

**As Concurred by the House**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. H. B. No. 24**

**Representative Ginter**

**Cosponsors: Representatives Schaffer, Rogers, Cera, Green, Hambley, Retherford, Anielski, Antani, Antonio, Arndt, Ashford, Barnes, Boccieri, Boggs, Boyd, Brown, Butler, Carfagna, Celebrezze, Clyde, Craig, Cupp, Edwards, Faber, Fedor, Galonski, Gavarone, Goodman, Greenspan, Hagan, Henne, Hill, Holmes, Householder, Howse, Huffman, Hughes, Ingram, Johnson, Keller, Kent, Kick, Landis, Lanese, Lang, LaTourette, Leland, Lepore-Hagan, Lipps, Manning, McColley, Miller, O'Brien, Patmon, Patterson, Patton, Pelanda, Perales, Ramos, Reece, Reineke, Rezabek, Riedel, Roegner, Romanchuk, Schuring, Sheehy, Sprague, Stein, Strahorn, Sweeney, Thompson, West, Young**

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**A BILL**

To amend sections 3350.15, 5124.01, 5124.101,	1
5124.15, 5124.151, 5124.152, 5124.17, 5124.19,	2
5124.191, 5124.192, 5124.193, 5124.195, 5124.21,	3
5124.23, 5124.28, 5124.29, 5124.30, 5124.38,	4
5124.39, 5124.40, 5124.41, 5124.46, 5124.68,	5
5705.21, 5709.121, 5709.17, 5735.01, 5735.024,	6
5735.04, and 5747.01; to amend, for the purpose	7
of adopting new section numbers as indicated in	8
parentheses, sections 5124.17 (5124.171),	9
5124.19 (5124.195), 5124.191 (5124.196),	10
5124.192 (5124.197), 5124.193 (5124.198),	11
5124.195 (5124.199), 5124.21 (5124.211), and	12
5124.23 (5124.231); to enact new sections	13
5124.17, 5124.19, 5124.191, 5124.192, 5124.193,	14
5124.194, 5124.21, and 5124.23 and section	15

5124.24; to repeal sections 5124.155 and 16  
5124.194 of the Revised Code; to amend Section 17  
261.168 of Am. Sub. H.B. 49 of the 132nd General 18  
Assembly; and to repeal Section 261.169 of Am. 19  
Sub. H.B. 49 of the 132nd General Assembly to 20  
modify the existing tax exemption for veterans 21  
organizations' property, to make appropriations 22  
and otherwise provide authorization and 23  
conditions for the operation of state programs, 24  
and to declare an emergency. 25

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

**Section 1.** That sections 3350.15, 5124.01, 5124.101, 26  
5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 27  
5124.192, 5124.193, 5124.195, 5124.21, 5124.23, 5124.28, 28  
5124.29, 5124.30, 5124.38, 5124.39, 5124.40, 5124.41, 5124.46, 29  
5124.68, 5705.21, 5709.121, 5709.17, 5735.01, 5735.024, 5735.04, 30  
and 5747.01 be amended; sections 5124.17 (5124.171), 5124.19 31  
(5124.195), 5124.191 (5124.196), 5124.192 (5124.197), 5124.193 32  
(5124.198), 5124.195 (5124.199), 5124.21 (5124.211), and 5124.23 33  
(5124.231) be amended for the purpose of adopting new section 34  
numbers as indicated in parentheses; and new sections 5124.17, 35  
5124.19, 5124.191, 5124.192, 5124.193, 5124.194, 5124.21, and 36  
5124.23 and section 5124.24 of the Revised Code be enacted to 37  
read as follows: 38

**Sec. 3350.15.** (A) The northeast Ohio medical university 39  
may enter into a partnership with Cleveland state university to 40  
establish the northeast Ohio medical university academic campus 41  
at Cleveland state university, to enable fifty per cent or more 42

of the medical curriculum taught to students enrolled under this 43  
partnership to be based in Cleveland at Cleveland state 44  
university, local hospitals, and community- and neighborhood- 45  
based primary care clinics. Cleveland state university shall not 46  
receive state capital appropriations to pay for facilities for 47  
the academic campus. 48

(B) The Ohio university heritage college of osteopathic 49  
medicine may be a member of the partnership established under 50  
division (A) of this section and may admit and enroll a portion 51  
of the Cleveland state university students provided for under 52  
division (A) of this section. 53

**Sec. 5124.01.** As used in this chapter: 54

(A) "Addition" means an increase in an ICF/IID's square 55  
footage. 56

(B) "Affiliated operator" means an operator affiliated 57  
with either of the following: 58

(1) The exiting operator for whom the affiliated operator 59  
is to assume liability for the entire amount of the exiting 60  
operator's debt under the medicaid program or the portion of the 61  
debt that represents the franchise permit fee the exiting 62  
operator owes; 63

(2) The entering operator involved in the change of 64  
operator with the exiting operator specified in division ~~(A)~~ (B) 65  
(1) of this section. 66

~~(B)~~ (C) "Allowable costs" means an ICF/IID's costs that 67  
the department of developmental disabilities determines are 68  
reasonable. Fines paid under section 5124.99 of the Revised Code 69  
are not allowable costs. 70

~~(C)~~ (D) "Capital costs" means an ICF/IID's costs of 71  
ownership and costs of nonextensive renovation. 72

~~(D)~~ (E) "Case-mix score" means the measure determined 73  
under section 5124.192, 5124.193, or 5124.197 of the Revised 74  
Code of the relative direct-care resources needed to provide 75  
care and habilitation to an ICF/IID resident. 76

~~(E)~~ (F) "Change of operator" means an entering operator 77  
becoming the operator of an ICF/IID in the place of the exiting 78  
operator. 79

(1) Actions that constitute a change of operator include 80  
the following: 81

(a) A change in an exiting operator's form of legal 82  
organization, including the formation of a partnership or 83  
corporation from a sole proprietorship; 84

(b) A transfer of all the exiting operator's ownership 85  
interest in the operation of the ICF/IID to the entering 86  
operator, regardless of whether ownership of any or all of the 87  
real property or personal property associated with the ICF/IID 88  
is also transferred; 89

(c) A lease of the ICF/IID to the entering operator or the 90  
exiting operator's termination of the exiting operator's lease; 91

(d) If the exiting operator is a partnership, dissolution 92  
of the partnership; 93

(e) If the exiting operator is a partnership, a change in 94  
composition of the partnership unless both of the following 95  
apply: 96

(i) The change in composition does not cause the 97  
partnership's dissolution under state law. 98

(ii) The partners agree that the change in composition 99  
does not constitute a change in operator. 100

(f) If the operator is a corporation, dissolution of the 101  
corporation, a merger of the corporation into another 102  
corporation that is the survivor of the merger, or a 103  
consolidation of one or more other corporations to form a new 104  
corporation. 105

(2) The following, alone, do not constitute a change of 106  
operator: 107

(a) A contract for an entity to manage an ICF/IID as the 108  
operator's agent, subject to the operator's approval of daily 109  
operating and management decisions; 110

(b) A change of ownership, lease, or termination of a 111  
lease of real property or personal property associated with an 112  
ICF/IID if an entering operator does not become the operator in 113  
place of an exiting operator; 114

(c) If the operator is a corporation, a change of one or 115  
more members of the corporation's governing body or transfer of 116  
ownership of one or more shares of the corporation's stock, if 117  
the same corporation continues to be the operator. 118

~~(F)~~ (G) "Cost center" means the following: 119

(1) Capital costs; 120

(2) Direct care costs; 121

(3) Indirect care costs; 122

(4) Other protected costs. 123

~~(G)~~ (H) (1) Except as provided in division (H) (2) of this 124  
section, "cost report year" means the calendar year immediately 125

preceding the calendar year in which a fiscal year for which a 126  
medicaid payment rate determination is made begins. 127

(2) When a cost report the department of developmental 128  
disabilities accepts under division (A) or (C) (1) (b) of section 129  
5124.101 of the Revised Code is used in determining an ICF/IID's 130  
medicaid payment rate, "cost report year" means the period that 131  
the cost report covers. 132

(I) "Costs of nonextensive renovations" means the 133  
following: 134

(1) For the purpose of determining an ICF/IID's per 135  
medicaid day capital component rate under section 5124.17 of the 136  
Revised Code, the actual expense incurred by the ICF/IID for 137  
depreciation or amortization and interest on renovations 138  
approved by the department of developmental disabilities as 139  
nonextensive renovations; 140

(2) For the purpose of determining an ICF/IID's per 141  
medicaid day payment rate for reasonable capital costs under 142  
section 5124.171 of the Revised Code, the actual expense 143  
incurred by an the ICF/IID for depreciation or amortization and 144  
interest on renovations that are not extensive renovations. 145

~~(H)~~ (J) (1) "Costs of ownership" means the actual expenses 146  
incurred by an ICF/IID for all of the following: 147

(a) Subject to division ~~(H)~~ (J) (2) of this section, 148  
depreciation and interest on any capital assets that cost five 149  
hundred dollars or more per item, including the following: 150

(i) Buildings; 151

(ii) Building improvements that are not approved as 152  
nonextensive renovations ~~under~~ for the purpose of section 153

5124.17 <u>or 5124.171</u> of the Revised Code;	154
(iii) Equipment;	155
(iv) <del>Extensive renovations;</del>	156
<del>(v)</del> Transportation equipment;	157
(v) <u>For the purpose of determining an ICF/IID's per</u>	158
<u>medicaid day payment rate for reasonable capital costs under</u>	159
<u>section 5124.171 of the Revised Code, extensive renovations.</u>	160
(b) Amortization and interest on land improvements and	161
leasehold improvements;	162
(c) Amortization of financing costs;	163
(d) Except as provided in division <del>(Z)</del> <u>(BB)</u> of this	164
section, lease and rent of land, building, and equipment.	165
(2) The costs of capital assets of less than five hundred	166
dollars per item may be considered costs of ownership in	167
accordance with an ICF/IID provider's practice.	168
<del>(I)</del> <u>(K)</u> (1) "Date of licensure" means the following:	169
(a) In the case of an ICF/IID that was originally licensed	170
as a nursing home under Chapter 3721. of the Revised Code, the	171
date that it was originally so licensed, regardless that it was	172
subsequently licensed as a residential facility under section	173
5123.19 of the Revised Code;	174
(b) In the case of an ICF/IID that was originally licensed	175
as a residential facility under section 5123.19 of the Revised	176
Code, the date it was originally so licensed;	177
(c) In the case of an ICF/IID that was not required by law	178
to be licensed as a nursing home or residential facility when it	179
was originally operated as a residential facility, the date it	180

first was operated as a residential facility, regardless of the 181  
date the ICF/IID was first licensed as a nursing home or 182  
residential facility. 183

(2) If, after an ICF/IID's original date of licensure, 184  
more residential facility beds are added to the ICF/IID or all 185  
or part of the ICF/IID undergoes an extensive renovation, the 186  
ICF/IID has a different date of licensure for the additional 187  
beds or extensively renovated portion of the ICF/IID. This does 188  
not apply, however, to additional beds when both of the 189  
following apply: 190

(a) The additional beds are located in a part of the 191  
ICF/IID that was constructed at the same time as the continuing 192  
beds already located in that part of the ICF/IID. 193

(b) The part of the ICF/IID in which the additional beds 194  
are located was constructed as part of the ICF/IID at a time 195  
when the ICF/IID was not required by law to be licensed as a 196  
nursing home or residential facility. 197

(3) The definition of "date of licensure" in this section 198  
applies in determinations of ICFs/IID's medicaid payment rates 199  
but does not apply in determinations of ICFs/IID's franchise 200  
permit fees under sections 5168.60 to 5168.71 of the Revised 201  
Code. 202

~~(J)~~ (L) "Desk-reviewed" means that an ICF/IID's costs as 203  
reported on a cost report filed under section 5124.10 or 204  
5124.101 of the Revised Code have been subjected to a desk 205  
review under section 5124.108 of the Revised Code and 206  
preliminarily determined to be allowable costs. 207

~~(K)~~ (M) "Developmental center" means a residential 208  
facility that is maintained and operated by the department of 209



developmental disabilities. 210

~~(L)~~ (N) "Direct care costs" means all of the following 211  
costs incurred by an ICF/IID: 212

(1) Costs for registered nurses, licensed practical 213  
nurses, and nurse aides employed by the ICF/IID; 214

(2) Costs for direct care staff, administrative nursing 215  
staff, medical directors, respiratory therapists, physical 216  
therapists, physical therapy assistants, occupational 217  
therapists, occupational therapy assistants, speech therapists, 218  
audiologists, habilitation staff (including habilitation 219  
supervisors), qualified intellectual disability professionals, 220  
program directors, social services staff, activities staff, ~~off-~~ 221  
~~site day programming,~~ psychologists, psychology assistants, 222  
social workers, counselors, and other persons holding degrees 223  
qualifying them to provide therapy; 224

(3) Costs of purchased nursing services; 225

(4) Costs of training and staff development, employee 226  
benefits, payroll taxes, and workers' compensation premiums or 227  
costs for self-insurance claims and related costs as specified 228  
in rules adopted under section 5124.03 of the Revised Code, for 229  
personnel listed in divisions ~~(L)~~ (N) (1), (2), and (3) of this 230  
section; 231

(5) Costs of quality assurance; 232

(6) Costs of consulting and management fees related to 233  
direct care; 234

(7) Allocated direct care home office costs; 235

(8) Costs of off-site day programming, including day 236  
programming that is provided in an area that is not certified by 237

the director of health as an ICF/IID under Title XIX and 238  
regardless of either of the following: 239

(a) Whether or not the area in which the day programming 240  
is provided is less than two hundred feet away from the ICF/IID; 241

(b) Whether or not the day programming is provided by an 242  
individual or organization that is a related party to the 243  
ICF/IID provider. 244

(9) Costs of other direct-care resources that are 245  
specified as direct care costs in rules adopted under section 246  
5124.03 of the Revised Code. 247

~~(M)~~ (O) "Downsized ICF/IID" means an ICF/IID that 248  
permanently reduced its medicaid-certified capacity pursuant to 249  
a plan approved by the department of developmental disabilities 250  
under section 5123.042 of the Revised Code. 251

~~(N)~~ (P) "Effective date of a change of operator" means the 252  
day the entering operator becomes the operator of the ICF/IID. 253

~~(O)~~ (Q) "Effective date of a facility closure" means the 254  
last day that the last of the residents of the ICF/IID resides 255  
in the ICF/IID. 256

~~(P)~~ (R) "Effective date of an involuntary termination" 257  
means the date the department of medicaid terminates the 258  
operator's provider agreement for the ICF/IID or the last day 259  
that such a provider agreement is in effect when the department 260  
cancels or refuses to revalidate it. 261

~~(Q)~~ (S) "Effective date of a voluntary termination" means 262  
the day the ICF/IID ceases to accept medicaid recipients. 263

~~(R)~~ (T) "Entering operator" means the person or government 264  
entity that will become the operator of an ICF/IID when a change 265

of operator occurs or following an involuntary termination. 266

~~(S)~~ (U) "Exiting operator" means any of the following: 267

(1) An operator that will cease to be the operator of an 268  
ICF/IID on the effective date of a change of operator; 269

(2) An operator that will cease to be the operator of an 270  
ICF/IID on the effective date of a facility closure; 271

(3) An operator of an ICF/IID that is undergoing or has 272  
undergone a voluntary termination; 273

(4) An operator of an ICF/IID that is undergoing or has 274  
undergone an involuntary termination. 275

~~(T)~~ (V) (1) "Extensive-For the purpose of determining an 276  
ICF/IID's per medicaid day payment rate for reasonable capital 277  
costs under section 5124.171 of the Revised Code, "extensive 278  
renovation" means the following: 279

(a) An ICF/IID's betterment, improvement, or restoration 280  
to which both of the following apply: 281

(i) It was started before July 1, 1993. 282

(ii) It meets the definition of "extensive renovation" 283  
established in rules that were adopted by the director of job 284  
and family services and in effect on December 22, 1992. 285

(b) An ICF/IID's betterment, improvement, or restoration 286  
to which all of the following apply: 287

(i) It was started on or after July 1, 1993. 288

(ii) Except as provided in division ~~(T)~~ (V) (2) of this 289  
section, it costs more than sixty-five per cent and not more 290  
than eighty-five per cent of the cost of constructing a new bed. 291

(iii) It extends the useful life of the assets for at 292  
least ten years. 293

(2) The department of developmental disabilities may treat 294  
a renovation that costs more than eighty-five per cent of the 295  
cost of constructing new beds as an extensive renovation if the 296  
department determines that the renovation is more prudent than 297  
construction of new beds. 298

(3) For the purpose of division ~~(T)~~(V) (1) (b) (ii) of this 299  
section, the cost of constructing a new bed shall be considered 300  
to be forty thousand dollars, adjusted for the estimated rate of 301  
inflation from January 1, 1993, to the end of the calendar year 302  
during which the extensive renovation is completed, using the 303  
consumer price index for shelter costs for all urban consumers 304  
for the north central region, as published by the United States 305  
bureau of labor statistics. 306

~~(U)~~(W) (1) Subject to divisions ~~(U)~~(W) (2) and (3) of this 307  
section, "facility closure" means either of the following: 308

(a) Discontinuance of the use of the building, or part of 309  
the building, that houses the facility as an ICF/IID that 310  
results in the relocation of all of the facility's residents; 311

(b) Conversion of the building, or part of the building, 312  
that houses an ICF/IID to a different use with any necessary 313  
license or other approval needed for that use being obtained and 314  
one or more of the facility's residents remaining in the 315  
facility to receive services under the new use. 316

(2) A facility closure occurs regardless of any of the 317  
following: 318

(a) The operator completely or partially replacing the 319  
ICF/IID by constructing a new ICF/IID or transferring the 320

ICF/IID's license to another ICF/IID; 321

(b) The ICF/IID's residents relocating to another of the 322  
operator's ICFs/IID; 323

(c) Any action the department of health takes regarding 324  
the ICF/IID's medicaid certification that may result in the 325  
transfer of part of the ICF/IID's survey findings to another of 326  
the operator's ICFs/IID; 327

(d) Any action the department of developmental 328  
disabilities takes regarding the ICF/IID's license under section 329  
5123.19 of the Revised Code. 330

(3) A facility closure does not occur if all of the 331  
ICF/IID's residents are relocated due to an emergency evacuation 332  
and one or more of the residents return to a medicaid-certified 333  
bed in the ICF/IID not later than thirty days after the 334  
evacuation occurs. 335

~~(V)~~ (X) "Fiscal year" means the fiscal year of this state, 336  
as specified in section 9.34 of the Revised Code. 337

~~(W)~~ (Y) "Franchise permit fee" means the fee imposed by 338  
sections 5168.60 to 5168.71 of the Revised Code. 339

~~(X)~~ (Z) "Home and community-based services" has the same 340  
meaning as in section 5123.01 of the Revised Code. 341

~~(Y)~~ (AA) "ICF/IID services" has the same meaning as in 42 342  
C.F.R. 440.150. 343

~~(Z)~~ (BB) (1) "Indirect care costs" means all reasonable 344  
costs incurred by an ICF/IID other than capital costs, direct 345  
care costs, and other protected costs. "Indirect care costs" 346  
includes costs of habilitation supplies, pharmacy consultants, 347  
medical and habilitation records, program supplies, incontinence 348

supplies, food, enterals, dietary supplies and personnel, 349  
laundry, housekeeping, security, administration, liability 350  
insurance, bookkeeping, purchasing department, human resources, 351  
communications, travel, dues, license fees, subscriptions, home 352  
office costs not otherwise allocated, legal services, accounting 353  
services, minor equipment, maintenance and repair expenses, 354  
help-wanted advertising, informational advertising, start-up 355  
costs, organizational expenses, other interest, property 356  
insurance, employee training and staff development, employee 357  
benefits, payroll taxes, and workers' compensation premiums or 358  
costs for self-insurance claims and related costs, as specified 359  
in rules adopted under section 5124.03 of the Revised Code, for 360  
personnel listed in this division. Notwithstanding division ~~(H)~~ 361  
(J) of this section, "indirect care costs" also means the cost 362  
of equipment, including vehicles, acquired by operating lease 363  
executed before December 1, 1992, if the costs are reported as 364  
administrative and general costs on the ICF/IID's cost report 365  
for the cost reporting period ending December 31, 1992. 366

(2) For the purpose of division ~~(Z)~~ (BB) (1) of this 367  
section, an operating lease shall be construed in accordance 368  
with generally accepted accounting principles. 369

~~(AA)~~ (CC) "Inpatient days" means both of the following: 370

(1) All days during which a resident, regardless of 371  
payment source, occupies a bed in an ICF/IID that is included in 372  
the ICF/IID's medicaid-certified capacity; 373

(2) All days for which payment is made under section 374  
5124.34 of the Revised Code. 375

~~(BB)~~ (DD) "Intermediate care facility for individuals with 376  
intellectual disabilities" and "ICF/IID" mean an intermediate 377

care facility for the mentally retarded as defined in the 378  
"Social Security Act," section 1905(d), 42 U.S.C. 1396d(d). 379

~~(CC)~~ (EE) "Involuntary termination" means the department 380  
of medicaid's termination of, cancellation of, or refusal to 381  
revalidate the operator's provider agreement for the ICF/IID 382  
when such action is not taken at the operator's request. 383

~~(DD)~~ (FF) "Maintenance and repair expenses" means, except 384  
as provided in division ~~(WW)~~ (XX) (2) (b) of this section, 385  
expenditures that are necessary and proper to maintain an asset 386  
in a normally efficient working condition and that do not extend 387  
the useful life of the asset two years or more. "Maintenance and 388  
repair expenses" includes the costs of ordinary repairs such as 389  
painting and wallpapering. 390

~~(EE)~~ (GG) "Medicaid-certified capacity" means the number 391  
of an ICF/IID's beds that are certified for participation in 392  
medicaid as ICF/IID beds. 393

~~(FF)~~ (HH) "Medicaid days" means both of the following: 394

(1) All days during which a resident who is a medicaid 395  
recipient eligible for ICF/IID services occupies a bed in an 396  
ICF/IID that is included in the ICF/IID's medicaid-certified 397  
capacity; 398

(2) All days for which payment is made under section 399  
5124.34 of the Revised Code. 400

~~(GG)~~ (II) (1) "New ICF/IID" means an ICF/IID for which the 401  
provider obtains an initial provider agreement following the 402  
director of health's medicaid certification of the ICF/IID, 403  
including such an ICF/IID that replaces one or more ICFs/IID for 404  
which a provider previously held a provider agreement. 405

(2) "New ICF/IID" does not mean either of the following: 406

(a) An ICF/IID for which the entering operator seeks a 407  
provider agreement pursuant to section 5124.511 or 5124.512 or 408  
(pursuant to section 5124.515) section 5124.07 of the Revised 409  
Code; 410

(b) A downsized ICF/IID or partially converted ICF/IID. 411

~~(HH)~~ (JJ) "Nursing home" has the same meaning as in 412  
section 3721.01 of the Revised Code. 413

~~(II)~~ (KK) "Operator" means the person or government entity 414  
responsible for the daily operating and management decisions for 415  
an ICF/IID. 416

~~(JJ)~~ (LL) "Other protected costs" means costs incurred by 417  
an ICF/IID for medical supplies; real estate, franchise, and 418  
property taxes; natural gas, fuel oil, water, electricity, 419  
sewage, and refuse and hazardous medical waste collection; 420  
allocated other protected home office costs; and any additional 421  
costs defined as other protected costs in rules adopted under 422  
section 5124.03 of the Revised Code. 423

~~(KK)~~ (MM) (1) "Owner" means any person or government entity 424  
that has at least five per cent ownership or interest, either 425  
directly, indirectly, or in any combination, in any of the 426  
following regarding an ICF/IID: 427

