application is for an industrial water pollution control facility, one-half of the fee shall be credited to the surface water protection fund created in section 6111.038 of the Revised Code for use in administering section 5709.211 of the Revised Code. If the director of development is required to provide the opinion for an application, one-half of the fee for each exempt facility application shall be credited to the exempt facility inspection fund, which is hereby created in the state treasury, for appropriation to the department of development for use in administering section 5709.211 of the Revised Code.

An applicant is not entitled to any tax exemption under section 5709.25 of the Revised Code until the fee required by this section is paid. The fee required by this section is not refundable, and is due with the application for an exempt facility certificate even if an exempt facility certificate ultimately is not issued or is withdrawn. Any application submitted without payment of the fee shall be deemed incomplete until the fee is paid.

(B) The application fee imposed under division (A) of this section for a jointly owned facility shall be equal to one-half of one per cent of the total exempt facility project cost, not to exceed two thousand dollars for each facility that is the subject of the application.

Sec. 5709.62. (A) In any municipal corporation that is defined by the United States office of management and budget as a principal city of a metropolitan statistical area, the legislative authority of the municipal corporation may designate one or more areas within its municipal corporation as proposed enterprise zones. Upon designating an area, the legislative authority shall petition the director of development for certification of the area as having the characteristics set forth in division (A)(1) of section 5709.61 of the Revised Code as amended by Substitute Senate Bill No. 19 of the 120th general assembly. Except as otherwise provided in division (E) of this section, on and after July 1, 1994, legislative authorities shall not enter into agreements under this section unless the legislative authority has petitioned the director and the director has certified the zone under this section as amended by that act; however, all agreements entered into under this section as it existed prior to July 1, 1994, and the incentives granted under those agreements shall remain in effect for the period agreed to under those agreements. Within sixty days after receiving such a petition, the director shall determine whether the area has the characteristics set forth in division (A)(1) of section 5709.61 of the Revised Code, and shall forward the findings to the legislative authority of the

municipal corporation. If the director certifies the area as having those characteristics, and thereby certifies it as a zone, the legislative authority may enter into an agreement with an enterprise under division (C) of this section.

(B) Any enterprise that wishes to enter into an agreement with a municipal corporation under division (C) of this section shall submit a proposal to the legislative authority of the municipal corporation on a form prescribed by the director of development, together with the application fee established under section 5709.68 of the Revised Code. The form shall require the following information:

(1) An estimate of the number of new employees whom the enterprise intends to hire, or of the number of employees whom the enterprise intends to retain, within the zone at a facility that is a project site, and an estimate of the amount of payroll of the enterprise attributable to these employees;

(2) An estimate of the amount to be invested by the enterprise to establish, expand, renovate, or occupy a facility, including investment in new buildings, additions or improvements to existing buildings, machinery, equipment, furniture, fixtures, and inventory;

(3) A listing of the enterprise's current investment, if any, in a facility as of the date of the proposal's submission.

The enterprise shall review and update the listings required under this division to reflect material changes, and any agreement entered into under division (C) of this section shall set forth final estimates and listings as of the time the agreement is entered into. The legislative authority may, on a separate form and at any time, require any additional information necessary to determine whether an enterprise is in compliance with an agreement and to collect the information required to be reported under section 5709.68 of the Revised Code.

(C) Upon receipt and investigation of a proposal under division (B) of this section, if the legislative authority finds that the enterprise submitting the proposal is qualified by financial responsibility and business experience to create and preserve employment opportunities in the zone and improve the economic climate of the municipal corporation, the legislative authority, on or before October 15, ~~2012~~ 2013, may do one of the following:

(1) Enter into an agreement with the enterprise under which the enterprise agrees to establish, expand, renovate, or occupy a facility and hire new employees, or preserve employment opportunities for existing employees, in return for one or more of the following incentives:

(a) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to seventy-five per cent, of the assessed value of

tangible personal property first used in business at the project site as a result of the agreement. If an exemption for inventory is specifically granted in the agreement pursuant to this division, the exemption applies to inventory required to be listed pursuant to sections 5711.15 and 5711.16 of the Revised Code, except that, in the instance of an expansion or other situations in which an enterprise was in business at the facility prior to the establishment of the zone, the inventory that is exempt is that amount or value of inventory in excess of the amount or value of inventory required to be listed in the personal property tax return of the enterprise in the return for the tax year in which the agreement is entered into.

(b) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to seventy-five per cent, of the increase in the assessed valuation of real property constituting the project site subsequent to formal approval of the agreement by the legislative authority;

(c) Provision for a specified number of years, not to exceed fifteen, of any optional services or assistance that the municipal corporation is authorized to provide with regard to the project site.

(2) Enter into an agreement under which the enterprise agrees to remediate an environmentally contaminated facility, to spend an amount equal to at least two hundred fifty per cent of the true value in money of the real property of the facility prior to remediation as determined for the purposes of property taxation to establish, expand, renovate, or occupy the remediated facility, and to hire new employees or preserve employment opportunities for existing employees at the remediated facility, in return for one or more of the following incentives:

(a) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, not to exceed fifty per cent, of the assessed valuation of the real property of the facility prior to remediation;

(b) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, not to exceed one hundred per cent, of the increase in the assessed valuation of the real property of the facility during or after remediation;

(c) The incentive under division (C)(1)(a) of this section, except that the percentage of the assessed value of such property exempted from taxation shall not exceed one hundred per cent;

(d) The incentive under division (C)(1)(c) of this section.

(3) Enter into an agreement with an enterprise that plans to purchase and operate a large manufacturing facility that has ceased operation or announced its intention to cease operation, in return for exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to