(a) The land on which the ICF/IID is located; 428

(b) The structure in which the ICF/IID is located; 429

(c) Any mortgage, contract for deed, or other obligation 430  
secured in whole or in part by the land or structure on or in 431  
which the ICF/IID is located; 432



(d) Any lease or sublease of the land or structure on or 433  
in which the ICF/IID is located. 434

(2) "Owner" does not mean a holder of a debenture or bond 435  
related to an ICF/IID and purchased at public issue or a 436  
regulated lender that has made a loan related to the ICF/IID 437  
unless the holder or lender operates the ICF/IID directly or 438  
through a subsidiary. 439

~~(LL)~~ (NN) "Partially converted ICF/IID" means an ICF/IID 440  
that converted some, but not all, of its beds to providing home 441  
and community-based services under the individual options waiver 442  
pursuant to section 5124.60 or 5124.61 of the Revised Code. 443

~~(MM)~~ (OO) (1) For the purpose of the total per medicaid day 444  
payment rate determined for an ICF/IID under division (B) of 445  
section 5124.15 of the Revised Code and the initial total per 446  
medicaid day payment rate determined for a new ICF/IID under 447  
section 5124.151 of the Revised Code: 448

(a) "Peer group 1-A" means each ICF/IID with a medicaid- 449  
certified capacity exceeding sixteen. 450

(b) "Peer group 2-A" means each ICF/IID with a medicaid- 451  
certified capacity exceeding eight but not exceeding sixteen. 452

(c) "Peer group 3-A" means each ICF/IID with a medicaid- 453  
certified capacity of seven or eight. 454

(d) "Peer group 4-A" means each ICF/IID with a medicaid- 455  
certified capacity not exceeding six, other than an ICF/IID that 456  
is in peer group 5-A. 457

(e) "Peer group 5-A" means each ICF/IID to which all of 458  
the following apply: 459

(i) The ICF/IID is first certified as an ICF/IID after 460

July 1, 2014. 461

(ii) The ICF/IID has a medicaid-certified capacity not 462  
exceeding six. 463

(iii) The ICF/IID has a contract with the department of 464  
developmental disabilities that is for fifteen years and 465  
includes a provision for the department to approve all 466  
admissions to, and discharges from, the ICF/IID. 467

(iv) The ICF/IID's residents are admitted to the ICF/IID 468  
directly from a developmental center or have been determined by 469  
the department to be at risk of admission to a developmental 470  
center. 471

(2) For the purpose of the total per medicaid day payment 472  
rate determined for an ICF/IID under division (C) of section 473  
5124.15 of the Revised Code: 474

(a) "Peer group 1-B" means each ICF/IID with a medicaid- 475  
certified capacity exceeding eight. 476

~~(NN)~~ (b) "Peer group 2-B" means each ICF/IID with a 477  
medicaid-certified capacity not exceeding eight, other than an 478  
ICF/IID that is in peer group 3. 479

~~(OO)~~ (c) "Peer group 3-B" means each ICF/IID to which all 480  
of the following apply: 481

~~(1)~~ (i) The ICF/IID is first certified as an ICF/IID after 482  
July 1, 2014; 483

~~(2)~~ (ii) The ICF/IID has a medicaid-certified capacity not 484  
exceeding six; 485

~~(3)~~ (iii) The ICF/IID has a contract with the department 486  
of developmental disabilities that is for fifteen years and 487

includes a provision for the department to approve all 488  
admissions to, and discharges from, the ICF/IID; 489

~~(4)~~ (iv) The ICF/IID's residents are admitted to the 490  
ICF/IID directly from a developmental center or have been 491  
determined by the department to be at risk of admission to a 492  
developmental center. 493

(PP) (1) Except as provided in divisions (PP) (2) and (3) of 494  
this section, "per diem" means an ICF/IID's desk-reviewed, 495  
actual, allowable costs in a given cost center in a cost 496  
reporting period, divided by the facility's inpatient days for 497  
that cost reporting period. 498

(2) When determining capital costs for the purpose of 499  
section ~~5124.17~~ 5124.171 of the Revised Code, "per diem" means 500  
an ICF/IID's actual, allowable capital costs in a cost reporting 501  
period divided by the greater of the facility's inpatient days 502  
for that period or the number of inpatient days the ICF/IID 503  
would have had during that period if its occupancy rate had been 504  
ninety-five per cent. 505

(3) When determining indirect care costs for the purpose 506  
of section 5124.21 or 5124.211 of the Revised Code, "per diem" 507  
means an ICF/IID's actual, allowable indirect care costs in a 508  
cost reporting period divided by the greater of the ICF/IID's 509  
inpatient days for that period or the number of inpatient days 510  
the ICF/IID would have had during that period if its occupancy 511  
rate had been eighty-five per cent. 512

(QQ) "Provider" means an operator with a valid provider 513  
agreement. 514

(RR) "Provider agreement" means a provider agreement, as 515  
defined in section 5164.01 of the Revised Code, that is between 516

the department of medicaid and the operator of an ICF/IID for 517  
the provision of ICF/IID services under the medicaid program. 518

(SS) "Purchased nursing services" means services that are 519  
provided in an ICF/IID by registered nurses, licensed practical 520  
nurses, or nurse aides who are not employees of the ICF/IID. 521

(TT) "Reasonable" means that a cost is an actual cost that 522  
is appropriate and helpful to develop and maintain the operation 523  
of resident care facilities and activities, including normal 524  
standby costs, and that does not exceed what a prudent buyer 525  
pays for a given item or services. Reasonable costs may vary 526  
from provider to provider and from time to time for the same 527  
provider. 528

(UU) "Related party" means an individual or organization 529  
that, to a significant extent, has common ownership with, is 530  
associated or affiliated with, has control of, or is controlled 531  
by, a provider. 532

(1) An individual who is a relative of an owner is a 533  
related party. 534

(2) Common ownership exists when an individual or 535  
individuals possess significant ownership or equity in both the 536  
provider and the other organization. Significant ownership or 537  
equity exists when an individual or individuals possess five per 538  
cent ownership or equity in both the provider and a supplier. 539  
Significant ownership or equity is presumed to exist when an 540  
individual or individuals possess ten per cent ownership or 541  
equity in both the provider and another organization from which 542  
the provider purchases or leases real property. 543

(3) Control exists when an individual or organization has 544  
the power, directly or indirectly, to significantly influence or 545

direct the actions or policies of an organization. 546

(4) An individual or organization that supplies goods or 547  
services to a provider shall not be considered a related party 548  
if all of the following conditions are met: 549

(a) The supplier is a separate bona fide organization. 550

(b) A substantial part of the supplier's business activity 551  
of the type carried on with the provider is transacted with 552  
others than the provider and there is an open, competitive 553  
market for the types of goods or services the supplier 554  
furnishes. 555

(c) The types of goods or services are commonly obtained 556  
by other ICFs/IID from outside organizations and are not a basic 557  
element of resident care ordinarily furnished directly to 558  
residents by the ICFs/IID. 559

(d) The charge to the provider is in line with the charge 560  
for the goods or services in the open market and no more than 561  
the charge made under comparable circumstances to others by the 562  
supplier. 563

(VV) "Relative of owner" means an individual who is 564  
related to an owner of an ICF/IID by one of the following 565  
relationships: 566

(1) Spouse; 567

(2) Natural parent, child, or sibling; 568

(3) Adopted parent, child, or sibling; 569

(4) Stepparent, stepchild, stepbrother, or stepsister; 570

(5) Father-in-law, mother-in-law, son-in-law, daughter-in- 571  
law, brother-in-law, or sister-in-law; 572

(6) Grandparent or grandchild; 573

(7) Foster caregiver, foster child, foster brother, or 574  
foster sister. 575

(WW) For the purpose of determining an ICF/IID's per 576  
medicaid day capital component rate under section 5124.17 of the 577  
Revised Code, "renovation" means an ICF/IID's betterment, 578  
improvement, or restoration, other than an addition, through a 579  
capital expenditure. 580

~~(XX)~~ (1) ~~"Renovation"~~ For the purpose of determining an 581  
ICF/IID's per medicaid day payment rate for reasonable capital 582  
costs under section 5124.171 of the Revised Code, "renovation" 583  
means the following: 584

(a) An ICF/IID's betterment, improvement, or restoration 585  
to which both of the following apply: 586

(i) It was started before July 1, 1993. 587

(ii) It meets the definition of "renovation" established 588  
in rules that were adopted by the director of job and family 589  
services and in effect on December 22, 1992. 590

(b) An ICF/IID's betterment, improvement, or restoration 591  
to which both of the following apply: 592

(i) It was started on or after July 1, 1993. 593

(ii) It betters, improves, or restores the ICF/IID beyond 594  
its current functional capacity through a structural change that 595  
costs at least five hundred dollars per bed. 596

(2) ~~A~~ For the purpose of division (XX) (1) of this section, 597  
a renovation started on or after July 1, 1993, may include both 598  
of the following: 599

(a) A betterment, improvement, restoration, or replacement 600  
of assets that are affixed to a building and have a useful life 601  
of at least five years; 602

(b) Costs that otherwise would be considered maintenance 603  
and repair expenses if they are an integral part of the 604  
structural change that makes up the renovation project. 605

(3) ~~"Renovation"~~ For the purpose of division (XX) (1) of 606  
this section, "renovation" does not mean construction of 607  
additional space for beds that will be added to an ICF/IID's 608  
licensed capacity or medicaid-certified capacity. 609

~~(XX)~~ ~~(YY)~~ "Residential facility" has the same meaning as 610  
in section 5123.19 of the Revised Code. 611

~~(YY)~~ ~~(ZZ)~~ "Secondary building" means a building or part of 612  
a building, other than an ICF/IID, in which the owner of one or 613  
more ICFs/IID has administrative work regarding the ICFs/IID 614  
performed or records regarding the ICFs/IID stored. 615

(AAA) "Sponsor" means an adult relative, friend, or 616  
guardian of an ICF/IID resident who has an interest or 617  
responsibility in the resident's welfare. 618

~~(ZZ)~~ ~~(BBB)~~ "Title XIX" means Title XIX of the "Social 619  
Security Act," 42 U.S.C. 1396, et seq. 620

~~(AAA)~~ ~~(CCC)~~ "Title XVIII" means Title XVIII of the "Social 621  
Security Act," 42 U.S.C. 1395, et seq. 622

~~(BBB)~~ ~~(DDD)~~ "Voluntary termination" means an operator's 623  
voluntary election to terminate the participation of an ICF/IID 624  
in the medicaid program but to continue to provide service of 625  
the type provided by a residential facility as defined in 626  
section 5123.19 of the Revised Code. 627

**Sec. 5124.101.** (A) The provider of an ICF/IID in peer 628  
group 1-A, peer group 2-A, peer group 3-A, peer group 4-A, peer 629  
group 1-B, or peer group 2-B that becomes a downsized ICF/IID or 630  
partially converted ICF/IID on or after July 1, 2013, or becomes 631  
a new ICF/IID on or after that date, may file with the 632  
department of developmental disabilities a cost report covering 633  
the period specified in division (B) of this section if the 634  
following applies to the ICF/IID: 635

(1) In the case of an ICF/IID that becomes a downsized 636  
ICF/IID or partially converted ICF/IID, the ICF/IID has either 637  
of the following on the day it becomes a downsized ICF/IID or 638  
partially converted ICF/IID: 639

(a) A medicaid-certified capacity that is at least ten per 640  
cent less than its medicaid-certified capacity on the day 641  
immediately preceding the day it becomes a downsized ICF/IID or 642  
partially converted ICF/IID; 643

(b) At least five fewer beds certified as ICF/IID beds 644  
than it has on the day immediately preceding the day it becomes 645  
a downsized ICF/IID or partially converted ICF/IID. 646

(2) In the case of a new ICF/IID, the ICF/IID's beds are 647  
from a downsized ICF/IID and the downsized ICF/IID has either of 648  
the following on the day it becomes a downsized ICF/IID: 649

(a) A medicaid-certified capacity that is at least ten per 650  
cent less than its medicaid-certified capacity on the day 651  
immediately preceding the day it becomes a downsized ICF/IID; 652

(b) At least five fewer beds certified as ICF/IID beds 653  
than it has on the day immediately preceding the day it becomes 654  
a downsized ICF/IID. 655

(B) A cost report filed under division (A) of this section 656



shall cover the period that begins and ends as follows: 657

(1) In the case of an ICF/IID that becomes a downsized 658  
ICF/IID or partially converted ICF/IID: 659

(a) The period begins with the day that the ICF/IID 660  
becomes a downsized ICF/IID or partially converted ICF/IID. 661

(b) The period ends on the last day of the last month of 662  
the first three full months of operation as a downsized ICF/IID 663  
or partially converted ICF/IID. 664

(2) In the case of a new ICF/IID: 665

(a) The period begins with the day that the provider 666  
agreement for the ICF/IID takes effect. 667

(b) The period ends on the last day of the last month of 668  
the first three full months that the provider agreement is in 669  
effect. 670

(C) (1) If the department accepts a cost report filed under 671  
division (A) of this section for an ICF/IID that becomes a 672  
downsized ICF/IID or partially converted ICF/IID on or before 673  
the first day of October of a calendar year, the provider also 674  
shall do both of the following: 675

(a) File with the department a cost report for the ICF/IID 676  
in accordance with division (A) of section 5124.10 of the 677  
Revised Code; 678

(b) File with the department another cost report for the 679  
ICF/IID that covers the portion of the initial calendar year 680  
that the ICF/IID operated as a downsized ICF/IID or partially 681  
converted ICF/IID. 682

(2) If the department accepts a cost report filed under 683

division (A) of this section for an ICF/IID that becomes a 684  
downsized ICF/IID or partially converted ICF/IID after the first 685  
day of October of a calendar year, the provider is not required 686  
to file a cost report that covers that calendar year in 687  
accordance with division (A) of section 5124.10 of the Revised 688  
Code. Instead, the provider shall file a cost report for the 689  
ICF/IID in accordance with division (A) of section 5124.10 of 690  
the Revised Code covering the immediately following calendar 691  
year. 692

(3) If the department accepts a cost report filed under 693  
division (A) of this section for a new ICF/IID that has a 694  
provider agreement that takes effect on or before the first day 695  
of October of a calendar year, the provider also shall file a 696  
cost report for the ICF/IID in accordance with division (A) of 697  
section 5124.10 of the Revised Code covering the portion of that 698  
calendar year that the provider agreement was in effect. 699

(4) If the department accepts a cost report filed under 700  
division (A) of this section for a new ICF/IID that has a 701  
provider agreement that takes effect after the first day of 702  
October of a calendar year, the provider is not required to file 703  
a cost report that covers that calendar year in accordance with 704  
division (A) of section 5124.10 of the Revised Code. The 705  
provider shall file a cost report for the ICF/IID in accordance 706  
with division (A) of section 5124.10 of the Revised Code 707  
covering the immediately following calendar year. 708

(D) The department shall refuse to accept a cost report 709  
filed under division (A) or (C)(1)(b) of this section if either 710  
of the following apply: 711

(1) Except as provided in division (E) of section 5124.10 712  
of the Revised Code, the provider fails to file the cost report 713

with the department not later than ninety days after the last 714  
day of the period the cost report covers; 715

(2) The cost report is incomplete or inadequate. 716

(E) If the department accepts a cost report filed under 717  
division (A) or (C) (1) (b) of this section, the department shall 718  
use that cost report, rather than the cost report that otherwise 719  
would be used pursuant to section 5124.17, 5124.171, 5124.19, 720  
5124.195, 5124.21, ~~or 5124.211~~, 5124.23, or 5124.231 of the 721  
Revised Code, to determine the ICF/IID's medicaid payment rate 722  
in accordance with this chapter for ICF/IID services the ICF/IID 723  
provides during the period that begins and ends as follows: 724

(1) For a cost report filed under division (A) of this 725  
section, the period begins on the following: 726

(a) In the case of an ICF/IID that becomes a downsized 727  
ICF/IID or partially converted ICF/IID: 728

(i) The day that the ICF/IID becomes a downsized ICF/IID 729  
or partially converted ICF/IID if that day is the first day of a 730  
month; 731

(ii) The first day of the month immediately following the 732  
month that the ICF/IID becomes a downsized ICF/IID or partially 733  
converted ICF/IID if division (E) (1) (a) (i) of this section does 734  
not apply. 735

(b) In the case of a new ICF/IID, the day that the 736  
ICF/IID's provider agreement takes effect. 737

(2) For a cost report filed under division (A) of this 738  
section, the period ends on the following: 739

(a) In the case of an ICF/IID that becomes a downsized 740  
ICF/IID or partially converted ICF/IID: 741

(i) The last day of the fiscal year that immediately 742  
precedes the fiscal year for which the ICF/IID is paid a rate 743  
determined using a cost report filed under division (C) (1) (b) of 744  
this section if the ICF/IID became a downsized ICF/IID or 745  
partially converted ICF/IID on or before the first day of 746  
October of a calendar year; 747

(ii) The last day of the fiscal year that immediately 748  
precedes the fiscal year for which the ICF/IID begins to be paid 749  
a rate determined using a cost report that division (C) (2) of 750  
this section requires be filed in accordance with division (A) 751  
of section 5124.10 of the Revised Code if the ICF/IID became a 752  
downsized ICF/IID or partially converted ICF/IID after the first 753  
day of October of a calendar year. 754

(b) In the case of a new ICF/IID, the last day of the 755  
fiscal year that immediately precedes the fiscal year for which 756  
the ICF/IID begins to be paid a rate determined using a cost 757  
report that division (C) (3) or (4) of this section requires be 758  
filed in accordance with division (A) of section 5124.10 of the 759  
Revised Code. 760

(3) For a cost report filed under division (C) (1) (b) of 761  
this section, the period begins on the day immediately following 762  
the day specified in division (E) (2) (a) (i) of this section. 763

(4) For a cost report filed under division (C) (1) (b) of 764  
this section, the period ends on the last day of the fiscal year 765  
that immediately precedes the fiscal year for which the ICF/IID 766  
begins to be paid a rate determined using the cost report filed 767  
with the department in accordance with division (A) of section 768  
5124.10 of the Revised Code that covers the calendar year that 769  
immediately follows the initial calendar year that the ICF/IID 770  
operated as a downsized ICF/IID or partially converted ICF/IID. 771

(F) If the department accepts a cost report filed under 772  
division (A) or (C) (1) (b) of this section by the provider of a 773  
downsized ICF/IID or partially converted ICF/IID, the following 774  
modifications shall be made for the purpose of determining the 775  
medicaid payment rate for ICF/IID services the ICF/IID provides 776  
during the period specified in division (E) of this section: 777

(1) In place of the quarterly case mix score otherwise 778  
used in determining the ICF/IID's per medicaid day direct care 779  
costs component rate under division (A) of section 5124.19 of 780  
the Revised Code, the ICF/IID's case mix score in effect on the 781  
last day of the calendar quarter that ends during the period the 782  
cost report covers (or, if more than one calendar quarter ends 783  
during that period, the last of those calendar quarters) shall 784  
be used to determine the ICF/IID's per medicaid day direct care 785  
costs component rate. 786

(2) In place of the annual average case mix score 787  
otherwise used in determining the ICF/IID's per medicaid day 788  
payment rate for direct care costs under division (A) of section 789  
~~5124.19~~ 5124.195 of the Revised Code, the ICF/IID's case mix 790  
score in effect on the last day of the calendar quarter that 791  
ends during the period the cost report covers (or, if more than 792  
one calendar quarter ends during that period, the last of those 793  
calendar quarters) shall be used to determine the ICF/IID's per 794  
medicaid day payment rate for direct care costs. 795

~~(2) If the ICF/IID becomes a downsized ICF/IID or~~ 796  
~~partially converted ICF/IID:~~ 797

~~(a)~~ (3) The ICF/IID shall not be subject to the limit on 798  
the costs of ownership per diem payment rate specified in 799  
divisions (B) and (C) of section ~~5124.17~~ 5124.171 of the Revised 800  
Code. 801

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

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

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

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

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

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

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

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

(3) The per medicaid day indirect care costs component 831  
rate determined for the ICF/IID under section 5124.21 of the 832  
Revised Code; 833

(4) The per medicaid day other protected costs component 834  
rate determined for the ICF/IID under section 5124.23 of the 835  
Revised Code; 836

(5) Until July 1, 2020, a direct support personnel payment 837  
equal to three and four-hundredths per cent of the ICF/IID's 838  
desk-reviewed, actual, allowable, per medicaid day direct care 839  
costs from the applicable cost report year; 840

(6) Beginning July 1, 2020, the per medicaid day quality 841  
incentive payment determined for the ICF/IID under section 842  
5124.24 of the Revised Code. 843

(C) The total per medicaid day payment rate determined 844  
under this division is the sum of all of the following: 845

(1) The per medicaid day payment rate for capital costs 846  
determined for the ICF/IID under section ~~5124.17~~ 5124.171 of the 847  
Revised Code; 848

(2) The per medicaid day payment rate for direct care 849  
costs determined for the ICF/IID under section ~~5124.19~~ 5124.195 850  
of the Revised Code; 851

(3) The per medicaid day payment rate for indirect care 852  
costs determined for the ICF/IID under section ~~5124.21~~ 5124.211 853  
of the Revised Code; 854

(4) The per medicaid day payment rate for other protected 855  
costs determined for the ICF/IID under section ~~5124.23~~ 5124.231 856  
of the Revised Code; 857

(5) A direct support personnel payment equal to three and 858

four-hundredths per cent of the ICF/IID's desk-reviewed, actual, 859  
allowable, per medicaid day direct care costs from the 860  
applicable cost report year. 861

~~(B)~~ (D) The total per medicaid day payment rate for ~~an~~ 862  
~~ICF/IID in peer group 3~~ the following shall not exceed the 863  
average total per medicaid day payment rate in effect on July 1, 864  
2013, for developmental centers: 865

(1) An ICF/IID that is in peer group 5-A for the purpose 866  
of the total per medicaid day payment rate determined under 867  
division (B) of this section; 868

(2) An ICF/IID that is in peer group 3-B for the purpose 869  
of the total per medicaid day payment rate determined under 870  
division (C) of this section. 871

~~(C)~~ (E) The department shall adjust the total per medicaid 872  
day payment rate otherwise determined for an ICF/IID under 873  
~~division (A)~~ divisions (B) and (C) of this section as directed 874  
by the general assembly through the enactment of law governing 875  
medicaid payments to ICF/IID providers. 876

~~(D)~~ (F) In addition to paying an ICF/IID provider the 877  
total per medicaid day payment rate determined for the 878  
provider's ICF/IID under divisions ~~(A),~~ (B), and (C), (D), and 879  
(E) of this section for a fiscal year, the department, in 880  
accordance with section 5124.25 of the Revised Code, may pay the 881  
provider a rate add-on for ventilator-dependent outlier ICF/IID 882  
services if the rate add-on is to be paid under that section and 883  
the department approves the provider's application for the rate 884  
add-on. The rate add-on is not to be part of the ICF/IID's total 885  
per medicaid day payment rate. 886

**Sec. 5124.151.** (A) The total per medicaid day payment rate 887



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

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

(1) The initial ~~rate for per medicaid day capital costs-~~  
~~component rate~~ shall be ~~determined under section 5124.17 of the~~  
~~Revised Code using the greater of the new ICF/IID's actual~~  
~~inpatient days or an imputed occupancy rate of eighty per cent-~~  
the median per medicaid day capital component rate for the  
ICF/IID's peer group for the fiscal year.

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

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

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

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

(iii) Adjust the product determined under division (B) (2) 917  
(a) (ii) of this section by the rate of inflation estimated under 918  
division (D) of section 5124.19 of the Revised Code. 919

(b) If the new ICF/IID is a replacement ICF/IID and the 920  
ICF/IID or ICFs/IID that are being replaced are in operation 921  
immediately before the new ICF/IID opens, the rate shall be the 922  
same as the rate for the replaced ICF/IID or ICFs/IID, 923  
proportionate to the number of ICF/IID beds in each replaced 924  
ICF/IID. 925

(c) If the new ICF/IID is a replacement ICF/IID and the 926  
ICF/IID or ICFs/IID that are being replaced are not in operation 927  
immediately before the new ICF/IID opens, the rate shall be 928  
determined under division (B) (2) (a) of this section. 929

(3) The initial ~~rate for per medicaid day~~ indirect care 930  
costs component rate shall be the maximum rate for the new 931  
ICF/IID's peer group as determined for the fiscal year in 932  
accordance with division (C) of section 5124.21 of the Revised 933  
Code. 934

(4) The initial ~~rate for per medicaid day~~ other protected 935  
costs component rate shall be one hundred fifteen per cent of 936  
the median rate for ICFs/IID determined for the fiscal year 937  
under section 5124.23 of the Revised Code. 938

(C) The initial total medicaid day payment rate for 939  
ICF/IID services provided by a new ICF/IID in peer group ~~3-5-A~~ 940  
shall be determined in the following manner: 941

(1) The initial ~~rate for per medicaid day~~ capital ~~costs~~ 942  
component rate shall be \$29.61. 943

(2) The initial ~~rate for per medicaid day~~ direct care 944  
costs component rate shall be \$264.89. 945

(3) The initial ~~rate for per medicaid day~~ indirect care 946  
costs component rate shall be \$59.85. 947

(4) The initial ~~rate for per medicaid day~~ other protected 948  
costs component rate shall be \$25.99. 949

(D) (1) Except as provided in division (D) (2) of this 950  
section, the department of developmental disabilities shall 951  
adjust a new ICF/IID's initial total per medicaid day payment 952  
rate determined under this section effective the first day of 953  
July, to reflect new rate determinations for all ICFs/IID under 954  
this chapter. 955

(2) If the department accepts, under division (A) of 956  
section 5124.101 of the Revised Code, a cost report filed by the 957  
provider of a new ICF/IID, the department shall adjust the 958  
ICF/IID's initial total per medicaid day payment rate in 959  
accordance with divisions (E) and (F) of that section rather 960  
than division (D) (1) of this section. 961

**Sec. 5124.152.** (A) The total per medicaid day payment rate 962  
determined under section 5124.15 of the Revised Code shall not 963  
be paid for ICF/IID services provided by an ICF/IID, or discrete 964  
unit of an ICF/IID, designated by the department of 965  
developmental disabilities as an outlier ICF/IID or unit. 966  
Instead, the provider of a designated outlier ICF/IID or unit 967  
shall be paid each fiscal year a total per medicaid day payment 968  
rate that the department shall prospectively determine in 969  
accordance with a methodology established in rules authorized by 970  
this section. 971

(B) The department may designate an ICF/IID, or discrete 972  
unit of an ICF/IID, as an outlier ICF/IID or unit if the ICF/IID 973  
or unit serves residents who have either of the following: 974

(1) Diagnoses or special care needs that require direct 975  
care resources that are not measured adequately by the resident 976  
assessment instrument specified in rules authorized by ~~section~~ 977  
sections 5124.191 and 5124.196 of the Revised Code; 978

(2) Diagnoses or special care needs that are specified in 979  
rules authorized by this section as otherwise qualifying for 980  
consideration under this section. 981

(C) Notwithstanding any other provision of this chapter, 982  
the costs incurred by a designated outlier ICF/IID or unit shall 983  
not be considered in establishing medicaid payment rates for 984  
other ICFs/IID or units. 985

(D) The director of developmental disabilities shall adopt 986  
rules under section 5124.03 of the Revised Code as necessary to 987  
implement this section. 988

(1) (a) The rules shall do both of the following: 989

(i) Specify the criteria and procedures the department 990  
will apply when designating an ICF/IID, or discrete unit of an 991  
ICF/IID, as an outlier ICF/IID or unit; 992

(ii) Establish a methodology for prospectively determining 993  
the total per medicaid day payment rate that will be paid each 994  
fiscal year for ICF/IID services provided by a designated 995  
outlier ICF/IID or unit. 996

(b) The rules adopted under division (D) (1) (a) (i) of this 997  
section regarding the criteria for designating outlier ICFs/IID 998  
and units shall do both of the following: 999

(i) Provide for consideration of whether all of the 1000  
allowable costs of an ICF/IID, or discrete unit of an ICF/IID, 1001  
would be paid by the rate determined under section 5124.15 of 1002

the Revised Code; 1003

(ii) Specify the minimum number of ICF/IID beds that an 1004  
ICF/IID, or discrete unit of an ICF/IID, must have to be 1005  
designated an outlier ICF/IID or unit. 1006

(c) The rules authorized by division (D) (1) (a) (i) of this 1007  
section regarding the criteria for designating outlier ICFs/IID 1008  
and units shall not limit the designation to ICFs/IID, or 1009  
discrete units of ICFs/IID, located in large cities. 1010

(d) The rules authorized by division (D) (1) (a) (ii) of this 1011  
section regarding the methodology for prospectively determining 1012  
the rates of designated outlier ICFs/IID and units shall provide 1013  
for the methodology to consider the historical costs of 1014  
providing ICF/IID services to the residents of designated 1015  
outlier ICFs/IID and units. 1016

(2) (a) The rules may do both of the following: 1017

(i) Include for designation as an outlier ICF/IID or unit, 1018  
an ICF/IID, or discrete unit of an ICF/IID, that serves 1019  
residents who have complex medical conditions or severe 1020  
behavioral problems; 1021

(ii) Require that a designated outlier ICF/IID or unit 1022  
receive authorization from the department before admitting or 1023  
retaining a resident. 1024

(b) If the director adopts rules authorized by division 1025  
(D) (2) (a) (ii) of this section regarding the authorization of a 1026  
designated outlier ICF/IID or unit to admit or retain a 1027  
resident, the rules shall specify the criteria and procedures 1028  
the department will apply when granting the authorization. 1029

**Sec. 5124.17.** (A) For each fiscal year, the department of 1030

developmental disabilities shall determine each ICF/IID's per 1031  
medicaid day capital component rate. An ICF/IID's rate for a 1032  
fiscal year shall equal the sum of the following: 1033

(1) The lesser of the following: 1034

(a) The sum of all of the following: 1035

(i) The ICF/IID's per diem fair rental value rate for the 1036  
fiscal year as determined under division (B) of this section; 1037

(ii) The ICF/IID's per diem equipment rate for the fiscal 1038  
year as determined under division (D) of this section; 1039

(iii) The ICF/IID's per diem secondary building rate for 1040  
the fiscal year as determined under division (E) of this 1041  
section. 1042

(b) The sum determined for the fiscal year under division 1043  
(G) of this section. 1044

(2) The ICF/IID's per diem nonextensive renovation rate 1045  
for the fiscal year as determined under division (H) of this 1046  
section. 1047

(B) An ICF/IID's per diem fair rental value rate for a 1048  
fiscal year is the quotient of the following: 1049

(1) The ICF/IID's fair rental value as determined under 1050  
division (C) of this section; 1051

(2) The greater of the following: 1052

(a) The number of the ICF/IID's inpatient days for the 1053  
applicable cost report year; 1054

(b) The number of inpatient days the ICF/IID would have 1055  
had during the applicable cost report year if its occupancy rate 1056  
had been ninety-two per cent that year. 1057

(C) (1) An ICF/IID's fair rental value is the product of 1058  
the following: 1059

(a) The sum of the following: 1060

(i) The ICF/IID's depreciated current asset value as 1061  
determined under division (C) (2) of this section; 1062

(ii) The ICF/IID's land value as determined under division 1063  
(C) (10) of this section. 1064

(b) Eleven per cent. 1065

(2) An ICF/IID's depreciated current asset value is its 1066  
current asset value, as determined under division (C) (3) of this 1067  
section, depreciated by the product of the following: 1068

(a) The ICF/IID's effective age as determined under 1069  
division (C) (5) of this section; 1070

(b) One and six-tenths per cent. 1071

(3) An ICF/IID's current asset value is the product of the 1072  
following: 1073

(a) The ICF/IID's value per square foot as determined 1074  
under division (C) (4) of this section; 1075

(b) The lesser of the ICF/IID's square footage and the 1076  
following: 1077

(i) If the ICF/IID is in peer group 1-A and is a downsized 1078  
ICF/IID, its medicaid-certified capacity on the last day of the 1079  
applicable cost report year multiplied by one thousand; 1080

(ii) If the ICF/IID is in peer group 1-A and is not a 1081  
downsized ICF/IID, its medicaid-certified capacity on the last 1082  
day of the applicable cost report year multiplied by five 1083  
hundred fifty; 1084

(iii) If the ICF/IID is in peer group 2-A and is a 1085  
downsized ICF/IID, its medicaid-certified capacity on the last 1086  
day of the applicable cost report year multiplied by one 1087  
thousand; 1088

(iv) If the ICF/IID is in peer group 2-A and is not a 1089  
downsized ICF/IID, its medicaid-certified capacity on the last 1090  
day of the applicable cost report year multiplied by seven 1091  
hundred fifty; 1092

(v) If the ICF/IID is in peer group 3-A, its medicaid- 1093  
certified capacity on the last day of the applicable cost report 1094  
year multiplied by eight hundred fifty; 1095

(vi) If the ICF/IID is in peer group 4-A or peer group 5- 1096  
A, its medicaid-certified capacity on the last day of the 1097  
applicable cost report year multiplied by nine hundred. 1098

(4) (a) An ICF/IID's value per square foot shall be 1099  
determined by using the version of the following RS means data 1100  
that was most recently published at the time the determination 1101  
is made: 1102

(i) If the ICF/IID is in peer group 1-A or peer group 2-A, 1103  
the RS means data for assisted-senior living facility 1104  
construction costs; 1105

(ii) If the ICF/IID is in peer group 3-A, peer group 4-A, 1106  
or peer group 5-A, the RS means data for nursing home 1107  
construction costs. 1108

(b) Except as provided in division (C) (4) (c) of this 1109  
section, in determining an ICF/IID's value per square foot, the 1110  
following modifier shall be used: 1111

(i) If the ICF/IID is located in Summit county, the 1112



modifier specified in the applicable RS means data for Akron; 1113

(ii) If the ICF/IID is located in Athens county, the 1114  
modifier specified in the applicable RS means data for Athens; 1115

(iii) If the ICF/IID is located in Ashtabula, Geauga, 1116  
Lake, Medina, Portage, Stark, Trumbull, or Wayne county, the 1117  
modifier specified in the applicable RS means data for Canton; 1118

(iv) If the ICF/IID is located in Ross county, the 1119  
modifier specified in the applicable RS means data for 1120  
Chillicothe; 1121

(v) If the ICF/IID is located in Hamilton county, the 1122  
modifier specified in the applicable RS means data for 1123  
Cincinnati; 1124

(vi) If the ICF/IID is located in Cuyahoga county, the 1125  
modifier specified in the applicable RS means data for 1126  
Cleveland; 1127

(vii) If the ICF/IID is located in Franklin county, the 1128  
modifier specified in the applicable RS means data for Columbus; 1129

(viii) If the ICF/IID is located in Montgomery county, the 1130  
modifier specified in the applicable RS means data for Dayton; 1131

(ix) If the ICF/IID is located in Brown, Butler, Clermont, 1132  
Clinton, Champaign, Darke, Greene, Logan, Miami, Preble, Shelby, 1133  
or Warren county, the modifier specified in the applicable RS 1134  
means data for Hamilton; 1135

(x) If the ICF/IID is located in Allen, Auglaize, 1136  
Defiance, Erie, Fulton, Hancock, Henry, Huron, Mercer, Paulding, 1137  
Putnam, Ottawa, Sandusky, Seneca, Van Wert, Williams, or Wood 1138  
county, the modifier specified in the applicable RS means data 1139  
for Lima; 1140

- (xi) If the ICF/IID is located in Lorain county, the 1141  
modifier specified in the applicable RS means data for Lorain; 1142
- (xii) If the ICF/IID is located in Ashland, Crawford, 1143  
Delaware, Fairfield, Fayette, Hardin, Knox, Licking, Madison, 1144  
Morrow, Pickaway, Richland, Union, or Wyandot county, the 1145  
modifier specified in the applicable RS means data for 1146  
Mansfield; 1147
- (xiii) If the ICF/IID is located in Marion county, the 1148  
modifier specified in the applicable RS means data for Marion; 1149
- (xiv) If the ICF/IID is located in Clark county, the 1150  
modifier specified in the applicable RS means data for 1151  
Springfield; 1152
- (xv) If the ICF/IID is located in Jefferson county, the 1153  
modifier specified in the applicable RS means data for 1154  
Steubenville; 1155
- (xvi) If the ICF/IID is located in Lucas county, the 1156  
modifier specified in the applicable RS means data for Toledo; 1157
- (xvii) If the ICF/IID is located in Mahoning county, the 1158  
modifier specified in the applicable RS means data for 1159  
Youngstown; 1160
- (xviii) If the ICF/IID is located in Adams, Belmont, 1161  
Carroll, Columbiana, Coshocton, Gallia, Guernsey, Harrison, 1162  
Highland, Hocking, Holmes, Jackson, Lawrence, Meigs, Monroe, 1163  
Morgan, Muskingum, Noble, Perry, Pike, Scioto, Tuscarawas, 1164  
Vinton, or Washington county, the modifier specified in the 1165  
applicable RS means data for Zanesville. 1166
- (c) If a modifier ceases to be specified in the applicable 1167  
RS means data for a city listed in division (C) (4) (b) of this 1168

section, the director of developmental disabilities shall 1169  
specify in rules adopted under section 5124.03 of the Revised 1170  
Code a different modifier for the counties that are affected by 1171  
the change. 1172

(5) An ICF/IID's effective age shall be determined as 1173  
follows: 1174

(a) Determine the sum of the numbers of the ICF/IID's new 1175  
bed equivalents for renovations for the applicable cost report 1176  
year and the immediately preceding thirty-nine calendar years as 1177  
determined for each of those years under division (C) (7) (a) of 1178  
this section; 1179

(b) Determine the sum of the numbers of the ICF/IID's new 1180  
bed equivalents for additions that do not increase the ICF/IID's 1181  
medicaid-certified capacity for the applicable cost report year 1182  
and the immediately preceding thirty-nine calendar years as 1183  
determined for each of those years under division (C) (8) (a) of 1184  
this section; 1185

(c) Determine the sum of the numbers of the ICF/IID's new 1186  
beds resulting from additions that increase the ICF/IID's 1187  
medicaid-certified capacity for the applicable cost report year 1188  
and the immediately preceding thirty-nine calendar years as 1189  
determined for each of those years under division (C) (9) (a) of 1190  
this section; 1191

(d) Determine the sum of the sums determined under 1192  
divisions (C) (5) (a), (b), and (c) of this section; 1193

(e) Determine the difference of the following: 1194

(i) The ICF/IID's medicaid-certified capacity on the last 1195  
day of the applicable cost report year; 1196

<u>(ii) The lesser of the amount specified in division (C) (5)</u>	1197
<u>(e) (i) of this section and the sum determined under division (C)</u>	1198
<u>(5) (d) of this section.</u>	1199
<u>(f) For the purpose of determining the weighted age of the</u>	1200
<u>ICF/IID's original beds, determine the product of the following:</u>	1201
<u>(i) The difference determined under division (C) (5) (e) of</u>	1202
<u>this section;</u>	1203
<u>(ii) The ICF/IID's age as determined under division (C) (6)</u>	1204
<u>of this section.</u>	1205
<u>(g) Determine the sum of the weighted ages of the</u>	1206
<u>ICF/IID's new bed equivalents for renovations for the applicable</u>	1207
<u>cost report year and the immediately preceding thirty-nine</u>	1208
<u>calendar years as determined for each of those years under</u>	1209
<u>division (C) (7) (c) of this section;</u>	1210
<u>(h) Determine the sum of the weighted ages of the</u>	1211
<u>ICF/IID's new bed equivalents for additions that do not increase</u>	1212
<u>its medicaid-certified capacity for the applicable cost report</u>	1213
<u>year and the immediately preceding thirty-nine calendar years as</u>	1214
<u>determined for each of those years under division (C) (8) (d) of</u>	1215
<u>this section;</u>	1216
<u>(i) Determine the sum of the weighted ages of the</u>	1217
<u>ICF/IID's new beds resulting from additions that increase its</u>	1218
<u>medicaid-certified capacity for the applicable cost report year</u>	1219
<u>and the immediately preceding thirty-nine calendar years as</u>	1220
<u>determined for that period and each of those years under</u>	1221
<u>division (C) (9) (b) of this section;</u>	1222
<u>(j) Determine the sum of the following:</u>	1223
<u>(i) The product determined under division (C) (5) (f) of</u>	1224

<u>this section;</u>	1225
(ii) <u>The sum of the sums determined under divisions (C) (5)</u>	1226
<u>(g), (h), and (i) of this section.</u>	1227
(k) <u>Determine the quotient of the following:</u>	1228
(i) <u>The sum determined under division (C) (5) (j) of this</u>	1229
<u>section;</u>	1230
(ii) <u>The ICF/IID's medicaid-certified capacity on the last</u>	1231
<u>day of the applicable cost report year.</u>	1232
(6) <u>An ICF/IID's age is the lesser of the following:</u>	1233
(a) <u>The difference between the following:</u>	1234
(i) <u>The calendar year in which occurs the last day of the</u>	1235
<u>period covered by the cost report being used to determine the</u>	1236
<u>ICF/IID's rate under this section;</u>	1237
(ii) <u>The calendar year in which the ICF/IID was initially</u>	1238
<u>constructed.</u>	1239
(b) <u>Forty.</u>	1240
(7) (a) <u>The number, for a year, of an ICF/IID's new bed</u>	1241
<u>equivalents for renovations is the quotient of the following:</u>	1242
(i) <u>The ICF/IID's desk-reviewed, actual, allowable</u>	1243
<u>renovation costs for the year;</u>	1244
(ii) <u>Seventy thousand dollars.</u>	1245
(b) <u>The age of an ICF/IID's new bed equivalents for</u>	1246
<u>renovations is the difference of the following:</u>	1247
(i) <u>The calendar year in which occurs the last day of the</u>	1248
<u>period covered by the cost report being used to determine the</u>	1249
<u>ICF/IID's rate under this section;</u>	1250

<u>(ii) The calendar year the renovations were completed.</u>	1251
<u>(c) The weighted age, for a year, of an ICF/IID's new bed</u>	1252
<u>equivalents for renovations is the product of the following:</u>	1253
<u>(i) The number, for that year, of the ICF/IID's new bed</u>	1254
<u>equivalents for renovations as determined under division (C) (7)</u>	1255
<u>(a) of this section;</u>	1256
<u>(ii) The age of those new bed equivalents as determined</u>	1257
<u>under division (C) (7) (b) of this section.</u>	1258
<u>(8) (a) The number, for a year, of an ICF/IID's new bed</u>	1259
<u>equivalents for additions that do not increase its medicaid-</u>	1260
<u>certified capacity is the quotient of the following:</u>	1261
<u>(i) The value of such additions made to the ICF/IID that</u>	1262
<u>year as determined under division (C) (8) (b) of this section;</u>	1263
<u>(ii) Seventy thousand dollars.</u>	1264
<u>(b) The value of additions that do not increase an</u>	1265
<u>ICF/IID's medicaid-certified capacity is the product of the</u>	1266
<u>following:</u>	1267
<u>(i) The total square footage of the additions;</u>	1268
<u>(ii) The ICF/IID's value per square foot as determined</u>	1269
<u>under division (C) (4) of this section.</u>	1270
<u>(c) The age of an ICF/IID's new bed equivalents for</u>	1271
<u>additions that do not increase its medicaid-certified capacity</u>	1272
<u>is the difference of the following:</u>	1273
<u>(i) The calendar year in which occurs the last day of the</u>	1274
<u>period covered by the cost report being used to determine the</u>	1275
<u>ICF/IID's rate under this section;</u>	1276
<u>(ii) The calendar year the additions were completed.</u>	1277

(d) The weighted age, for a year, of an ICF/IID's new bed 1278  
equivalents for additions that do not increase its medicaid- 1279  
certified capacity is the product of the following: 1280

(i) The number, for that year, of the ICF/IID's new bed 1281  
equivalents for such additions as determined under division (C) 1282  
(8) (a) of this section; 1283

(ii) The age of those new bed equivalents as determined 1284  
under division (C) (8) (c) of this section. 1285

(9) (a) The number, for a year, of new beds resulting from 1286  
additions that increase an ICF/IID's medicaid-certified capacity 1287  
is the number by which the new beds increased the ICF/IID's 1288  
medicaid-certified capacity that year. 1289

(b) The weighted age, for a year, of new beds resulting 1290  
from additions that increase an ICF/IID's medicaid-certified 1291  
capacity is the product of the following: 1292

(i) The number by which those new beds increased the 1293  
ICF/IID's medicaid-certified capacity that year; 1294

(ii) The difference of the calendar year in which occurs 1295  
the last day of the period covered by the cost report being used 1296  
to determine the ICF/IID's rate under this section and the 1297  
calendar year the ICF/IID's medicaid-certified capacity was so 1298  
increased. 1299

(10) An ICF/IID's land value is the product of the 1300  
following: 1301

(a) The ICF/IID's current asset value as determined under 1302  
division (C) (3) of this section; 1303

(b) Ten per cent. 1304

<u>(D) An ICF/IID's per diem equipment rate for a fiscal year</u>	1305
<u>shall be the lesser of the following:</u>	1306
<u>(1) The quotient of the following:</u>	1307
<u>(a) The ICF/IID's costs for capital equipment for the</u>	1308
<u>applicable cost report year;</u>	1309
<u>(b) The greater of the following:</u>	1310
<u>(i) The number of the ICF/IID's inpatient days for the</u>	1311
<u>applicable cost report year;</u>	1312
<u>(ii) The number of inpatient days the ICF/IID would have</u>	1313
<u>had during the applicable cost report year if its occupancy rate</u>	1314
<u>had been ninety-two per cent that year.</u>	1315
<u>(2) The following amount:</u>	1316
<u>(a) If the ICF/IID is in peer group 1-A, five dollars;</u>	1317
<u>(b) If the ICF/IID is in peer group 2-A, six dollars and</u>	1318
<u>fifty cents;</u>	1319
<u>(c) If the ICF/IID is in peer group 3-A, eight dollars;</u>	1320
<u>(d) If the ICF/IID is in peer group 4-A or peer group 5-A,</u>	1321
<u>nine dollars.</u>	1322
<u>(E) An ICF/IID's per diem secondary building rate for a</u>	1323
<u>fiscal year is the quotient of the following:</u>	1324
<u>(1) The ICF/IID's secondary building value as determined</u>	1325
<u>under division (F) of this section;</u>	1326
<u>(2) The greater of the following:</u>	1327
<u>(a) The number of the ICF/IID's inpatient days for the</u>	1328
<u>applicable cost report year;</u>	1329



(b) The number of inpatient days the ICF/IID would have 1330  
had during the applicable cost report year if its occupancy rate 1331  
had been ninety-two per cent that year. 1332

(F) (1) An ICF/IID's secondary building value is the 1333  
product of the following: 1334

(a) The sum of the following: 1335

(i) The sum of the depreciated current asset values of the 1336  
ICF/IID's secondary buildings as determined under division (F) 1337  
(2) of this section; 1338

(ii) The sum of the land values of the ICF/IID's secondary 1339  
buildings as determined under division (F) (6) of this section. 1340

(b) A rental rate of eleven per cent. 1341

(2) The depreciated current asset value of an ICF/IID's 1342  
secondary building is the current asset value of the secondary 1343  
building, as determined under division (F) (3) of this section, 1344  
depreciated by the product of the following: 1345

(a) The age of the secondary building as determined under 1346  
division (F) (5) of this section; 1347

(b) One and six-tenths per cent. 1348

(3) The current asset value of an ICF/IID's secondary 1349  
building is the product of the following: 1350

(a) The part of the secondary building's square footage 1351  
that is allocated to the ICF/IID; 1352

(b) The secondary building's value per square foot as 1353  
determined under division (F) (4) of this section. 1354

(4) The value per square foot of an ICF/IID's secondary 1355  
building shall be determined by using the following: 1356

(a) Except as provided in division (F) (4) (b) of this 1357  
section, the most recent national average commercial cost 1358  
estimate for office/warehouse buildings according to information 1359  
available at buildingjournal.com on the last day of the 1360  
applicable cost report year; 1361

(b) If the national average commercial cost estimate for 1362  
office/warehouse buildings ceases to be available at 1363  
buildingjournal.com, the most recent comparable cost estimate as 1364  
specified in rules the director of developmental disabilities 1365  
shall adopt under section 5124.03 of the Revised Code. 1366

(5) The age of an ICF/IID's secondary building is the 1367  
lesser of the following: 1368

(a) The difference of the following: 1369

(i) The calendar year in which occurs the last day of the 1370  
period covered by the cost report being used to determine the 1371  
ICF/IID's rate under this section; 1372

(ii) The calendar year the secondary building was 1373  
initially constructed. 1374

(b) Forty. 1375

(6) The land value of an ICF/IID's secondary building is 1376  
the product of the following: 1377

(a) The current asset value of the ICF/IID's secondary 1378  
building as determined under division (F) (3) of this section; 1379

(b) Ten per cent. 1380

(G) For the purposes of divisions (A) (1) (b) and (H) (1) (b) 1381  
(ii) of this section, the department shall determine the sum of 1382  
the following for each ICF/IID for each fiscal year: 1383

<u>(1) The quotient of the following:</u>	1384
<u>(a) The ICF/IID's desk-reviewed, actual, allowable capital</u>	1385
<u>costs for the applicable cost report year;</u>	1386
<u>(b) The greater of the following:</u>	1387
<u>(i) The number of the ICF/IID's inpatient days for the</u>	1388
<u>applicable cost report year;</u>	1389
<u>(ii) The number of inpatient days the ICF/IID would have</u>	1390
<u>had during the applicable cost report year if its occupancy rate</u>	1391
<u>had been ninety-two per cent that year.</u>	1392
<u>(2) The following amount:</u>	1393
<u>(a) If the ICF/IID is in peer group 1-A or peer group 2-A,</u>	1394
<u>three dollars;</u>	1395
<u>(b) If the ICF/IID is in peer group 3-A, peer group 4-A,</u>	1396
<u>or peer group 5-A, five dollars.</u>	1397
<u>(3) The greater of the following:</u>	1398
<u>(a) Ten per cent of the difference of the following:</u>	1399
<u>(i) The sum of the quotient determined for the fiscal year</u>	1400
<u>under division (G) (1) of this section and the applicable amount</u>	1401
<u>specified in division (G) (2) of this section;</u>	1402
<u>(ii) The sum determined for the fiscal year under division</u>	1403
<u>(A) (1) (a) of this section.</u>	1404
<u>(b) Zero.</u>	1405
<u>(H) An ICF/IID's per diem nonextensive renovation rate for</u>	1406
<u>a fiscal year is the following:</u>	1407
<u>(1) If the sum of the ICF/IID's per diem costs of</u>	1408
<u>nonextensive renovations for the applicable cost report year as</u>	1409

determined under division (I) of this section and the ICF/IID's 1410  
per diem costs of ownership for the applicable cost report year 1411  
as determined under division (J) of this section is greater than 1412  
the sum determined for the ICF/IID for the fiscal year under 1413  
division (G) of this section, the lesser of the following: 1414

(a) The ICF/IID's per diem costs of nonextensive 1415  
renovations for the applicable cost report year as determined 1416  
under division (I) of this section; 1417

(b) The difference of the following: 1418

(i) The sum of the ICF/IID's per diem costs of 1419  
nonextensive renovation for the applicable cost report year as 1420  
determined under division (I) of this section and the ICF/IID's 1421  
per diem costs of ownership for the applicable cost report year 1422  
as determined under division (J) of this section; 1423

(ii) The sum determined for the ICF/IID for the fiscal 1424  
year under division (G) of this section. 1425

(2) If the sum of the ICF/IID's per diem costs of 1426  
nonextensive renovation for the applicable cost report year as 1427  
determined under division (I) of this section and the ICF/IID's 1428  
per diem costs of ownership for the applicable cost report year 1429  
as determined under division (J) of this section is less than or 1430  
equal to the sum determined for the ICF/IID for the fiscal year 1431  
under division (G) of this section, zero. 1432

(I) An ICF/IID's per diem costs of nonextensive 1433  
renovations for an applicable cost report year are the quotient 1434  
of the following: 1435

(1) The ICF/IID's desk-reviewed, actual, allowable costs 1436  
of nonextensive renovations for the applicable cost report year; 1437

<u>(2) The greater of the following:</u>	1438
<u>(a) The number of the ICF/IID's inpatient days for the</u>	1439
<u>applicable cost report year;</u>	1440
<u>(b) The number of inpatient days the ICF/IID would have</u>	1441
<u>had during the applicable cost report year if its occupancy rate</u>	1442
<u>had been ninety-two per cent that year.</u>	1443
<u>(J) An ICF/IID's per diem costs of ownership for an</u>	1444
<u>applicable cost report year are the quotient of the following:</u>	1445
<u>(1) The ICF/IID's desk-reviewed, actual, allowable costs</u>	1446
<u>of ownership for the applicable cost report year;</u>	1447
<u>(2) The greater of the following:</u>	1448
<u>(a) The number of the ICF/IID's inpatient days for the</u>	1449
<u>applicable cost report year;</u>	1450
<u>(b) The number of inpatient days the ICF/IID would have</u>	1451
<u>had during the applicable cost report year if its occupancy rate</u>	1452
<u>had been ninety-two per cent that year.</u>	1453
<b><u>Sec. <del>5124.17</del> 5124.171.</u></b> (A) For each fiscal year <u>until</u>	1454
<u>fiscal year 2022 and for the purpose of division (C) of section</u>	1455
<u>5124.15 of the Revised Code</u> , the department of developmental	1456
disabilities shall determine each ICF/IID's per medicaid day	1457
payment rate for reasonable capital costs. Except as otherwise	1458
provided in this chapter, an ICF/IID's rate shall be determined	1459
prospectively and based on the ICF/IID's capital costs for the	1460
calendar year preceding the fiscal year <del>in for</del> which the rate	1461
will be <del>paid</del> <u>determined</u> . Subject to section 5124.28 of the	1462
Revised Code, an ICF/IID's rate shall equal the sum of the	1463
following:	1464
(1) The ICF/IID's desk-reviewed, actual, allowable, per	1465

diem costs of ownership for the immediately preceding cost 1466  
reporting period, limited as provided in divisions (B), (C), and 1467  
(D) of this section; 1468

(2) The ICF/IID's per medicaid day payment for the 1469  
ICF/IID's per diem capitalized costs of nonextensive renovations 1470  
determined under division (E) (1) of this section if the ICF/IID 1471  
qualifies for a payment for such costs as specified in division 1472  
(E) (2) of this section; 1473

(3) The ICF/IID's per medicaid day efficiency incentive 1474  
determined under division (F) of this section. 1475

(B) The costs of ownership per diem payment rates for 1476  
ICFs/IID in peer group 1-B shall not exceed the following limits 1477  
as adjusted for inflation in accordance with division (G) of 1478  
this section: 1479

(1) For ICFs/IID with dates of licensure prior to January 1480  
1, 1958, not exceeding two dollars and fifty cents; 1481

(2) For ICFs/IID with dates of licensure after December 1482  
31, 1957, but prior to January 1, 1968, not exceeding: 1483

(a) Three dollars and fifty cents if the cost of 1484  
construction was three thousand five hundred dollars or more per 1485  
bed; 1486

(b) Two dollars and fifty cents if the cost of 1487  
construction was less than three thousand five hundred dollars 1488  
per bed. 1489

(3) For ICFs/IID with dates of licensure after December 1490  
31, 1967, but prior to January 1, 1976, not exceeding: 1491

(a) Four dollars and fifty cents if the cost of 1492  
construction was five thousand one hundred fifty dollars or more 1493

per bed;	1494
(b) Three dollars and fifty cents if the cost of	1495
construction was less than five thousand one hundred fifty	1496
dollars per bed, but exceeds three thousand five hundred dollars	1497
per bed;	1498
(c) Two dollars and fifty cents if the cost of	1499
construction was three thousand five hundred dollars or less per	1500
bed.	1501
(4) For ICFs/IID with dates of licensure after December	1502
31, 1975, but prior to January 1, 1979, not exceeding:	1503
(a) Five dollars and fifty cents if the cost of	1504
construction was six thousand eight hundred dollars or more per	1505
bed;	1506
(b) Four dollars and fifty cents if the cost of	1507
construction was less than six thousand eight hundred dollars	1508
per bed but exceeds five thousand one hundred fifty dollars per	1509
bed;	1510
(c) Three dollars and fifty cents if the cost of	1511
construction was five thousand one hundred fifty dollars or less	1512
per bed, but exceeds three thousand five hundred dollars per	1513
bed;	1514
(d) Two dollars and fifty cents if the cost of	1515
construction was three thousand five hundred dollars or less per	1516
bed.	1517
(5) For ICFs/IID with dates of licensure after December	1518
31, 1978, but prior to January 1, 1980, not exceeding:	1519
(a) Six dollars if the cost of construction was seven	1520
thousand six hundred twenty-five dollars or more per bed;	1521

(b) Five dollars and fifty cents if the cost of 1522  
construction was less than seven thousand six hundred twenty- 1523  
five dollars per bed but exceeds six thousand eight hundred 1524  
dollars per bed; 1525

(c) Four dollars and fifty cents if the cost of 1526  
construction was six thousand eight hundred dollars or less per 1527  
bed but exceeds five thousand one hundred fifty dollars per bed; 1528

(d) Three dollars and fifty cents if the cost of 1529  
construction was five thousand one hundred fifty dollars or less 1530  
but exceeds three thousand five hundred dollars per bed; 1531

(e) Two dollars and fifty cents if the cost of 1532  
construction was three thousand five hundred dollars or less per 1533  
bed. 1534

(6) For ICFs/IID with dates of licensure after December 1535  
31, 1979, but prior to January 1, 1981, not exceeding: 1536

(a) Twelve dollars if the beds were originally licensed as 1537  
residential facility beds by the department of developmental 1538  
disabilities; 1539

(b) Six dollars if the beds were originally licensed as 1540  
nursing home beds by the department of health. 1541

(7) For ICFs/IID with dates of licensure after December 1542  
31, 1980, but prior to January 1, 1982, not exceeding: 1543

(a) Twelve dollars if the beds were originally licensed as 1544  
residential facility beds by the department of developmental 1545  
disabilities; 1546

(b) Six dollars and forty-five cents if the beds were 1547  
originally licensed as nursing home beds by the department of 1548  
health. 1549



(8) For ICFs/IID with dates of licensure after December	1550
31, 1981, but prior to January 1, 1983, not exceeding:	1551
(a) Twelve dollars if the beds were originally licensed as	1552
residential facility beds by the department of developmental	1553
disabilities;	1554
(b) Six dollars and seventy-nine cents if the beds were	1555
originally licensed as nursing home beds by the department of	1556
health.	1557
(9) For ICFs/IID with dates of licensure after December	1558
31, 1982, but prior to January 1, 1984, not exceeding:	1559
(a) Twelve dollars if the beds were originally licensed as	1560
residential facility beds by the department of developmental	1561
disabilities;	1562
(b) Seven dollars and nine cents if the beds were	1563
originally licensed as nursing home beds by the department of	1564
health.	1565
(10) For ICFs/IID with dates of licensure after December	1566
31, 1983, but prior to January 1, 1985, not exceeding:	1567
(a) Twelve dollars and twenty-four cents if the beds were	1568
originally licensed as residential facility beds by the	1569
department of developmental disabilities;	1570
(b) Seven dollars and twenty-three cents if the beds were	1571
originally licensed as nursing home beds by the department of	1572
health.	1573
(11) For ICFs/IID with dates of licensure after December	1574
31, 1984, but prior to January 1, 1986, not exceeding:	1575
(a) Twelve dollars and fifty-three cents if the beds were	1576

originally licensed as residential facility beds by the	1577
department of developmental disabilities;	1578
(b) Seven dollars and forty cents if the beds were	1579
originally licensed as nursing home beds by the department of	1580
health.	1581
(12) For ICFs/IID with dates of licensure after December	1582
31, 1985, but prior to January 1, 1987, not exceeding:	1583
(a) Twelve dollars and seventy cents if the beds were	1584
originally licensed as residential facility beds by the	1585
department of developmental disabilities;	1586
(b) Seven dollars and fifty cents if the beds were	1587
originally licensed as nursing home beds by the department of	1588
health.	1589
(13) For ICFs/IID with dates of licensure after December	1590
31, 1986, but prior to January 1, 1988, not exceeding:	1591
(a) Twelve dollars and ninety-nine cents if the beds were	1592
originally licensed as residential facility beds by the	1593
department of developmental disabilities;	1594
(b) Seven dollars and sixty-seven cents if the beds were	1595
originally licensed as nursing home beds by the department of	1596
health.	1597
(14) For ICFs/IID with dates of licensure after December	1598
31, 1987, but prior to January 1, 1989, not exceeding thirteen	1599
dollars and twenty-six cents;	1600
(15) For ICFs/IID with dates of licensure after December	1601
31, 1988, but prior to January 1, 1990, not exceeding thirteen	1602
dollars and forty-six cents;	1603

(16) For ICFs/IID with dates of licensure after December 1604  
31, 1989, but prior to January 1, 1991, not exceeding thirteen 1605  
dollars and sixty cents; 1606

(17) For ICFs/IID with dates of licensure after December 1607  
31, 1990, but prior to January 1, 1992, not exceeding thirteen 1608  
dollars and forty-nine cents; 1609

(18) For ICFs/IID with dates of licensure after December 1610  
31, 1991, but prior to January 1, 1993, not exceeding thirteen 1611  
dollars and sixty-seven cents; 1612

(19) For ICFs/IID with dates of licensure after December 1613  
31, 1992, not exceeding fourteen dollars and twenty-eight cents. 1614

(C) (1) The costs of ownership per diem payment rate for an 1615  
ICF/IID in peer group 2-B shall not exceed the following limits: 1616

(a) Eighteen dollars and thirty cents as adjusted for 1617  
inflation pursuant to division (C) (2) of this section if any of 1618  
the following apply to the ICF/IID: 1619

(i) The ICF/IID has a date of licensure, or was granted 1620  
project authorization by the department of developmental 1621  
disabilities, before July 1, 1993. 1622

(ii) The ICF/IID has a date of licensure, or was granted 1623  
project authorization by the department, on or after July 1, 1624  
1993, and the provider demonstrates that the provider made 1625  
substantial commitments of funds for the ICF/IID before that 1626  
date. 1627

(iii) The ICF/IID has a date of licensure, or was granted 1628  
project authorization by the department, on or after July 1, 1629  
1993, the provider made no substantial commitment of funds for 1630  
the ICF/IID before that date, and the department of job and 1631

family services or department of developmental disabilities gave 1632  
prior approval for the ICF/IID's construction. 1633

(b) If division (C) (1) (a) of this section does not apply 1634  
to the ICF/IID, the amount that would apply to the ICF/IID under 1635  
division (B) of this section if it were in peer group 1-B. 1636

(2) The eighteen-dollar and thirty-cent payment rate 1637  
specified in division (C) (1) (a) of this section shall be 1638  
increased as follows: 1639

(a) For the period beginning June 30, 1990, and ending 1640  
July 1, 1993, by the change in the "Dodge building cost indexes, 1641  
northeastern and north central states," published by Marshall 1642  
and Swift; 1643

(b) For each fiscal year thereafter, in accordance with 1644  
division (G) of this section. 1645

(D) The costs of ownership per diem payment rate for an 1646  
ICF/IID in peer group 3-B shall not exceed the amount that is 1647  
used for the purpose of division (C) (1) (a) of this section and 1648  
is in effect on July 1, 2014. That rate shall be increased each 1649  
fiscal year that begins after ~~the effective date of this section~~ 1650  
September 15, 2014, and ends not later than July 1, 2021, in 1651  
accordance with division (G) of this section. 1652

(E) (1) Beginning January 1, 1981, regardless of the 1653  
original date of licensure, the payment rate for the per diem 1654  
capitalized costs of nonextensive renovations made after January 1655  
1, 1981, to a qualifying ICF/IID, shall not exceed six dollars 1656  
per medicaid day using 1980 as the base year and adjusting the 1657  
amount annually until June 30, 1993, for fluctuations in 1658  
construction costs calculated by the department using the "Dodge 1659  
building cost indexes, northeastern and north central states," 1660

published by Marshall and Swift. The payment rate shall be 1661  
further adjusted in accordance with division (G) of this 1662  
section. The payment provided for in this division is the only 1663  
payment that shall be made for an ICF/IID's capitalized costs of 1664  
nonextensive renovations. Costs of nonextensive renovations 1665  
shall not be included in costs of ownership and shall not affect 1666  
the date of licensure for purposes of division (B) or (C) of 1667  
this section. This division applies to nonextensive renovations 1668  
regardless of whether they are made by an owner or a lessee. If 1669  
the tenancy of a lessee that has made nonextensive renovations 1670  
ends before the depreciation expense for the costs of 1671  
nonextensive renovations has been fully reported, the former 1672  
lessee shall not report the undepreciated balance as an expense. 1673

(2) An ICF/IID qualifies for a payment for costs of 1674  
nonextensive renovations if all of the following apply: 1675

(a) Either of the following applies: 1676

(i) The ICF/IID is in peer group 1-B and either the 1677  
department approved the nonextensive renovation before July 1, 1678  
2013, or the nonextensive renovation is part of a project that 1679  
results in the ICF/IID becoming a downsized ICF/IID or partially 1680  
converted ICF/IID. 1681

(ii) The ICF/IID is in peer group 2-B or peer group 3-B. 1682

(b) At least five years have elapsed since the ICF/IID's 1683  
date of licensure or date of an extensive renovation of the 1684  
portion of the ICF/IID that is proposed to be nonextensively 1685  
renovated, unless the nonextensive renovation is necessary to 1686  
meet the requirements of federal, state, or local statutes, 1687  
ordinances, rules, or policies. 1688

(c) The provider of the ICF/IID does both of the 1689

following: 1690

(i) Submits to the department a plan that describes in 1691  
detail the changes in capital assets to be accomplished by means 1692  
of the nonextensive renovation and the timetable for completing 1693  
the project, which shall be not more than eighteen months after 1694  
the nonextensive renovation begins; 1695

(ii) Obtains prior approval from the department for the 1696  
nonextensive renovation. 1697

(3) The director of developmental disabilities shall adopt 1698  
rules under section 5124.03 of the Revised Code that specify 1699  
criteria and procedures for prior approval of nonextensive 1700  
renovation and extensive renovation projects. No provider shall 1701  
separate a project with the intent to evade the characterization 1702  
of the project as a nonextensive renovation or as an extensive 1703  
renovation. No provider shall increase the scope of a project 1704  
after it is approved by the department unless the increase in 1705  
scope is approved by the department. 1706

(F) (1) Subject to division (F) (2) of this section, an 1707  
ICF/IID's per medicaid day efficiency incentive payment rate 1708  
shall equal the following percentage of the difference between 1709  
the ICF/IID's desk-reviewed, actual, allowable per diem costs of 1710  
ownership and the applicable limit on costs of ownership payment 1711  
rates established by division (B) of this section: 1712

(a) In the case of an ICF/IID in peer group 1-B, the 1713  
following percentage: 1714

(i) Fifty per cent if the provider of the ICF/IID obtains 1715  
the department's approval to become a downsized ICF/IID and the 1716  
approval is conditioned on the downsizing being completed not 1717  
later than July 1, 2018; 1718

(ii) Twenty-five per cent if division (F) (1) (a) (i) of this 1719  
section does not apply; 1720

(b) In the case of an ICF/IID in peer group 2-B or peer 1721  
group 3-B, fifty per cent. 1722

(2) The efficiency incentive payment rate for an ICF/IID 1723  
in peer group 2-B or peer group 3-B shall not exceed three 1724  
dollars per medicaid day, adjusted annually in accordance with 1725  
division (G) of this section. For the purpose of determining an 1726  
ICF/IID's efficiency incentive payment rate, both of the 1727  
following apply: 1728

(a) Depreciation for costs paid or reimbursed by any 1729  
government agency shall be considered as a cost of ownership; 1730

(b) The applicable limit under division (B) of this 1731  
section shall apply to all ICFs/IID regardless of which peer 1732  
group they are in. 1733

(G) The amounts specified in divisions (B), (C), (D), (E), 1734  
and (F) of this section shall be adjusted beginning on the first 1735  
day of each fiscal year until fiscal year 2022 for the estimated 1736  
inflation rate for the twelve-month period beginning on the 1737  
first day of July of the calendar year immediately preceding the 1738  
calendar year that immediately precedes the fiscal year for 1739  
which rate ~~will be paid~~ is determined and ending on the 1740  
thirtieth day of the following June, using the consumer price 1741  
index for shelter costs for all urban consumers for the midwest 1742  
region, as published by the United States bureau of labor 1743  
statistics. 1744

(H) Notwithstanding divisions (C) and (E) of this section, 1745  
the total payment rate for costs of ownership, capitalized costs 1746  
of nonextensive renovations, and the efficiency incentive for an 1747

ICF/IID in peer group 2-B shall not exceed the sum of the 1748  
limitations specified in divisions (C) and (E) of this section. 1749  
Notwithstanding divisions (D) and (E) of this section, the total 1750  
payment rate for costs of ownership, capitalized costs of 1751  
nonextensive renovations, and the efficiency incentive for an 1752  
ICF/IID in peer group 3-B shall not exceed the sum of the 1753  
limitations specified in divisions (D) and (E) of this section. 1754

(I) (1) For the purpose of determining ICFs/IID's medicaid 1755  
payment rates for capital costs under this section: 1756

(a) Buildings shall be depreciated using the straight line 1757  
method over forty years or over a different period approved by 1758  
the department. 1759

(b) Components and equipment shall be depreciated using 1760  
the straight line method over a period designated by the 1761  
director of developmental disabilities in rules adopted under 1762  
section 5124.03 of the Revised Code, consistent with the 1763  
guidelines of the American hospital association, or over a 1764  
different period approved by the department. 1765

(2) Any rules authorized by division (I) (1) of this 1766  
section that specify useful lives of buildings, components, or 1767  
equipment apply only to assets acquired on or after July 1, 1768  
1993. Depreciation for costs paid or reimbursed by any 1769  
government agency shall not be included in costs of ownership or 1770  
costs of nonextensive renovations unless that part of the 1771  
payment under this chapter is used to reimburse the government 1772  
agency. 1773

(J) (1) Except as provided in division (J) (2) of this 1774  
section, if a provider leases or transfers an interest in an 1775  
ICF/IID to another provider who is a related party, the related 1776



party's allowable costs of ownership shall include the lesser of 1777  
the following: 1778

(a) The annual lease expense or actual cost of ownership, 1779  
whichever is applicable; 1780

(b) The reasonable cost to the lessor or provider making 1781  
the transfer. 1782

(2) If a provider leases or transfers an interest in an 1783  
ICF/IID to another provider who is a related party, regardless 1784  
of the date of the lease or transfer, the related party's 1785  
allowable cost of ownership shall include the annual lease 1786  
expense or actual cost of ownership, whichever is applicable, 1787  
subject to the limitations specified in divisions (B) to (I) of 1788  
this section, if all of the following conditions are met: 1789

(a) The related party is a relative of owner; 1790

(b) In the case of a lease, if the lessor retains any 1791  
ownership interest, it is, except as provided in division (J) (2) 1792  
(d) (ii) of this section, in only the real property and any 1793  
improvements on the real property; 1794

(c) In the case of a transfer, the provider making the 1795  
transfer retains, except as provided in division (J) (2) (d) (iv) 1796  
of this section, no ownership interest in the ICF/IID; 1797

(d) The department determines that the lease or transfer 1798  
is an arm's length transaction pursuant to rules adopted under 1799  
section 5124.03 of the Revised Code. The rules shall provide 1800  
that a lease or transfer is an arm's length transaction if all 1801  
of the following, as applicable, apply: 1802

(i) In the case of a lease, once the lease goes into 1803  
effect, the lessor has no direct or indirect interest in the 1804

lessee or, except as provided in division (J) (2) (b) of this 1805  
section, the ICF/IID itself, including interest as an owner, 1806  
officer, director, employee, independent contractor, or 1807  
consultant, but excluding interest as a lessor. 1808

(ii) In the case of a lease, the lessor does not reacquire 1809  
an interest in the ICF/IID except through the exercise of a 1810  
lessor's rights in the event of a default. If the lessor 1811  
reacquires an interest in the ICF/IID in this manner, the 1812  
department shall treat the ICF/IID as if the lease never 1813  
occurred when the department determines its payment rate for 1814  
capital costs. 1815

(iii) In the case of a transfer, once the transfer goes 1816  
into effect, the provider that made the transfer has no direct 1817  
or indirect interest in the provider that acquires the ICF/IID 1818  
or the ICF/IID itself, including interest as an owner, officer, 1819  
director, employee, independent contractor, or consultant, but 1820  
excluding interest as a creditor. 1821

(iv) In the case of a transfer, the provider that made the 1822  
transfer does not reacquire an interest in the ICF/IID except 1823  
through the exercise of a creditor's rights in the event of a 1824  
default. If the provider reacquires an interest in the ICF/IID 1825  
in this manner, the department shall treat the ICF/IID as if the 1826  
transfer never occurred when the department determines its 1827  
payment rate for capital costs. 1828

(v) The lease or transfer satisfies any other criteria 1829  
specified in the rules. 1830

(e) Except in the case of hardship caused by a 1831  
catastrophic event, as determined by the department, or in the 1832  
case of a lessor or provider making the transfer who is at least 1833

sixty-five years of age, not less than twenty years have elapsed 1834  
since, for the same ICF/IID, allowable cost of ownership was 1835  
determined most recently under this division. 1836

(K) This section is obsolete beginning July 1, 2021. 1837

**Sec. 5124.19.** (A) For each fiscal year, the department of 1838  
developmental disabilities shall determine each ICF/IID's per 1839  
medicaid day direct care costs component rate. An ICF/IID's rate 1840  
shall be determined as follows: 1841

(1) Determine the product of the following: 1842

(a) The ICF/IID's quarterly case-mix score determined or 1843  
assigned under section 5124.193 of the Revised Code for the 1844  
following calendar quarter: 1845

(i) For the rate determined for fiscal year 2019, the 1846  
calendar quarter ending December 31, 2017; 1847

(ii) For the rate determined for each subsequent fiscal 1848  
year, the calendar quarter ending on the last day of March of 1849  
the calendar year in which the fiscal year begins. 1850

(b) The lesser of the following: 1851

(i) The ICF/IID's cost per case-mix unit for the 1852  
applicable cost report year as determined under division (B) of 1853  
this section; 1854

(ii) The maximum cost per case-mix unit for the ICF/IID's 1855  
peer group for the fiscal year for which the rate is determined 1856  
as determined under division (C) of this section. 1857

(2) Adjust the product determined under division (A) (1) of 1858  
this section by the inflation rate estimated under division (D) 1859  
of this section. 1860

(B) To determine an ICF/IID's cost per case-mix unit for a 1861  
cost report year, the department shall determine the quotient of 1862  
the following: 1863

(1) The ICF/IID's desk-reviewed, actual, allowable, per 1864  
diem direct care costs for the cost report year; 1865

(2) The ICF/IID's annual average case-mix score as 1866  
determined under section 5124.193 of the Revised Code for the 1867  
fiscal year for which the rate is determined. 1868

(C) (1) The maximum cost per case-mix unit for a peer group 1869  
for a fiscal year, other than peer group 5-A, is the following 1870  
percentage above the peer group's median cost per case-mix unit 1871  
for that fiscal year: 1872

(a) For peer group 1-A, sixteen per cent; 1873

(b) For peer group 2-A, fourteen per cent; 1874

(c) For peer group 3-A, eighteen per cent; 1875

(d) For peer group 4-A, twenty-two per cent. 1876

(2) The maximum cost per case-mix unit for peer group 5-A 1877  
for a fiscal year is the ninety-fifth percentile of all ICFs/IID 1878  
in peer group 5-A for the applicable cost report year. 1879

(3) In determining the maximum cost per case-mix unit for 1880  
a peer group under division (C) (1) of this section, the 1881  
department shall exclude from its determination the cost per 1882  
case-mix unit of any ICF/IID in the peer group that participated 1883  
in the medicaid program under the same provider for less than 1884  
twelve months during the applicable cost report year. 1885

(4) In determining the maximum cost per case-mix unit for 1886  
a peer group under division (C) (1) or (2) of this section, the 1887

department shall exclude from its determination the cost per 1888  
case-mix unit of any ICF/IID in the peer group that has a case- 1889  
mix score that was assigned by the department to the ICF/IID 1890  
under division (B) of section 5124.193 of the Revised Code. 1891

(5) The department shall not reset a peer group's maximum 1892  
cost per case-mix unit for a fiscal year under division (C) (1) 1893  
or (2) of this section based on additional information that the 1894  
department receives after it sets the maximum for that fiscal 1895  
year. The department shall reset a peer group's maximum cost per 1896  
case-mix unit for a fiscal year only if it made an error in 1897  
setting the maximum for that fiscal year based on information 1898  
available to the department at the time it originally sets the 1899  
maximum for that fiscal year. 1900

(D) The department shall estimate the rate of inflation 1901  
for the eighteen-month period beginning on the first day of July 1902  
of the applicable cost report year and ending on the last day of 1903  
December of the fiscal year for which the rate is determined, 1904  
using the following: 1905

(1) Subject to division (D) (2) of this section, the 1906  
employment cost index for total compensation, health care and 1907  
social assistance component, published by the United States 1908  
bureau of labor statistics; 1909

(2) If the United States bureau of labor statistics ceases 1910  
to publish the index specified in division (D) (1) of this 1911  
section, the index that is subsequently published by the bureau 1912  
and covers the staff costs of ICFs/IID. 1913

**Sec. 5124.191.** (A) As used in sections 5124.191 to 1914  
5124.193 of the Revised Code, "ICF/IID resident" includes an 1915  
individual who is on hospital or therapeutic leave from an 1916

ICF/IID. 1917

(B) In accordance with rules adopted under section 5124.03 1918  
of the Revised Code, the department of developmental 1919  
disabilities shall assess each ICF/IID resident regardless of 1920  
payment source and compile complete assessment data on the 1921  
residents. The department shall perform the initial assessment 1922  
of an ICF/IID resident. The department may perform a subsequent 1923  
assessment of an ICF/IID resident under any of the following 1924  
circumstances: 1925

(1) The provider of the ICF/IID in which the resident 1926  
resides or from which the resident is on hospital or therapeutic 1927  
leave has submitted to the department under division (D) of this 1928  
section revised assessment data for the resident or an 1929  
attestation of no changes in the resident's assessment data and 1930  
the department has reason to believe that the revised assessment 1931  
data or attestation is inaccurate; 1932

(2) The department has reason to believe that the 1933  
resident's most recent assessment no longer accurately reflects 1934  
the resident's condition; 1935

(3) The department determines that the resident's most 1936  
recent assessment should be updated because of the passage of 1937  
time since that assessment was performed. 1938

(C) If an ICF/IID provider disagrees with the results of 1939  
an assessment performed by the department under this section, 1940  
the provider may request that the department reconsider the 1941  
results in accordance with rules adopted under section 5124.03 1942  
of the Revised Code. 1943

(D) After the department assesses an ICF/IID resident 1944  
under this section, the provider of the ICF/IID in which the 1945

resident resides or from which the resident is on hospital or 1946  
therapeutic leave shall submit to the department, not later than 1947  
fifteen days after the end of each subsequent calendar quarter 1948  
and through the medium or media specified in rules adopted under 1949  
section 5124.03 of the Revised Code, either of the following: 1950

(1) Revised assessment data for the resident if there are 1951  
changes in the resident's assessment data; 1952

(2) An attestation that there are no changes in the 1953  
resident's assessment data. 1954

(E) A resident assessment instrument specified in rules 1955  
adopted under section 5124.03 of the Revised Code shall be used 1956  
to compile or revise assessment data of ICF/IID residents under 1957  
this section. The resident assessment instrument used for the 1958  
purpose of this section may be different from the resident 1959  
assessment instrument used for the purpose of section 5124.196 1960  
of the Revised Code. 1961

**Sec. 5124.192.** (A) The department of developmental 1962  
disabilities shall establish six acuity groups for the purpose 1963  
of assigning case-mix scores to ICF/IID residents. An ICF/IID 1964  
resident's case-mix score shall be the score of the resident's 1965  
acuity group as specified in rules authorized by this section. 1966

(B) The department shall place each ICF/IID resident into 1967  
one of the acuity groups. In determining which acuity group an 1968  
ICF/IID resident is to be placed into, the department shall do 1969  
all of the following: 1970

(1) In accordance with rules authorized by this section 1971  
and using the most recent resident assessment data for the 1972  
ICF/IID resident available to the department, calculate for the 1973  
resident an assessment score for each of the medical, 1974

behavioral, and adaptive skills domains on the resident 1975  
assessment instrument used to compile or revise assessment data 1976  
for ICF/IID residents under section 5124.191 of the Revised 1977  
Code; 1978

(2) For each of the ICF/IID resident's domain assessment 1979  
scores and using values specified in rules authorized by this 1980  
section, assign the following points: 1981

(a) If the resident's assessment score for the domain is 1982  
more than one standard deviation above the mean assessment score 1983  
for the domain for all ICF/IID residents as of December 31, 1984  
2017, one point; 1985

(b) If the resident's assessment score for the domain is 1986  
more than one-half standard deviation above the mean assessment 1987  
score for the domain for all ICF/IID residents as of December 1988  
31, 2017, and not more than one standard deviation above that 1989  
mean, two points; 1990

(c) If the resident's assessment score for the domain is 1991  
more than the mean assessment score for the domain for all 1992  
ICF/IID residents as of December 31, 2017, and not more than 1993  
one-half standard deviation above that mean, three points; 1994

(d) If the resident's assessment score for the domain is 1995  
not more than the mean assessment score for the domain for all 1996  
ICF/IID residents as of December 31, 2017, and not more than 1997  
one-half standard deviation below that mean, four points; 1998

(e) If the resident's assessment score for the domain is 1999  
more than one-half standard deviation below the mean assessment 2000  
score for the domain for all ICF/IID residents as of December 2001  
31, 2017, and not more than one standard deviation below that 2002  
mean, five points; 2003



(f) If the resident's assessment score for the domain is 2004  
more than one standard deviation below the mean assessment score 2005  
for the domain for all ICF/IID residents as of December 31, 2006  
2017, six points. 2007

(3) Using the following weights, determine the weighted 2008  
sum of the points assigned under division (B) (2) of this section 2009  
to each of the ICF/IID resident's domain assessment scores and 2010  
round the weighted sum to the nearest whole number: 2011

(a) Points assigned to the resident's assessment score for 2012  
the medical domain shall be weighted at thirty-five per cent. 2013

(b) Points assigned to the resident's assessment score for 2014  
the behavioral domain shall be weighted at thirty per cent. 2015

(c) Points assigned to the resident's assessment score for 2016  
the adaptive skills domain shall be weighted at thirty-five per 2017  
cent. 2018

(4) Place the ICF/IID resident into the following acuity 2019  
group: 2020

(a) If the resident's weighted sum of points is five or 2021  
lower, group one; 2022

(b) If the resident's weighted sum of points is at least 2023  
six and not more than eight, group two; 2024

(c) If the resident's weighted sum of points is nine or 2025  
ten, group three; 2026

(d) If the resident's weighted sum of points is eleven or 2027  
twelve, group four; 2028

(e) If the resident's weighted sum of points is at least 2029  
thirteen and not more than fifteen, group five; 2030

(f) If the resident's weighted sum of points is sixteen or higher, group six. 2031  
2032

(C) (1) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code as necessary to implement this section, including rules that do all of the following: 2033  
2034  
2035  
2036

(a) Subject to division (C) (2) of this section, specify case-mix scores for each acuity group established under this section; 2037  
2038  
2039

(b) Prescribe a methodology for calculating assessment scores for the medical, behavioral, and adaptive skills domains on the resident assessment instrument used to compile or revise assessment data of ICF/IID residents under section 5124.191 of the Revised Code; 2040  
2041  
2042  
2043  
2044

(c) Specify values to be used in assigning points to domain assessment scores. 2045  
2046

(2) The case-mix score specified for an acuity group shall be based on relative resource use by ICF/IID residents who are placed in the group and were included in a time study of ICF/IID residents performed by the department. 2047  
2048  
2049  
2050

**Sec. 5124.193.** (A) Except as provided in division (B) of this section, the department of developmental disabilities shall do both of the following: 2051  
2052  
2053

(1) For each calendar quarter, determine a case-mix score for each ICF/IID using both of the following: 2054  
2055

(a) The most recent (as of the date the determination is made) resident assessment data compiled and revised for the ICF/IID's residents under section 5124.191 of the Revised Code; 2056  
2057  
2058

(b) The case-mix scores of the ICF/IID's residents as 2059  
determined under section 5124.192 of the Revised Code. 2060

(2) After the end of each calendar year, determine an 2061  
annual average case-mix score for each ICF/IID using the 2062  
ICF/IID's quarterly case-mix scores for that calendar year. 2063

(B) (1) Subject to divisions (B) (2) and (3) of this 2064  
section, the department, for one or more months of a calendar 2065  
quarter, may assign to an ICF/IID a case-mix score that is five 2066  
per cent less than the ICF/IID's case-mix score as of the day 2067  
immediately preceding the day on which the reduction takes 2068  
effect if the provider does not timely comply with division (D) 2069  
of section 5124.191 of the Revised Code. 2070

(2) Subject to division (B) (3) of this section, before 2071  
assigning a case-mix score to an ICF/IID under division (B) (1) 2072  
of this section, the department shall permit the provider to 2073  
come into compliance with division (D) of section 5124.191 of 2074  
the Revised Code. The department may assign the case-mix score 2075  
if the provider fails to comply not later than forty-five days 2076  
after the end of the calendar quarter to which the noncompliance 2077  
pertains or a later date specified in rules authorized by this 2078  
section. 2079

(3) The department shall take action under division (B) (1) 2080  
or (2) of this section only in accordance with rules authorized 2081  
by this section. The department shall not take an action that 2082  
affects medicaid payment rates for prior payment periods except 2083  
in accordance with sections 5124.41 and 5124.42 of the Revised 2084  
Code. 2085

(C) The director of developmental disabilities shall adopt 2086  
rules under section 5124.03 of the Revised Code as necessary to 2087

implement this section.

2088

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

2089

2090

2091

2092

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

2093

2094

2095

2096

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

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2098

2099

2100

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

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2102

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

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

2104

2105

2106

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

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~~Sec. 5124.19~~ **5124.195.** (A) (1) For each fiscal year until fiscal year 2022 and for the purpose of division (C) of section 5124.15 of the Revised Code, the department of developmental disabilities shall determine each ICF/IID's per medicaid day payment rate for direct care costs as follows:

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

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

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

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

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

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

(C) (1) For each fiscal year for which a rate ~~will be paid~~  
is determined under this section, the department shall set the  
maximum cost per case-mix unit for ICFs/IID in peer group 1-B at

a percentage above the cost per case-mix unit determined under 2145  
division (B) of this section for the ICF/IID in peer group 1-B 2146  
that has the peer group's median number of medicaid days for the 2147  
calendar year immediately preceding the fiscal year ~~in for~~ which 2148  
the rate ~~will be paid~~ is determined. The percentage shall be no 2149  
less than twenty-two and forty-six hundredths per cent. 2150

(2) For each fiscal year for which a rate ~~will be paid~~ is 2151  
determined under this section, the department shall set the 2152  
maximum cost per case-mix unit for ICFs/IID in peer group 2-B at 2153  
a percentage above the cost per case-mix unit determined under 2154  
division (B) of this section for the ICF/IID in peer group 2-B 2155  
that has the peer group's median number of medicaid days for the 2156  
calendar year immediately preceding the fiscal year ~~in for~~ which 2157  
the rate ~~will be paid~~ is determined. The percentage shall be no 2158  
less than eighteen and eight-tenths per cent. 2159

(3) For each fiscal year for which a rate ~~will be paid~~ is 2160  
determined under this section, the department shall set the 2161  
maximum cost per case-mix unit for ICFs/IID in peer group 3-B at 2162  
the ninety-fifth percentile of all ICFs/IID in peer group 3-B 2163  
for the calendar year immediately preceding the fiscal year ~~in~~ 2164  
~~for~~ which the rate will be paid is determined. 2165

(4) In determining the maximum cost per case-mix unit 2166  
under divisions (C) (1) and (2) of this section for peer group 1- 2167  
B and peer group 2-B, the department shall exclude from its 2168  
determinations the cost per case-mix unit of any ICF/IID in peer 2169  
group 1-B or peer group 2-B that participated in the medicaid 2170  
program under the same provider for less than twelve months 2171  
during the calendar year immediately preceding the fiscal year 2172  
~~in for~~ which the rate will be paid is determined. 2173

(5) The department shall not reset a peer group's maximum 2174

cost per case-mix unit for a fiscal year under division (C) (1), 2175  
(2), or (3) of this section based on additional information that 2176  
it receives after it sets the maximum for that fiscal year. The 2177  
department shall reset a peer group's maximum cost per case-mix 2178  
unit for a fiscal year only if it made an error in setting the 2179  
maximum for that fiscal year based on information available to 2180  
the department at the time it originally sets the maximum for 2181  
that fiscal year. 2182

(D) (1) The department shall estimate the rate of inflation 2183  
for the eighteen-month period beginning on the first day of July 2184  
of the calendar year preceding the fiscal year ~~in for~~ which a 2185  
rate ~~will be paid~~ is determined under this section and ending on 2186  
the thirty-first day of December of the fiscal year ~~in for~~ which 2187  
the rate ~~will be paid~~ is determined, using the following: 2188

(a) Subject to division (D) (1) (b) of this section, the 2189  
employment cost index for total compensation, health care and 2190  
social assistance component, published by the United States 2191  
bureau of labor statistics; 2192

(b) If the United States bureau of labor statistics ceases 2193  
to publish the index specified in division (D) (1) (a) of this 2194  
section, the index that is subsequently published by the bureau 2195  
and covers the staff costs of ICFs/IID. 2196

(2) If the estimated inflation rate for the eighteen-month 2197  
period specified in division (D) (1) of this section is different 2198  
from the actual inflation rate for that period, as measured 2199  
using the same index, the difference shall be added to or 2200  
subtracted from the inflation rate estimated under division (D) 2201  
(1) of this section for the following fiscal year. 2202

(E) This section is obsolete beginning July 1, 2021. 2203

**Sec. ~~5124.191~~ 5124.196.** Each calendar quarter until the 2204  
calendar quarter beginning July 1, 2021, each ICF/IID provider 2205  
shall compile complete assessment data for each resident of each 2206  
of the provider's ICFs/IID, regardless of payment source, who is 2207  
in the ICF/IID, or on hospital or therapeutic leave from the 2208  
ICF/IID, on the last day of the quarter. A resident assessment 2209  
instrument specified in rules adopted under section 5124.03 of 2210  
the Revised Code shall be used to compile the resident 2211  
assessment data. The resident assessment instrument used for the 2212  
purpose of this section may be different from the resident 2213  
assessment instrument used for the purpose of section 5124.191 2214  
of the Revised Code. Each provider shall submit the resident 2215  
assessment data to the department of developmental disabilities 2216  
not later than fifteen days after the end of the calendar 2217  
quarter for which the data is compiled. The resident assessment 2218  
data shall be submitted to the department through the medium or 2219  
media specified in rules adopted under section 5124.03 of the 2220  
Revised Code. 2221

This section is obsolete beginning July 1, 2021. 2222

**Sec. ~~5124.192~~ 5124.197.** (A) Except as provided in division 2223  
(B) of this section, the department of developmental 2224  
disabilities shall do both of the following until July 1, 2021: 2225

(1) For each calendar quarter, determine a case-mix score 2226  
for each ICF/IID using the resident assessment data submitted to 2227  
the department under section ~~5124.191~~ 5124.196 of the Revised 2228  
Code and the grouper methodology prescribed in rules authorized 2229  
by this section; 2230

(2) After the end of each calendar year and in accordance 2231  
with rules authorized by this section, determine an annual 2232  
average case-mix score for each ICF/IID using the ICF/IID's 2233



quarterly case-mix scores for that calendar year. 2234

(B) (1) Subject to division (B) (2) of this section and 2235  
until July 1, 2021, the department, for one or more months of a 2236  
calendar quarter, may assign to an ICF/IID a case-mix score that 2237  
is five per cent less than the ICF/IID's case-mix score for the 2238  
immediately preceding calendar quarter if any of the following 2239  
apply: 2240

(a) The provider does not timely submit complete and 2241  
accurate resident assessment data necessary to determine the 2242  
ICF/IID's case-mix score for the calendar quarter; 2243

(b) The ICF/IID was subject to an exception review under 2244  
section ~~5124.193~~ 5124.198 of the Revised Code for the 2245  
immediately preceding calendar quarter; 2246

(c) The ICF/IID was assigned a case-mix score for the 2247  
immediately preceding calendar quarter. 2248

(2) Before assigning a case-mix score to an ICF/IID due to 2249  
the submission of incorrect resident assessment data, the 2250  
department shall permit the provider to correct the data. The 2251  
department may assign the case-mix score if the provider fails 2252  
to submit the corrected resident assessment data not later than 2253  
forty-five days after the end of the calendar quarter to which 2254  
the data pertains or later due date specified in rules 2255  
authorized by this section. 2256

(3) If, for more than six months during a calendar year, a 2257  
provider is paid a rate determined for an ICF/IID using a case- 2258  
mix score assigned to the ICF/IID under division (B) (1) of this 2259  
section, the department may assign the ICF/IID a cost per case- 2260  
mix unit that is five per cent less than the ICF/IID's actual or 2261  
assigned cost per case-mix unit for the immediately preceding 2262

calendar year. The department may use the assigned cost per 2263  
case-mix unit, instead of determining the ICF/IID's actual cost 2264  
per case-mix unit in accordance with section ~~5124.19~~ 5124.195 of 2265  
the Revised Code, to establish the ICF/IID's rate for direct 2266  
care costs for the fiscal year immediately following the 2267  
calendar year for which the cost per case-mix unit is assigned. 2268

(4) The department shall take action under division (B) 2269  
(1), (2), or (3) of this section only in accordance with rules 2270  
authorized by this section. The department shall not take an 2271  
action that affects medicaid payment rates for prior payment 2272  
periods except in accordance with sections 5124.41 and 5124.42 2273  
of the Revised Code. 2274

(C) The director of developmental disabilities shall adopt 2275  
rules under section 5124.03 of the Revised Code as necessary to 2276  
implement this section. 2277

(1) The rules shall do all of the following: 2278

(a) Prescribe a grouper methodology to be used when 2279  
determining the case-mix scores for ICFs/IID; 2280

(b) Specify the process for determining the annual average 2281  
case-mix scores for ICFs/IID; 2282

(c) Establish procedures under which resident assessment 2283  
data is to be reviewed for accuracy and providers are to be 2284  
notified of any data that requires correction; 2285

(d) Establish procedures for providers to correct resident 2286  
assessment data and, if necessary, specify a due date for 2287  
corrections that is later than the due date specified in 2288  
division (B) (2) of this section. 2289

(e) Specify when and how the department will assign a 2290

case-mix score or cost per case-mix unit to an ICF/IID under 2291  
division (B) of this section if information necessary to 2292  
calculate the ICF/IID's case-mix score is not provided or 2293  
corrected in accordance with the procedures established by the 2294  
rules. 2295

(2) Notwithstanding any other provision of this chapter 2296  
except division (D) of this section, the rules may provide for 2297  
excluding case-mix scores assigned to an ICF/IID under division 2298  
(B) of this section from the determination of the ICF/IID's 2299  
annual average case-mix score and the maximum cost per case-mix 2300  
unit for the ICF/IID's peer group. 2301

(D) This section is obsolete beginning July 1, 2021. 2302

**Sec. ~~5124.193~~ 5124.198.** (A) The Until July 1, 2021, the 2303  
department of developmental disabilities may, pursuant to rules 2304  
authorized by this section, conduct an exception review of 2305  
resident assessment data submitted by an ICF/IID provider under 2306  
section ~~5124.191~~ 5124.196 of the Revised Code. The department 2307  
may conduct an exception review based on the findings of a 2308  
medicaid certification survey conducted by the department of 2309  
health, a risk analysis, or prior performance of the provider. 2310

Exception reviews shall be conducted at the ICF/IID by 2311  
appropriate health professionals under contract with or employed 2312  
by the department. The professionals may review resident 2313  
assessment forms and supporting documentation, conduct 2314  
interviews, and observe residents to identify any patterns or 2315  
trends of inaccurate resident assessments and resulting 2316  
inaccurate case-mix scores. 2317

(B) (1) If an exception review is conducted before the 2318  
effective date of an ICF/IID's rate for direct care costs that 2319

is based on the resident assessment data being reviewed and the 2320  
review results in findings that exceed tolerance levels 2321  
specified in the rules authorized by this section, the 2322  
department, in accordance with the rules authorized by this 2323  
section, may use the findings to redetermine individual resident 2324  
case-mix scores, the ICF/IID's case-mix score for the quarter, 2325  
and the ICF/IID's annual average case-mix score. ~~The Except as~~ 2326  
provided in division (B)(2) of this section, the department may 2327  
use the ICF/IID's redetermined quarterly and annual average 2328  
case-mix scores to determine the ICF/IID's rate for direct care 2329  
costs for the appropriate calendar quarter or quarters. 2330

(2) If an ICF/IID provider disagrees with a 2331  
redetermination of the ICF/IID's quarterly or annual average 2332  
case-mix score made under division (B)(1) of this section, the 2333  
provider may request that the department reconsider the 2334  
redetermination in accordance with rules authorized by this 2335  
section. If the department reconsiders the redetermination and 2336  
revises the ICF/IID's quarterly or annual average case-mix 2337  
score, the department shall use the revised case-mix score to 2338  
determine the ICF/IID's rate for direct care costs for the 2339  
appropriate calendar quarter or quarters. 2340

(C) The department shall prepare a written summary of any 2341  
exception review finding that is made after the effective date 2342  
of an ICF/IID's rate for direct care costs that is based on the 2343  
resident assessment data that was reviewed. Where the provider 2344  
is pursuing judicial or administrative remedies in good faith 2345  
regarding the finding, the department shall not withhold from 2346  
the provider's current payments any amounts the department 2347  
claims to be due from the provider pursuant to section 5124.41 2348  
of the Revised Code. 2349

(D) (1) The director of developmental disabilities shall 2350  
adopt rules under section 5124.03 of the Revised Code as 2351  
necessary to implement this section. The rules shall establish 2352  
an exception review program that does all of the following: 2353

(a) Requires each exception review to comply with Title 2354  
XIX; 2355

(b) Requires a written summary for each exception review 2356  
that states whether resident assessment forms have been 2357  
completed accurately; 2358

(c) Prohibits each health professional who conducts an 2359  
exception review from doing either of the following: 2360

(i) During the period of the professional's contract or 2361  
employment with the department, having or being committed to 2362  
acquire any direct or indirect financial interest in the 2363  
ownership, financing, or operation of ICFs/IID in this state; 2364

(ii) Reviewing any provider that has been a client of the 2365  
professional. 2366

(2) For the purposes of division (D) (1) (c) (i) of this 2367  
section, employment of a member of a health professional's 2368  
family by an ICF/IID that the professional does not review does 2369  
not constitute a direct or indirect financial interest in the 2370  
ownership, financing, or operation of the ICF/IID. 2371

(E) This section is obsolete beginning July 1, 2021. 2372

**Sec. ~~5124.195~~ 5124.199.** (A) No change that the department 2373  
of developmental disabilities makes to either of the following 2374  
is valid unless the change is applied prospectively and the 2375  
department complies with division (B) of this section: 2376

(1) The department's instructions or guidelines for the 2377

resident assessment forms that are used for the purpose of 2378  
section ~~5124.191~~5124.196 of the Revised Code; 2379

(2) The manner in which the grouper methodology prescribed 2380  
in rules authorized by section ~~5124.192~~5124.197 of the Revised 2381  
Code is applied in determining case-mix scores under that 2382  
section. 2383

(B) Before making a change described in division (A) of 2384  
this section, the department shall do all of the following: 2385

(1) Notify all ICF/IID providers of the proposed change; 2386

(2) Provide representatives of ICF/IID providers an 2387  
opportunity to provide the department their concerns about, and 2388  
suggestions to revise, the proposed change; 2389

(3) In the case of a proposed change described in division 2390  
(A) (2) of this section, determine that the proposed change is 2391  
consistent with the documentation of ICF/IID staff time that was 2392  
used to create the grouper methodology. 2393

(C) This section is obsolete beginning July 1, 2021. 2394

Sec. 5124.21. (A) For each fiscal year, the department of 2395  
developmental disabilities shall determine each ICF/IID's per 2396  
medicaid day indirect care costs component rate. An ICF/IID's 2397  
rate shall be the lesser of the individual rate determined under 2398  
division (B) of this section and the maximum rate determined for 2399  
the ICF/IID's peer group under division (C) of this section. 2400

(B) An ICF/IID's individual rate is the sum of the 2401  
following: 2402

(1) The ICF/IID's desk-reviewed, actual, allowable, per 2403  
diem indirect care costs for the applicable cost report year, 2404  
adjusted for the inflation rate estimated under division (E) of 2405

this section; 2406

(2) Subject to division (D) of this section, an efficiency 2407  
incentive equal to the difference between the amount of the per 2408  
diem indirect care costs for the applicable cost report year 2409  
determined for the ICF/IID under division (B)(1) of this section 2410  
and the maximum rate established for the ICF/IID's peer group 2411  
under division (C) of this section for that year. 2412

(C)(1) The maximum rate for an ICF/IID's peer group shall 2413  
be the following percentage above the peer group's median per 2414  
diem indirect care costs for the applicable cost report year: 2415

(a) For ICFs/IID in peer group 1-A, eight per cent; 2416

(b) For ICFs/IID in peer group 2-A or peer group 3-A, ten 2417  
per cent; 2418

(c) For ICFs/IID in peer group 4-A or peer group 5-A, 2419  
twelve per cent. 2420

(2) The department shall not redetermine a peer group's 2421  
maximum rate under division (C)(1) of this section based on 2422  
additional information that it receives after the maximum rate 2423  
is set. The department shall redetermine a peer group's maximum 2424  
rate only if the department made an error in computing the 2425  
maximum rate based on the information available to the 2426  
department at the time of the original calculation. 2427

(D) The efficiency incentive for an ICF/IID shall not 2428  
exceed the following: 2429

(1) If the ICF/IID is in peer group 1-A, five per cent of 2430  
the peer group's maximum rate established under division (C)(1) 2431  
(a) of this section; 2432

(2) If the ICF/IID is in peer group 2-A, peer group 3-A, 2433

peer group 4-A, or peer group 5-A, six per cent of the peer 2434  
group's maximum rate established under division (C) (1) (b) or (c) 2435  
of this section. 2436

(E) When adjusting rates for inflation under division (B) 2437  
(1) of this section, the department shall estimate the rate of 2438  
inflation for the eighteen-month period beginning on the first 2439  
day of July of the applicable cost report year and ending on the 2440  
thirty-first day of December of the fiscal year for which the 2441  
rate is determined. To estimate the rate of inflation, the 2442  
department shall use the following: 2443

(1) Subject to division (E) (2) of this section, the 2444  
consumer price index for all items for all urban consumers for 2445  
the midwest region, published by the United States bureau of 2446  
labor statistics; 2447

(2) If the United States bureau of labor statistics ceases 2448  
to publish the index specified in division (E) (1) of this 2449  
section, a comparable index that the bureau publishes and the 2450  
department determines is appropriate. 2451

**Sec. ~~5124.21~~ 5124.211.** (A) For each fiscal year until 2452  
fiscal year 2022 and for the purpose of division (C) of section 2453  
5124.15 of the Revised Code, the department of developmental 2454  
disabilities shall determine each ICF/IID's per medicaid day 2455  
payment rate for indirect care costs. Except as otherwise 2456  
provided in this chapter, an ICF/IID's rate shall be determined 2457  
prospectively. Subject to section 5124.28 of the Revised Code, 2458  
an ICF/IID's rate shall be the lesser of the individual rate 2459  
determined under division (B) of this section and the maximum 2460  
rate determined for the ICF/IID's peer group under division (C) 2461  
of this section. 2462



(B) An ICF/IID's individual rate is the sum of the 2463  
following: 2464

(1) The ICF/IID's desk-reviewed, actual, allowable, per 2465  
diem indirect care costs from the calendar year immediately 2466  
preceding the fiscal year ~~in-for~~ which the rate ~~will be paid~~ is 2467  
determined, adjusted for the inflation rate estimated under 2468  
division (E) (1) of this section; 2469

(2) Subject to division (D) of this section, an efficiency 2470  
incentive equal to the difference between the amount of the per 2471  
diem indirect care costs determined for the ICF/IID under 2472  
division (B) (1) of this section for the fiscal year ~~in-for~~ which 2473  
the rate ~~will be paid~~ is determined and the maximum rate 2474  
established for the ICF/IID's peer group under division (C) of 2475  
this section for that fiscal year. 2476

(C) (1) The maximum rate for indirect care costs for each 2477  
ICF/IID in peer group 1-B shall be determined as follows: 2478

(a) For each fiscal year ending in an even-numbered 2479  
calendar year, the maximum rate for ICFs/IID in peer group 1-B 2480  
shall be the rate that is no less than twelve and four-tenths 2481  
per cent above the median desk-reviewed, actual, allowable, per 2482  
diem indirect care cost for all ICFs/IID in peer group 1-B 2483  
(excluding ICFs/IID in peer group 1-B whose indirect care costs 2484  
for that period are more than three standard deviations from the 2485  
mean desk-reviewed, actual, allowable, per diem indirect care 2486  
cost for all ICFs/IID in peer group 1-B) for the calendar year 2487  
immediately preceding the fiscal year ~~in-for~~ which the rate ~~will~~ 2488  
~~be paid~~ is determined, adjusted by the inflation rate estimated 2489  
under division (E) (1) of this section. 2490

(b) For each fiscal year ending in an odd-numbered 2491

calendar year, the maximum rate for ICFs/IID in peer group 1-B 2492  
is the maximum rate for ICFs/IID in peer group 1-B for the 2493  
previous fiscal year, adjusted for the inflation rate estimated 2494  
under division (E) (2) of this section. 2495

(2) The maximum rate for indirect care costs for ICFs/IID 2496  
in peer group 2-B or peer group 3-B shall be determined as 2497  
follows: 2498

(a) For each fiscal year ending in an even-numbered 2499  
calendar year, the maximum rate for ICFs/IID in peer group 2-B 2500  
or peer group 3-B shall be the rate that is no less than ten and 2501  
three-tenths per cent above the median desk-reviewed, actual, 2502  
allowable, per diem indirect care cost for all ICFs/IID in peer 2503  
group 2-B or peer group 3-B (excluding ICFs/IID in peer group 2- 2504  
B or peer group 3-B whose indirect care costs are more than 2505  
three standard deviations from the mean desk-reviewed, actual, 2506  
allowable, per diem indirect care cost for all ICFs/IID in peer 2507  
group 2-B or peer group 3-B) for the calendar year immediately 2508  
preceding the fiscal year ~~in for which the rate will be paid~~ is 2509  
determined, adjusted by the inflation rate estimated under 2510  
division (E) (1) of this section. 2511

(b) For each fiscal year ending in an odd-numbered 2512  
calendar year, the maximum rate for ICFs/IID in peer group 2-B 2513  
or peer group 3-B is the maximum rate for ICFs/IID in peer group 2514  
2-B or peer group 3-B for the previous fiscal year, adjusted for 2515  
the inflation rate estimated under division (E) (2) of this 2516  
section. 2517

(3) The department shall not redetermine a maximum rate 2518  
for indirect care costs under division (C) (1) or (2) of this 2519  
section based on additional information that it receives after 2520  
the maximum rate is set. The department shall redetermine the 2521

maximum rate for indirect care costs only if it made an error in 2522  
computing the maximum rate based on the information available to 2523  
the department at the time of the original calculation. 2524

(D) (1) The efficiency incentive for an ICF/IID in peer 2525  
group 1-B shall not exceed the following: 2526

~~(a) For fiscal year 2014, seven and one-tenth per cent of~~ 2527  
~~the maximum rate established for ICFs/IID in peer group 1 under~~ 2528  
~~division (C) of this section;~~ 2529

~~(b) For fiscal year 2015, the following amount:~~ 2530

~~(i) The amount calculated for fiscal year 2014 under~~ 2531  
~~division (D) (1) (a) of this section if the provider of the~~ 2532  
~~ICF/IID obtains the department's approval to become a downsized~~ 2533  
~~ICF/IID and the approval is conditioned on the downsizing being~~ 2534  
~~completed not later than July 1, 2018;~~ 2535

~~(ii) One-half of the amount calculated for fiscal year~~ 2536  
~~2014 under division (D) (1) (a) of this section if division (D) (1)~~ 2537

~~(b) (i) of this section does not apply to the ICF/IID.~~ 2538

~~(c) For fiscal year 2016 and each fiscal year thereafter~~ 2539  
ending in an even-numbered calendar year, the following 2540  
percentages of the maximum rate established for ICFs/IID in peer 2541  
group 1-B under division (C) of this section: 2542

(i) Seven and one-tenth per cent if the provider of the 2543  
ICF/IID obtains the department's approval to become a downsized 2544  
ICF/IID and the approval is conditioned on the downsizing being 2545  
completed not later than July 1, 2018; 2546

(ii) Three and fifty-five hundredths per cent if division 2547  
(D) (1) ~~(c)~~ (a) (i) of this section does not apply to the ICF/IID. 2548

~~(d) (b) For fiscal year 2017 and each fiscal year~~ 2549

~~thereafter~~ ending in an odd-numbered calendar year, the amount 2550  
calculated for the immediately preceding fiscal year under 2551  
division (D) (1) ~~(e)~~ (a) of this section. 2552

(2) The efficiency incentive for an ICF/IID in peer group 2553  
2-B or peer group 3-B shall not exceed the following: 2554

(a) For each fiscal year ending in an even-numbered 2555  
calendar year, seven per cent of the maximum rate established 2556  
for ICFs/IID in peer group 2-B or peer group 3-B under division 2557  
(C) of this section; 2558

(b) For each fiscal year ending in an odd-numbered 2559  
calendar year, the amount calculated for the immediately 2560  
preceding fiscal year under division (D) (2) (a) of this section. 2561

(E) (1) When adjusting rates for inflation under divisions 2562  
(B) (1), (C) (1) (a), and (C) (2) (a) of this section, the department 2563  
shall estimate the rate of inflation for the eighteen-month 2564  
period beginning on the first day of July of the calendar year 2565  
immediately preceding the fiscal year ~~in for which the rate will~~ 2566  
~~be paid is determined~~ and ending on the thirty-first day of 2567  
December of the fiscal year ~~in for which the rate will be paid~~ 2568  
~~is determined~~. To estimate the rate of inflation, the department 2569  
shall use the following: 2570

(a) Subject to division (E) (1) (b) of this section, the 2571  
consumer price index for all items for all urban consumers for 2572  
the midwest region, published by the United States bureau of 2573  
labor statistics; 2574

(b) If the United States bureau of labor statistics ceases 2575  
to publish the index specified in division (E) (1) (a) of this 2576  
section, a comparable index that the bureau publishes and the 2577  
department determines is appropriate. 2578

(2) When adjusting rates for inflation under divisions (C) 2579  
(1) (b) and (C) (2) (b) of this section, the department shall 2580  
estimate the rate of inflation for the twelve-month period 2581  
beginning on the first day of January of the fiscal year 2582  
immediately preceding the fiscal year ~~in for~~ which the rate ~~will~~ 2583  
~~be paid~~ is determined and ending on the thirty-first day of 2584  
December of the fiscal year ~~in for~~ which the rate ~~will be paid~~ 2585  
is determined. To estimate the rate of inflation, the department 2586  
shall use the following: 2587

(a) Subject to division (E) (2) (b) of this section, the 2588  
consumer price index for all items for all urban consumers for 2589  
the midwest region, published by the United States bureau of 2590  
labor statistics; 2591

(b) If the United States bureau of labor statistics ceases 2592  
to publish the index specified in division (E) (2) (a) of this 2593  
section, a comparable index that the bureau publishes and the 2594  
department determines is appropriate. 2595

(3) If an inflation rate estimated under division (E) (1) 2596  
or (2) of this section is different from the actual inflation 2597  
rate for the relevant time period, as measured using the same 2598  
index, the difference shall be added to or subtracted from the 2599  
inflation rate estimated pursuant to this division for the 2600  
following fiscal year. 2601

(F) This section is obsolete beginning July 1, 2021. 2602

Sec. 5124.23. For each fiscal year, the department of 2603  
developmental disabilities shall determine each ICF/IID's per 2604  
medicaid day other protected costs component rate. An ICF/IID's 2605  
rate shall be the ICF/IID's desk-reviewed, actual, allowable, 2606  
per diem other protected costs from the applicable cost report 2607

year, adjusted for inflation using the following: 2608

(A) Subject to division (B) of this section, the consumer 2609  
price index for all urban consumers for nonprescription drugs 2610  
and medical supplies, as published by the United States bureau 2611  
of labor statistics; 2612

(B) If the United States bureau of labor statistics ceases 2613  
to publish the index specified in division (B)(1) of this 2614  
section, the index that is subsequently published by the bureau 2615  
and covers nonprescription drugs and medical supplies. 2616

**Sec. ~~5124.23~~ 5124.231.** (A) For each fiscal year until 2617  
fiscal year 2022 and for the purpose of division (C) of section 2618  
5124.15 of the Revised Code, the department of developmental 2619  
disabilities shall determine each ICF/IID's per medicaid day 2620  
payment rate for other protected costs. Except as otherwise 2621  
provided in this chapter, an ICF/IID's rate shall be determined 2622  
prospectively. An ICF/IID's rate shall be the ICF/IID's desk- 2623  
reviewed, actual, allowable, per diem other protected costs from 2624  
the calendar year immediately preceding the fiscal year in-for 2625  
which the rate ~~will be paid~~ is determined, all adjusted for the 2626  
estimated inflation rate for the eighteen-month period beginning 2627  
on the first day of July of the calendar year immediately 2628  
preceding the fiscal year in-for which the rate ~~will be paid~~ is 2629  
determined and ending on the thirty-first day of December of 2630  
that fiscal year. The department shall estimate inflation using 2631  
the index specified in division (B) of this section. If the 2632  
estimated inflation rate for the eighteen-month period is 2633  
different from the actual inflation rate for that period, the 2634  
difference shall be added to or subtracted from the inflation 2635  
rate estimated for the following year. 2636

(B) The department shall use the following index for the 2637

purpose of division (A) of this section: 2638

(1) Subject to division (B) (2) of this section, the 2639  
consumer price index for all urban consumers for nonprescription 2640  
drugs and medical supplies, as published by the United States 2641  
bureau of labor statistics; 2642

(2) If the United States bureau of labor statistics ceases 2643  
to publish the index specified in division (B) (1) of this 2644  
section, the index that is subsequently published by the bureau 2645  
and covers nonprescription drugs and medical supplies. 2646

(C) This section is obsolete beginning July 1, 2021. 2647

Sec. 5124.24. (A) For fiscal year 2021 and each fiscal 2648  
year thereafter, the department of developmental disabilities 2649  
shall determine in accordance with division (C) of this section 2650  
a per medicaid day quality incentive payment for each ICF/IID 2651  
that earns for the fiscal year at least one point under division 2652  
(B) of this section. 2653

(B) Each fiscal year beginning with fiscal year 2021, the 2654  
department, in accordance with rules authorized by this section, 2655  
shall award to an ICF/IID points for the following quality 2656  
indicators the ICF/IID meets for the fiscal year: 2657

(1) The ICF/IID created and promoted diverse opportunities 2658  
for its residents to participate in the broader community in the 2659  
applicable cost report year. 2660

(2) The ICF/IID offers its residents multiple 2661  
opportunities for off-site day programming activities, including 2662  
resident-specific activities. 2663

(3) All of the ICF/IID's residents who are least eighteen 2664  
years of age and interested in employment have an identified 2665

place on the path to community employment specified in rules 2666  
adopted under section 5123.022 of the Revised Code. 2667

(4) The ICF/IID has an active advocacy group that is 2668  
driven by its residents or fosters its residents' participation 2669  
in a community-wide group. 2670

(5) The ICF/IID meets both of the following standards: 2671

(a) The ICF/IID's bedrooms are designed and arranged to 2672  
enhance privacy, promote personalization, and meet its 2673  
residents' needs. 2674

(b) The ICF/IID encourages residents to bring to the 2675  
ICF/IID their own home and room decor. 2676

(6) The ICF/IID has and follows a policy specifying how it 2677  
seeks direction from its residents. 2678

(7) The ICF/IID has a policy for doing both of the 2679  
following: 2680

(a) Evaluating each hospital emergency department visit by 2681  
its residents to identify precipitating factors that led to the 2682  
visit; 2683

(b) Developing a plan to mitigate any identified 2684  
precipitating factors. 2685

(8) The ICF/IID has adopted the recommendations for 2686  
resident health screenings that the department publishes on its 2687  
web site. 2688

(9) Each month, the ICF/IID offers at least the number of 2689  
wellness and fitness activities specified for this purpose in 2690  
rules authorized by this section. 2691

(10) The number of the ICF/IID's staff who were trained in 2692



positive behavior support strategies, trauma-informed care, and 2693  
similar topics in the applicable cost report year is at least 2694  
the number specified for this purpose in rules authorized by 2695  
this section. 2696

(11) Members of the ICF/IID's staff are involved in 2697  
orienting and mentoring new staff. 2698

(12) The ICF/IID's ratio of direct care staff to residents 2699  
is at least the ratio specified for this purpose in rules 2700  
authorized by this section. 2701

(13) The ICF/IID's direct care staff retention percentage 2702  
is at least the percentage specified for this purpose in rules 2703  
authorized by this section. 2704

(C) An ICF/IID's per medicaid day quality incentive 2705  
payment for a fiscal year shall be the product of the following: 2706

(1) The relative weight point value for the fiscal year as 2707  
determined under division (D) of this section; 2708

(2) The number of points the ICF/IID was awarded under 2709  
division (C) of this section for the fiscal year. 2710

(D) The relative weight point value for a fiscal year 2711  
shall be determined as follows: 2712

(1) For each ICF/IID, determine the product of the 2713  
following: 2714

(a) The number of inpatient days the ICF/IID had for the 2715  
applicable cost report year; 2716

(b) The number of points the ICF/IID was awarded under 2717  
division (C) of this section for the fiscal year. 2718

(2) Determine the sum of all of the products determined 2719

under division (D) (1) of this section for the fiscal year; 2720

(3) Determine the amount equal to three and four 2721  
hundredths per cent of the total desk-reviewed, actual, 2722  
allowable direct care costs of all ICFs/IID for the applicable 2723  
cost report year; 2724

(4) Divide the amount determined under division (D) (3) of 2725  
this section by the sum determined under division (D) (2) of this 2726  
section. 2727

(E) The director of developmental disabilities shall adopt 2728  
rules under section 5124.03 of the Revised Code as necessary to 2729  
implement this section, including rules that specify or 2730  
establish all of the following: 2731

(1) The data needed for the department to determine 2732  
whether an ICF/IID meets the quality indicators specified in 2733  
division (B) of this section, the medium through which a report 2734  
of the data is to be submitted to the department, and the date 2735  
by which the report of the data must be submitted to the 2736  
department; 2737

(2) Satisfactory evidence needed to determine that an 2738  
ICF/IID has met the quality indicators; 2739

(3) The method by which ICFs/IID are to be awarded points 2740  
under division (B) of this section and the number of points that 2741  
each quality indicator is worth based on the quality indicator's 2742  
relative importance compared to the other quality indicators. 2743

**Sec. 5124.28.** Notwithstanding any provision of section 2744  
~~5124.17-5124.171 or 5124.21-5124.211~~ of the Revised Code, the 2745  
director of developmental disabilities may adopt rules under 2746  
section 5124.03 of the Revised Code that provide for the 2747  
determination of a combined maximum payment limit for indirect 2748

care costs and costs of ownership for ICFs/IID in peer group 2\_ 2749  
B. 2750

This section is obsolete beginning July 1, 2021. 2751

**Sec. 5124.29.** Except as otherwise provided in section 2752  
5124.30 of the Revised Code, the department of developmental 2753  
disabilities, in determining whether an ICF/IID's direct care 2754  
costs and indirect care costs are allowable, shall place no 2755  
limit on specific categories of reasonable costs other than 2756  
compensation of owners, compensation of relatives of owners, and 2757  
compensation of administrators. 2758

Compensation cost limits for owners and relatives of 2759  
owners shall be based on compensation costs for individuals who 2760  
hold comparable positions but who are not owners or relatives of 2761  
owners, as reported on ICFs/IID's cost reports. As used in this 2762  
section, "comparable position" means the position that is held 2763  
by the owner or the owner's relative, if that position is listed 2764  
separately on the cost report form, or if the position is not 2765  
listed separately, the group of positions that is listed on the 2766  
cost report form and that includes the position held by the 2767  
owner or the owner's relative. In the case of an owner or 2768  
owner's relative who serves the ICFs/IID in a capacity such as 2769  
corporate officer, proprietor, or partner for which no 2770  
comparable position or group of positions is listed on the cost 2771  
report form, the compensation cost limit shall be based on civil 2772  
service equivalents and shall be specified in rules adopted 2773  
under section 5124.03 of the Revised Code. 2774

Compensation cost limits for administrators shall be based 2775  
on compensation costs for administrators who are not owners or 2776  
relatives of owners, as reported on ICFs/IID's cost reports. 2777  
~~Compensation~~ For the purpose of determining an ICF/IID's total 2778

per medicaid day payment rate under division (C) of section 2779  
5124.15 of the Revised Code, compensation cost limits for 2780  
administrators of four or more ICFs/IID shall be the same as the 2781  
limits for administrators of ICFs/IID with one hundred fifty or 2782  
more beds. 2783

**Sec. 5124.30.** Except as provided in ~~section~~ sections 2784  
5124.17 and 5124.171 of the Revised Code, the costs of goods, 2785  
services, and facilities, furnished to an ICF/IID provider by a 2786  
related party are includable in the allowable costs of the 2787  
provider at the reasonable cost to the related party. 2788

**Sec. 5124.38.** (A) The director of developmental 2789  
disabilities shall establish a process under which an ICF/IID 2790  
provider, or a group or association of ICF/IID providers, may 2791  
seek reconsideration of medicaid payment rates established under 2792  
this chapter, including a rate for direct care costs 2793  
redetermined before the effective date of the rate as a result 2794  
of an exception review conducted under section ~~5124.193~~ 5124.198 2795  
of the Revised Code. Except as provided in divisions (B) to ~~(D)~~ 2796  
(E) of this section, the only issue that a provider, group, or 2797  
association may raise in the rate reconsideration is whether the 2798  
rate was calculated in accordance with this chapter and the 2799  
rules adopted under section 5124.03 of the Revised Code. The 2800  
provider, group, or association may submit written arguments or 2801  
other materials that support its position. The provider, group, 2802  
or association and department shall take actions regarding the 2803  
rate reconsideration within time frames specified in rules 2804  
authorized by this section. 2805

If the department determines, as a result of the rate 2806  
reconsideration, that the rate established for one or more 2807  
ICFs/IID is less than the rate to which the ICF/IID is entitled, 2808

the department shall increase the rate. If the department has 2809  
paid the incorrect rate for a period of time, the department 2810  
shall pay the provider of the ICF/IID the difference between the 2811  
amount the provider was paid for that period for the ICF/IID and 2812  
the amount the provider should have been paid for the ICF/IID. 2813

(B) (1) The department, through the rate reconsideration 2814  
process, may increase during a fiscal year the medicaid payment 2815  
rate determined for an ICF/IID under this chapter if the 2816  
provider demonstrates that the ICF/IID's actual, allowable costs 2817  
have increased because of any of the following extreme 2818  
circumstances: 2819

(a) A natural disaster; 2820

(b) A nonextensive renovation approved under division (E) 2821  
of section ~~5124.17~~ 5124.171 of the Revised Code; 2822

(c) If the ICF/IID has an appropriate claims management 2823  
program, an increase in the ICF/IID's workers' compensation 2824  
experience rating of greater than five per cent; 2825

(d) If the ICF/IID is an inner-city ICF/IID, increased 2826  
security costs; 2827

(e) A change of ownership that results from bankruptcy, 2828  
foreclosure, or findings by the department of health of 2829  
violations of medicaid certification requirements; 2830

(f) Other extreme circumstances specified in rules 2831  
authorized by this section. 2832

(2) An ICF/IID may qualify for a rate increase under this 2833  
division only if its per diem, actual, allowable costs have 2834  
increased to a level that exceeds its total rate. An increase 2835  
under this division is subject to any rate limitations or 2836

maximum rates established by this chapter for specific cost 2837  
centers. Any rate increase granted under this division shall 2838  
take effect on the first day of the first month after the 2839  
department receives the request. 2840

(C) The department, through the rate reconsideration 2841  
process, may increase an ICF/IID's rate as determined under this 2842  
chapter if the department, in the department's sole discretion, 2843  
determines that the rate as determined under those sections 2844  
works an extreme hardship on the ICF/IID. 2845

(D) (1) When beds certified for the medicaid program are 2846  
added to an existing ICF/IID or replaced at the same site, the 2847  
department, through the rate reconsideration process, may 2848  
~~increase the ICF/IID's rate for capital costs proportionately,~~ 2849  
~~as limited by any applicable limitation under section 5124.17 of~~ 2850  
~~the Revised Code, do either of the following~~ to account for the 2851  
costs of the beds that are added or replaced: 2852

(a) Subject to any applicable limitation under section 2853  
5124.17 of the Revised Code, proportionately increase the 2854  
ICF/IID's per medicaid day capital component rate determined 2855  
under that section; 2856

(b) Subject to any applicable limitation under section 2857  
5124.171 of the Revised Code, proportionately increase the 2858  
ICF/IID's per medicaid day payment rate for reasonable capital 2859  
costs determined under that section. If- 2860

(2) If the department makes this grants an increase under 2861  
division (D) (1) (a) or (b) of this section, it the increase shall 2862  
~~make the increase go into effect~~ one month after the first day 2863  
of the month after the department receives sufficient 2864  
~~documentation of the costs~~ needed to determine the amount of the 2865

increase. ~~Any~~ 2866

(3) Any rate increase of an ICF/IID's per medicaid day 2867  
payment rate for reasonable capital costs determined under 2868  
section 5124.171 of the Revised Code that is granted under this 2869  
division (D) (1) (b) of this section after June 30, 1993, shall 2870  
remain in effect until the earlier of the following: 2871

(a) The effective date of a per medicaid day payment rate 2872  
for reasonable capital costs determined under section 5124.17 2873  
5124.171 of the Revised Code that includes costs incurred for a 2874  
full calendar year for the bed addition or bed replacement; 2875

(b) The date the provider of the ICF/IID begins to be paid 2876  
a rate determined under division (B) of section 5124.15 of the 2877  
Revised Code. ~~The~~ 2878

(4) The provider of an ICF/IID that has its per medicaid 2879  
day payment rate for reasonable capital costs increased under 2880  
division (D) (1) (b) of this section shall report double 2881  
accumulated depreciation in an amount equal to the depreciation 2882  
included in the rate adjustment on its cost report for the first 2883  
year of operation. During the term of any loan used to finance a 2884  
project for which ~~a the rate adjustment increase~~ is granted 2885  
~~under this division, if the ICF/IID is operated by the same~~ 2886  
~~provider, the provider, if the ICF/IID is operated by the same~~ 2887  
provider, shall subtract from the interest costs it reports on 2888  
~~its the ICF/IID's cost~~ report an amount equal to the difference 2889  
between the following: 2890

~~(1)~~ (a) The actual, allowable interest costs for the loan 2891  
during the calendar year for which the costs are being reported; 2892

~~(2)~~ (b) The actual, allowable interest costs attributable 2893  
to the loan that were used to calculate the rates paid to the 2894

provider for the ICF/IID during the same calendar year. 2895

(E) If the provider of an ICF/IID submits to the 2896  
department revised assessment data for a resident of the ICF/IID 2897  
under division (D) of section 5124.191 of the Revised Code and 2898  
the revised assessment data results in at least a fifteen per 2899  
cent increase in the ICF/IID's case-mix score determined under 2900  
section 5124.193 of the Revised Code, the provider may request 2901  
that the department, through the rate reconsideration process, 2902  
increase the ICF/IID's per medicaid day direct care costs 2903  
component rate determined under section 5124.19 of the Revised 2904  
Code to account for the increase in the ICF/IID's case-mix 2905  
score. If the department determines that the revised assessment 2906  
data so increases the ICF/IID's case-mix score, the department 2907  
shall grant the rate increase. The increase shall go into effect 2908  
one month after the first day of the month after the department 2909  
receives sufficient documentation needed to determine the amount 2910  
of the increase. 2911

(F) The department's decision at the conclusion of the a 2912  
rate reconsideration process is not subject to any 2913  
administrative proceedings under Chapter 119. or any other 2914  
provision of the Revised Code. 2915

~~(F)~~ (G) The director of developmental disabilities shall 2916  
adopt rules under section 5124.03 of the Revised Code as 2917  
necessary to implement this section. 2918

**Sec. 5124.39.** (A) Except as provided in divisions (B) and 2919  
(C) of this section, if the provider of an ICF/IID in peer group 2920  
1-B obtained approval from the department of developmental 2921  
disabilities to become a downsized ICF/IID not later than July 2922  
1, 2018, and the ICF/IID does not become a downsized ICF/IID by 2923  
that date, the department shall recoup from the provider an 2924



amount equal to the sum of the following: 2925

(1) The difference between the amount of the efficiency 2926  
incentive payments the ICF/IID earned under sections ~~5124.17~~ 2927  
~~5124.171~~ and ~~5124.21~~ ~~5124.211~~ of the Revised Code because the 2928  
provider obtained such approval and the amount of the efficiency 2929  
incentive payments the ICF/IID would have earned under those 2930  
sections had the provider not obtained such approval; 2931

(2) An amount of interest on the difference determined 2932  
under division (A) (1) of this section. 2933

(B) The department shall exempt an ICF/IID provider from a 2934  
recoupment otherwise required by this section if the provider 2935  
voluntarily repays the department the difference determined 2936  
under division (A) (1) of this section. No interest shall be 2937  
charged on the amount voluntarily repaid. 2938

(C) The department may exempt an ICF/IID provider from a 2939  
recoupment otherwise required by this section if both of the 2940  
following apply: 2941

(1) The provider, on or before July 1, 2018, demonstrates 2942  
to the department's satisfaction that the provider made a good 2943  
faith effort to complete the downsizing by July 1, 2018, but the 2944  
ICF/IID did not become a downsized ICF/IID by that date for 2945  
reasons beyond the provider's control; 2946

(2) The ICF/IID becomes a downsized ICF/IID within a 2947  
period of time after July 1, 2018, that the department 2948  
determines is reasonable. 2949

(D) An ICF/IID provider subject to a recoupment under 2950  
division (A) of this section or voluntarily making a repayment 2951  
under division (B) of this section shall choose one of the 2952  
following methods by which the recoupment or voluntary repayment 2953

shall be made: 2954

(1) In a lump sum payment; 2955

(2) Subject to the department's approval, in installment 2956  
payments; 2957

(3) In a single deduction from the next available medicaid 2958  
payment made to the provider if that payment at least equals the 2959  
total amount of the recoupment or voluntary repayment; 2960

(4) Subject to the department's approval, in installment 2961  
deductions from medicaid payments made to the provider. 2962

(E) An ICF/IID provider may request that the director of 2963  
developmental disabilities reconsider either or both of the 2964  
following: 2965

(1) A decision that the provider is subject to a 2966  
recoupment under this section; 2967

(2) A determination under this section of the amount to be 2968  
recouped from the provider. 2969

(F) The director shall adopt rules under section 5124.03 2970  
of the Revised Code as necessary to implement this section, 2971  
including rules specifying how the amount of interest charged 2972  
under division (A) (2) of this section is to be determined. 2973

**Sec. 5124.40.** If an ICF/IID provider properly amends a 2974  
cost report for an ICF/IID under section 5124.107 of the Revised 2975  
Code and the amended report shows that the provider received a 2976  
lower medicaid payment rate under the original cost report than 2977  
the provider was entitled to receive, the department of 2978  
developmental disabilities shall adjust the provider's rate for 2979  
the ICF/IID prospectively to reflect the corrected information. 2980  
The department shall pay the adjusted rate beginning two months 2981

after the first day of the month after the provider files the 2982  
amended cost report. 2983

If the department finds, from an exception review of 2984  
resident assessment data conducted pursuant to section ~~5124.193-~~ 2985  
5124.198 of the Revised Code after the effective date of an 2986  
ICF/IID's rate for direct care costs that is based on the 2987  
resident assessment data, that inaccurate resident assessment 2988  
data resulted in the provider receiving a lower rate for the 2989  
ICF/IID than the provider was entitled to receive, the 2990  
department prospectively shall adjust the provider's rate for 2991  
the ICF/IID accordingly. The department shall make payments to 2992  
the provider using the adjusted rate for the remainder of the 2993  
calendar quarter for which the resident assessment data is used 2994  
to determine the rate, beginning one month after the first day 2995  
of the month after the exception review is completed. 2996

**Sec. 5124.41.** (A) The department of developmental 2997  
disabilities shall redetermine a provider's medicaid payment 2998  
rate for an ICF/IID using revised information if any of the 2999  
following results in a determination that the provider received 3000  
a higher medicaid payment rate for the ICF/IID than the provider 3001  
was entitled to receive: 3002

(1) The provider properly amends a cost report for the 3003  
ICF/IID under section 5124.107 of the Revised Code; 3004

(2) The department makes a finding based on an audit under 3005  
section 5124.109 of the Revised Code; 3006

(3) The department makes a finding based on an exception 3007  
review of resident assessment data conducted under section 3008  
~~5124.193-~~5124.198 of the Revised Code after the effective date 3009  
of the ICF/IID's rate for direct care costs that is based on the 3010

resident assessment data. 3011

(B) The department shall apply the redetermined rate to 3012  
the periods when the provider received the incorrect rate to 3013  
determine the amount of the overpayment. The provider shall 3014  
refund the amount of the overpayment. The department may charge 3015  
the provider the following amount of interest from the time the 3016  
overpayment was made: 3017

(1) If the overpayment resulted from costs reported for 3018  
calendar year 1993, the interest shall be not greater than one 3019  
and one-half times the current average bank prime rate. 3020

(2) If the overpayment resulted from costs reported for a 3021  
subsequent calendar year: 3022

(a) The interest shall be not greater than two times the 3023  
current average bank prime rate if the overpayment was not more 3024  
than one per cent of the total medicaid payments to the provider 3025  
for the fiscal year for which the incorrect information was used 3026  
to determine a rate. 3027

(b) The interest shall be not greater than two and one- 3028  
half times the current average bank prime rate if the 3029  
overpayment was more than one per cent of the total medicaid 3030  
payments to the provider for the fiscal year for which the 3031  
incorrect information was used to determine a rate. 3032

**Sec. 5124.46.** All of the following are subject to an 3033  
adjudication conducted in accordance with Chapter 119. of the 3034  
Revised Code: 3035

(A) Any audit disallowance that the department of 3036  
developmental disabilities makes as the result of an audit under 3037  
section 5124.109 of the Revised Code; 3038

(B) Any adverse finding that results from an exception 3039  
review of resident assessment data conducted for an ICF/IID 3040  
under section ~~5124.193~~ 5124.198 of the Revised Code after the 3041  
effective date of the ICF/IID's medicaid payment rate for direct 3042  
care costs that is based on the resident assessment data; 3043

(C) Any medicaid payment deemed an overpayment under 3044  
section 5124.523 of the Revised Code; 3045

(D) Any penalty the department imposes under section 3046  
5124.42 of the Revised Code or section 5124.523 of the Revised 3047  
Code. 3048

**Sec. 5124.68.** (A) (1) Except as provided in division (D) of 3049  
this section, an ICF/IID ~~in peer group 1 with a medicaid-~~ 3050  
certified capacity exceeding eight shall not admit an individual 3051  
as a resident unless all of the following apply: 3052

(a) The provider of the ICF/IID provides written notice 3053  
about the individual's potential admission, and all information 3054  
about the individual in the provider's possession, to the county 3055  
board of developmental disabilities serving the county in which 3056  
the individual resides at the time the notice is provided. 3057

(b) The county board has provided to the individual and 3058  
department of developmental disabilities a copy of the findings 3059  
the county board makes pursuant to division (B) of this section; 3060

(c) Not later than seven business days after the provider 3061  
provides the county board the notice required by division (A) (1) 3062  
(a) of this section, the department determines that the 3063  
individual chooses to receive ICF/IID services from the ICF/IID 3064  
after being fully informed of all available alternatives. 3065

(2) For the purpose of division (A) (1) (a) of this section, 3066  
the provider of an ICF/IID ~~in peer group 1 with a medicaid-~~ 3067

certified capacity exceeding eight may provide a county board 3068  
written notices about multiple individuals' potential admissions 3069  
to the ICF/IID at the same time. 3070

(B) Not later than five business days after a county board 3071  
receives notice from the provider of an ICF/IID ~~in peer group 1~~ 3072  
with a medicaid-certified capacity exceeding eight about an 3073  
individual seeking admission to the ICF/IID, the county board 3074  
shall do both of the following: 3075

(1) Using the information included in the notification and 3076  
the additional information, if any, the department specifies 3077  
pursuant to division (C) of this section, evaluate the 3078  
individual and counsel the individual about both of the 3079  
following: 3080

(a) The nature, extent, and timing of the services that 3081  
the individual needs; 3082

(b) The least restrictive environment in which the 3083  
individual could receive the needed services. 3084

(2) Using the form prescribed under division (C) of this 3085  
section, make findings about the individual based on the 3086  
evaluation and counseling and provide a copy of the findings to 3087  
the individual and the department. 3088

(C) The department shall prescribe the form to be used for 3089  
the purpose of making findings pursuant to division (B) (2) of 3090  
this section. The department may specify additional information 3091  
that a county board is to use when evaluating and counseling 3092  
individuals under division (B) (1) of this section. 3093

(D) Division (A) of this section does not apply to an 3094  
individual seeking admission to an ICF/IID ~~in peer group 1~~ with 3095  
a medicaid-certified capacity exceeding eight if any of the 3096

following is the case:

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

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

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

**Sec. 5705.21.** (A) At any time, the board of education of any city, local, exempted village, cooperative education, or joint vocational school district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the school district, that it is necessary to levy a tax in excess of such limitation for one of the purposes specified in division (A), (D), (F), (H), or (DD) of section 5705.19 of the Revised Code, for general permanent improvements, for the purpose of operating a cultural center, for the purpose of providing for school safety and security, or for the purpose of providing education technology, and that the question of such additional tax levy shall be submitted to the electors of the school district at a special election on a day to be specified in the resolution. In the case of a qualifying library levy for the support of a

library association or private corporation, the question shall 3127  
be submitted to the electors of the association library 3128  
district. If the resolution states that the levy is for the 3129  
purpose of operating a cultural center, the ballot shall state 3130  
that the levy is "for the purpose of operating the..... 3131  
(name of cultural center).". 3132

As used in this division, "cultural center" means a 3133  
freestanding building, separate from a public school building, 3134  
that is open to the public for educational, musical, artistic, 3135  
and cultural purposes; "education technology" means, but is not 3136  
limited to, computer hardware, equipment, materials, and 3137  
accessories, equipment used for two-way audio or video, and 3138  
software; ~~and~~ "general permanent improvements" means permanent 3139  
improvements without regard to the limitation of division (F) of 3140  
section 5705.19 of the Revised Code that the improvements be a 3141  
specific improvement or a class of improvements that may be 3142  
included in a single bond issue; and "providing for school 3143  
safety and security" includes but is not limited to providing 3144  
for permanent improvements to provide or enhance security, 3145  
employment of or contracting for the services of safety 3146  
personnel, providing mental health services and counseling, or 3147  
providing training in safety and security practices and 3148  
responses. 3149

A resolution adopted under this division shall be confined 3150  
to a single purpose and shall specify the amount of the increase 3151  
in rate that it is necessary to levy, the purpose of the levy, 3152  
and the number of years during which the increase in rate shall 3153  
be in effect. The number of years may be any number not 3154  
exceeding five or, if the levy is for current expenses of the 3155  
district or for general permanent improvements, for a continuing 3156  
period of time. 3157



(B) (1) The board of education of a qualifying school 3158  
district, by resolution, may declare that it is necessary to 3159  
levy a tax in excess of the ten-mill limitation for the purpose 3160  
of paying the current expenses of partnering community schools 3161  
and, if any of the levy proceeds are so allocated, of the 3162  
district. A qualifying school district that is not a municipal 3163  
school district may allocate all of the levy proceeds to 3164  
partnering community schools. A municipal school district shall 3165  
allocate a portion of the levy proceeds to the current expenses 3166  
of the district. The resolution shall declare that the question 3167  
of the additional tax levy shall be submitted to the electors of 3168  
the school district at a special election on a day to be 3169  
specified in the resolution. The resolution shall state the 3170  
purpose of the levy, the rate of the tax expressed in mills per 3171  
dollar of taxable value, the number of such mills to be levied 3172  
for the current expenses of the partnering community schools and 3173  
the number of such mills, if any, to be levied for the current 3174  
expenses of the school district, the number of years the tax 3175  
will be levied, and the first year the tax will be levied. The 3176  
number of years the tax may be levied may be any number not 3177  
exceeding ten years, or for a continuing period of time. 3178

The levy of a tax for the current expenses of a partnering 3179  
community school under this section and the distribution of 3180  
proceeds from the tax by a qualifying school district to 3181  
partnering community schools is hereby determined to be a proper 3182  
public purpose. 3183

(2) (a) If any portion of the levy proceeds are to be 3184  
allocated to the current expenses of the qualifying school 3185  
district, the form of the ballot at an election held pursuant to 3186  
division (B) of this section shall be as follows: 3187

"Shall a levy be imposed by the..... (insert the name  
of the qualifying school district) for the purpose of current  
expenses of the school district and of partnering community  
schools at a rate not exceeding..... (insert the number of  
mills) mills for each one dollar of valuation, of which.....  
(insert the number of mills to be allocated to partnering  
community schools) mills is to be allocated to partnering  
community schools), which amounts to..... (insert the rate  
expressed in dollars and cents) for each one hundred dollars of  
valuation, for..... (insert the number of years the levy is to  
be imposed, or that it will be levied for a continuing period of  
time), beginning..... (insert first year the tax is to be  
levied), which will first be payable in calendar year.....  
(insert the first calendar year in which the tax would be  
payable)?

FOR THE TAX LEVY
AGAINST THE TAX LEVY

"

(b) If all of the levy proceeds are to be allocated to the  
current expenses of partnering community schools, the form of  
the ballot shall be as follows:

"Shall a levy be imposed by the..... (insert the name  
of the qualifying school district) for the purpose of current  
expenses of partnering community schools at a rate not  
exceeding..... (insert the number of mills) mills for each one  
dollar of valuation which amounts to..... (insert the rate  
expressed in dollars and cents) for each one hundred dollars of  
valuation, for..... (insert the number of years the levy is to  
be imposed, or that it will be levied for a continuing period of

time), beginning..... (insert first year the tax is to be 3218  
levied), which will first be payable in calendar year..... 3219  
(insert the first calendar year in which the tax would be 3220  
payable)? 3221

FOR THE TAX LEVY
AGAINST THE TAX LEVY

3222  
3223  
3224

"

3225

(3) Upon each receipt of a tax distribution by the 3226  
qualifying school district, the board of education shall credit 3227  
the portion allocated to partnering community schools to the 3228  
partnering community schools fund. All income from the 3229  
investment of money in the partnering community schools fund 3230  
shall be credited to that fund. 3231

(a) If the qualifying school district is a municipal 3232  
school district, the board of education shall distribute the 3233  
partnering community schools amount among the then qualifying 3234  
community schools not more than forty-five days after the school 3235  
district receives and deposits each tax distribution. From each 3236  
tax distribution, each such partnering community school shall 3237  
receive a portion of the partnering community schools amount in 3238  
the proportion that the number of its resident students bears to 3239  
the aggregate number of resident students of all such partnering 3240  
community schools as of the date of receipt and deposit of the 3241  
tax distribution. 3242

(b) If the qualifying school district is not a municipal 3243  
school district, the board of education may distribute all or a 3244  
portion of the amount in the partnering community schools fund 3245  
during a fiscal year to partnering community schools on or 3246

before the first day of June of the preceding fiscal year. Each 3247  
such partnering community school shall receive a portion of the 3248  
amount distributed by the board from the partnering community 3249  
schools fund during the fiscal year in the proportion that the 3250  
number of its resident students bears to the aggregate number of 3251  
resident students of all such partnering community schools as of 3252  
the date the school district received and deposited the most 3253  
recent tax distribution. On or before the fifteenth day of June 3254  
of each fiscal year, the board of education shall announce an 3255  
estimated allocation to partnering community schools for the 3256  
ensuing fiscal year. The board is not required to allocate to 3257  
partnering community schools the entire partnering community 3258  
schools amount in the fiscal year in which a tax distribution is 3259  
received and deposited in the partnering community schools fund. 3260  
The estimated allocation shall be published on the web site of 3261  
the school district and expressed as a dollar amount per 3262  
resident student. The actual allocation to community schools in 3263  
a fiscal year need not conform to the estimate published by the 3264  
school district so long if the estimate was made in good faith. 3265

Distributions by a school district under division (B) (3) 3266  
(b) of this section shall be made in accordance with 3267  
distribution agreements entered into by the board of education 3268  
and each partnering community school eligible for distributions 3269  
under this division. The distribution agreements shall be 3270  
certified to the department of education each fiscal year before 3271  
the thirtieth day of July. Each agreement shall provide for at 3272  
least three distributions by the school district to the 3273  
partnering community school during the fiscal year and shall 3274  
require the initial distribution be made on or before the 3275  
thirtieth day of July. 3276

(c) For the purposes of division (B) of this section, the 3277

number of resident students shall be the number of such students 3278  
reported under section 3317.03 of the Revised Code and 3279  
established by the department of education as of the date of 3280  
receipt and deposit of the tax distribution. 3281

(4) To the extent an agreement whereby the qualifying 3282  
school district and a community school endorse each other's 3283  
programs is necessary for the community school to qualify as a 3284  
partnering community school under division (B) (6) (b) of this 3285  
section, the board of education of the school district shall 3286  
certify to the department of education the agreement along with 3287  
the determination that such agreement satisfies the requirements 3288  
of that division. The board's determination is conclusive. 3289

(5) For the purposes of Chapter 3317. of the Revised Code 3290  
or other laws referring to the "taxes charged and payable" for a 3291  
school district, the taxes charged and payable for a qualifying 3292  
school district that levies a tax under division (B) of this 3293  
section includes only the taxes charged and payable under that 3294  
levy for the current expenses of the school district, and does 3295  
not include the taxes charged and payable for the current 3296  
expenses of partnering community schools. The taxes charged and 3297  
payable for the current expenses of partnering community schools 3298  
shall not affect the calculation of "state education aid" as 3299  
defined in section 5751.20 of the Revised Code. 3300

(6) As used in division (B) of this section: 3301

(a) "Qualifying school district" means a municipal school 3302  
district, as defined in section 3311.71 of the Revised Code or a 3303  
school district that contains within its territory a partnering 3304  
community school. 3305

(b) "Partnering community school" means a community school 3306

established under Chapter 3314. of the Revised Code that is 3307  
located within the territory of the qualifying school district 3308  
and meets one of the following criteria: 3309

(i) If the qualifying school district is a municipal 3310  
school district, the community school is sponsored by the 3311  
district or is a party to an agreement with the district whereby 3312  
the district and the community school endorse each other's 3313  
programs; 3314

(ii) If the qualifying school district is not a municipal 3315  
school district, the community school is sponsored by a sponsor 3316  
that was rated as "exemplary" in the ratings most recently 3317  
published under section 3314.016 of the Revised Code before the 3318  
resolution proposing the levy is certified to the board of 3319  
elections. 3320

(c) "Partnering community schools amount" means the 3321  
product obtained, as of the receipt and deposit of the tax 3322  
distribution, by multiplying the amount of a tax distribution by 3323  
a fraction, the numerator of which is the number of mills per 3324  
dollar of taxable value of the property tax to be allocated to 3325  
partnering community schools, and the denominator of which is 3326  
the total number of mills per dollar of taxable value authorized 3327  
by the electors in the election held under division (B) of this 3328  
section, each as set forth in the resolution levying the tax. If 3329  
the resolution allocates all of the levy proceeds to partnering 3330  
community schools, the "partnering schools amount" equals the 3331  
amount of the tax distribution. 3332

(d) "Partnering community schools fund" means a separate 3333  
fund established by the board of education of a qualifying 3334  
school district for the deposit of partnering community school 3335  
amounts under this section. 3336

(e) "Resident student" means a student enrolled in a 3337  
partnering community school who is entitled to attend school in 3338  
the qualifying school district under section 3313.64 or 3313.65 3339  
of the Revised Code. 3340

(f) "Tax distribution" means a distribution of proceeds of 3341  
the tax authorized by division (B) of this section under section 3342  
321.24 of the Revised Code and distributions that are 3343  
attributable to that tax under sections 323.156 and 4503.068 of 3344  
the Revised Code or other applicable law. 3345

(C) A resolution adopted under this section shall specify 3346  
the date of holding the election, which shall not be earlier 3347  
than ninety days after the adoption and certification of the 3348  
resolution and which shall be consistent with the requirements 3349  
of section 3501.01 of the Revised Code. 3350

A resolution adopted under this section may propose to 3351  
renew one or more existing levies imposed under division (A) or 3352  
(B) of this section or to increase or decrease a single levy 3353  
imposed under either such division. 3354

If the board of education imposes one or more existing 3355  
levies for the purpose specified in division (F) of section 3356  
5705.19 of the Revised Code, the resolution may propose to renew 3357  
one or more of those existing levies, or to increase or decrease 3358  
a single such existing levy, for the purpose of general 3359  
permanent improvements. 3360

If the resolution proposes to renew two or more existing 3361  
levies, the levies shall be levied for the same purpose. The 3362  
resolution shall identify those levies and the rates at which 3363  
they are levied. The resolution also shall specify that the 3364  
existing levies shall not be extended on the tax lists after the 3365

year preceding the year in which the renewal levy is first 3366  
imposed, regardless of the years for which those levies 3367  
originally were authorized to be levied. 3368

If the resolution proposes to renew an existing levy 3369  
imposed under division (B) of this section, the rates allocated 3370  
to the qualifying school district and to partnering community 3371  
schools each may be increased or decreased or remain the same, 3372  
and the total rate may be increased, decreased, or remain the 3373  
same. The resolution and notice of election shall specify the 3374  
number of the mills to be levied for the current expenses of the 3375  
partnering community schools and the number of the mills, if 3376  
any, to be levied for the current expenses of the qualifying 3377  
school district. 3378

A resolution adopted under this section shall go into 3379  
immediate effect upon its passage, and no publication of the 3380  
resolution shall be necessary other than that provided for in 3381  
the notice of election. A copy of the resolution shall 3382  
immediately after its passing be certified to the board of 3383  
elections of the proper county in the manner provided by section 3384  
5705.25 of the Revised Code. That section shall govern the 3385  
arrangements for the submission of such question and other 3386  
matters concerning the election to which that section refers, 3387  
including publication of notice of the election, except that the 3388  
election shall be held on the date specified in the resolution. 3389  
In the case of a resolution adopted under division (B) of this 3390  
section, the publication of notice of that election shall state 3391  
the number of the mills, if any, to be levied for the current 3392  
expenses of partnering community schools and the number of the 3393  
mills to be levied for the current expenses of the qualifying 3394  
school district. If a majority of the electors voting on the 3395  
question so submitted in an election vote in favor of the levy, 3396



the board of education may make the necessary levy within the 3397  
school district or, in the case of a qualifying library levy for 3398  
the support of a library association or private corporation, 3399  
within the association library district, at the additional rate, 3400  
or at any lesser rate in excess of the ten-mill limitation on 3401  
the tax list, for the purpose stated in the resolution. A levy 3402  
for a continuing period of time may be reduced pursuant to 3403  
section 5705.261 of the Revised Code. The tax levy shall be 3404  
included in the next tax budget that is certified to the county 3405  
budget commission. 3406

(D) (1) After the approval of a levy on the current tax 3407  
list and duplicate for current expenses, for recreational 3408  
purposes, for community centers provided for in section 755.16 3409  
of the Revised Code, or for a public library of the district 3410  
under division (A) of this section, and prior to the time when 3411  
the first tax collection from the levy can be made, the board of 3412  
education may anticipate a fraction of the proceeds of the levy 3413  
and issue anticipation notes in a principal amount not exceeding 3414  
fifty per cent of the total estimated proceeds of the levy to be 3415  
collected during the first year of the levy. 3416

(2) After the approval of a levy for general permanent 3417  
improvements for a specified number of years or for permanent 3418  
improvements having the purpose specified in division (F) of 3419  
section 5705.19 of the Revised Code, the board of education may 3420  
anticipate a fraction of the proceeds of the levy and issue 3421  
anticipation notes in a principal amount not exceeding fifty per 3422  
cent of the total estimated proceeds of the levy remaining to be 3423  
collected in each year over a period of five years after the 3424  
issuance of the notes. 3425

The notes shall be issued as provided in section 133.24 of 3426

the Revised Code, shall have principal payments during each year 3427  
after the year of their issuance over a period not to exceed 3428  
five years, and may have a principal payment in the year of 3429  
their issuance. 3430

(3) After approval of a levy for general permanent 3431  
improvements for a continuing period of time, the board of 3432  
education may anticipate a fraction of the proceeds of the levy 3433  
and issue anticipation notes in a principal amount not exceeding 3434  
fifty per cent of the total estimated proceeds of the levy to be 3435  
collected in each year over a specified period of years, not 3436  
exceeding ten, after the issuance of the notes. 3437

The notes shall be issued as provided in section 133.24 of 3438  
the Revised Code, shall have principal payments during each year 3439  
after the year of their issuance over a period not to exceed ten 3440  
years, and may have a principal payment in the year of their 3441  
issuance. 3442

(4) After the approval of a levy on the current tax list 3443  
and duplicate under division (B) of this section, and prior to 3444  
the time when the first tax collection from the levy can be 3445  
made, the board of education may anticipate a fraction of the 3446  
proceeds of the levy for the current expenses of the school 3447  
district and issue anticipation notes in a principal amount not 3448  
exceeding fifty per cent of the estimated proceeds of the levy 3449  
to be collected during the first year of the levy and allocated 3450  
to the school district. The portion of the levy proceeds to be 3451  
allocated to partnering community schools under that division 3452  
shall not be included in the estimated proceeds anticipated 3453  
under this division and shall not be used to pay debt charges on 3454  
any anticipation notes. 3455

The notes shall be issued as provided in section 133.24 of 3456

the Revised Code, shall have principal payments during each year 3457  
after the year of their issuance over a period not to exceed 3458  
five years, and may have a principal payment in the year of 3459  
their issuance. 3460

(E) The submission of questions to the electors under this 3461  
section is subject to the limitation on the number of election 3462  
dates established by section 5705.214 of the Revised Code. 3463

(F) The board of education of any school district that 3464  
levies a tax under this section for the purpose of providing for 3465  
school safety and security may report to the department of 3466  
education how the district is using revenue from that tax. 3467

**Sec. 5709.121.** (A) Real property and tangible personal 3468  
property belonging to a charitable or educational institution or 3469  
to the state or a political subdivision, shall be considered as 3470  
used exclusively for charitable or public purposes by such 3471  
institution, the state, or political subdivision, if it meets 3472  
one of the following requirements: 3473

(1) It is used by such institution, the state, or 3474  
political subdivision, or by one or more other such 3475  
institutions, the state, or political subdivisions under a 3476  
lease, sublease, or other contractual arrangement: 3477

(a) As a community or area center in which presentations 3478  
in music, dramatics, the arts, and related fields are made in 3479  
order to foster public interest and education therein; 3480

(b) As a children's, science, history, or natural history 3481  
museum that is open to the general public; 3482

(c) For other charitable, educational, or public purposes. 3483

(2) It is made available under the direction or control of 3484

such institution, the state, or political subdivision for use in 3485  
furtherance of or incidental to its charitable, educational, or 3486  
public purposes and not with the view to profit. 3487

(3) It is used by an organization described in division 3488  
(D) of section 5709.12 of the Revised Code. If the organization 3489  
is a corporation that receives a grant under the Thomas Alva 3490  
Edison grant program authorized by division (C) of section 3491  
122.33 of the Revised Code at any time during the tax year, 3492  
"used," for the purposes of this division, includes holding 3493  
property for lease or resale to others. 3494

(B) (1) Property described in division (A) (1) (a) or (b) of 3495  
this section shall continue to be considered as used exclusively 3496  
for charitable or public purposes even if the property is 3497  
conveyed through one conveyance or a series of conveyances to an 3498  
entity that is not a charitable or educational institution and 3499  
is not the state or a political subdivision, provided that all 3500  
of the following conditions apply with respect to that property: 3501

(a) The property was listed as exempt on the county 3502  
auditor's tax list and duplicate for the county in which it is 3503  
located for the tax year immediately preceding the year in which 3504  
the property is conveyed through one conveyance or a series of 3505  
conveyances; 3506

(b) The property is conveyed through one conveyance or a 3507  
series of conveyances to an entity that does any of the 3508  
following: 3509

(i) Leases at least forty-five per cent of the property, 3510  
through one lease or a series of leases, to the entity that 3511  
owned or occupied the property for the tax year immediately 3512  
preceding the year in which the property is conveyed or to an 3513

affiliate of that entity; 3514

(ii) Contracts, directly or indirectly to have renovations 3515  
performed as described in division (B) (1) (d) of this section and 3516  
is at least partially owned by a nonprofit organization 3517  
described in section 501(c) (3) of the Internal Revenue Code that 3518  
is exempt from taxation under section 501(a) of that code. 3519

(c) The property includes improvements that are at least 3520  
fifty years old; 3521

(d) The property is being renovated in connection with a 3522  
claim for historic preservation tax credits available under 3523  
federal law; 3524

(e) All or a portion of the property continues to be used 3525  
for the purposes described in division (A) (1) (a) or (b) of this 3526  
section after its conveyance; and 3527

(f) The property is certified by the United States 3528  
secretary of the interior as a "certified historic structure" or 3529  
certified as part of a certified historic structure. 3530

(2) Notwithstanding section 5715.27 of the Revised Code, 3531  
an application for exemption from taxation of property described 3532  
in division (B) (1) of this section may be filed by either the 3533  
owner of the property or an occupant. 3534

(C) For purposes of this section, an institution that 3535  
meets all of the following requirements is conclusively presumed 3536  
to be a charitable institution: 3537

(1) The institution is a nonprofit corporation or 3538  
association, no part of the net earnings of which inures to the 3539  
benefit of any private shareholder or individual; 3540

(2) The institution is exempt from federal income taxation 3541

under section 501(a) of the Internal Revenue Code; 3542

(3) The majority of the institution's board of directors 3543  
are appointed by the mayor or legislative authority of a 3544  
municipal corporation or a board of county commissioners, or a 3545  
combination thereof; 3546

(4) The primary purpose of the institution is to assist in 3547  
the development and revitalization of downtown urban areas. 3548

(D) For purposes of division (A)(1)(b) of this section, 3549  
the status of a museum as open to the general public shall be 3550  
conclusive if the museum is accredited by the American alliance 3551  
of museums or a successor organization. 3552

(E)(1) Qualifying real property owned by an institution 3553  
that meets all of the following requirements shall be considered 3554  
as used exclusively for charitable purposes, and the institution 3555  
shall be considered a charitable institution for purposes of 3556  
this section and section 5709.12 of the Revised Code: 3557

(a) The institution is an organization described under 3558  
section 501(c)(3) of the Internal Revenue Code and exempt from 3559  
federal income taxation under section 501(a) of the Internal 3560  
Revenue Code. 3561

(b) The institution's primary purpose is to acquire, 3562  
develop, lease, or otherwise provide suitable housing to 3563  
individuals with developmental disabilities. 3564

(c) The institution receives at least a portion of its 3565  
funding from one or more county boards of developmental 3566  
disabilities to assist in the institution's primary purpose 3567  
described in division (E)(1)(b) of this section. 3568

(2) As used in division (E) of this section, "qualifying 3569

real property" means real property that is used primarily in one 3570  
of the following manners: 3571

(a) The property is used by the institution described in 3572  
division (E) (1) of this section for the purpose described in 3573  
division (E) (1) (b) of this section. 3574

(b) The property is leased or otherwise provided by the 3575  
institution described in division (E) (1) of this section to 3576  
individuals with developmental disabilities and used by those 3577  
individuals as housing. 3578

(c) The property is leased or otherwise provided by the 3579  
institution described in division (E) (1) of this section to 3580  
another charitable institution, and that charitable institution 3581  
uses the property exclusively for charitable purposes. 3582

**Sec. 5709.17.** The following property shall be exempted 3583  
from taxation: 3584

(A) Real estate held or occupied by an association or 3585  
corporation, organized or incorporated under the laws of this 3586  
state relative to soldiers' memorial associations or monumental 3587  
building associations and that, in the opinion of the trustees, 3588  
directors, or managers thereof, is necessary and proper to carry 3589  
out the object intended for such association or corporation; 3590

(B) Real estate and tangible personal property held or 3591  
occupied by a qualifying veterans' organization ~~that qualifies~~ 3592  
~~for exemption from taxation under section 501(c) (19) or 501(c)-~~ 3593  
~~(23) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26-~~ 3594  
~~U.S.C.A. 1, as amended, and is incorporated under the laws of~~ 3595  
~~this state or the United States and used primarily for meetings~~ 3596  
and administration of the qualifying veterans' organization or 3597  
for providing, on a not-for-profit basis, programs and 3598

supportive services to past or present members of the armed 3599  
forces of the United States and their families, except real 3600  
estate held by such an organization for the production of rental 3601  
income in excess of thirty-six thousand dollars in a tax year, 3602  
before accounting for any cost or expense incurred in the 3603  
production of such income. For the purposes of this division, 3604  
rental income includes only income arising directly from renting 3605  
the real estate to others for consideration. 3606

As used in this division, "qualifying veterans' 3607  
organization" means an organization that is incorporated under 3608  
the laws of this state or the United States and that meets 3609  
either of the following requirements: 3610

(1) The organization qualifies for exemption from taxation 3611  
under section 501(c)(19) or 501(c)(23) of the Internal Revenue 3612  
Code. 3613

(2) The organization meets the criteria for exemption 3614  
under section 501(c)(19) of the Internal Revenue Code and 3615  
regulations adopted pursuant thereto, but is exempt from 3616  
taxation under section 501(c)(4) of the Internal Revenue Code. 3617

(C) Tangible personal property held by a corporation 3618  
chartered under 112 Stat. 1335, 36 U.S.C.A. 40701, described in 3619  
section 501(c)(3) of the Internal Revenue Code, and exempt from 3620  
taxation under section 501(a) of the Internal Revenue Code shall 3621  
be exempt from taxation if it is property obtained as described 3622  
in 112 Stat. 1335-1341, 36 U.S.C.A. Chapter 407. 3623

(D) Real estate held or occupied by a fraternal 3624  
organization and used primarily for meetings of and the 3625  
administration of the fraternal organization or for providing, 3626  
on a not-for-profit basis, educational or health services, 3627



except real estate held by such an organization for the 3628  
production of rental income in excess of thirty-six thousand 3629  
dollars in a tax year before accounting for any cost or expense 3630  
incurred in the production of such income. As used in this 3631  
division, "rental income" has the same meaning as in division 3632  
(B) of this section, and "fraternal organization" means a 3633  
domestic fraternal society, order, or association operating 3634  
under the lodge, council, or grange system that qualifies for 3635  
exemption from taxation under section 501(c)(5), 501(c)(8), or 3636  
501(c)(10) of the "Internal Revenue Code of 1986," 100 Stat. 3637  
2085, 26 U.S.C. 1, as amended; that provides financial support 3638  
for charitable purposes, as defined in division (B)(12) of 3639  
section 5739.02 of the Revised Code; and that operates under a 3640  
state governing body that has been operating in this state for 3641  
at least eighty-five years. 3642

**Sec. 5735.01.** As used in this chapter: 3643

(A) "Motor vehicles" includes all vehicles, vessels, 3644  
watercraft, engines, machines, or mechanical contrivances which 3645  
are powered by internal combustion engines or motors. 3646

(B) "Motor fuel" means gasoline, diesel fuel, kerosene, or 3647  
any other liquid motor fuel, including, but not limited to, 3648  
liquid petroleum gas or liquid natural gas, but excluding 3649  
substances prepackaged and sold in containers of five gallons or 3650  
less. 3651

(C) "Kerosene" means all grades of kerosene, including, 3652  
but not limited to, the two grades of kerosene, no. 1-K and no. 3653  
2-K, commonly known as K-1 kerosene and K-2 kerosene, 3654  
respectively, described in the American Society for Testing 3655  
Materials Standard D-3699, in effect on January 1, 1999, and 3656  
aviation grade kerosene. 3657

(D) "Diesel fuel" means any liquid fuel capable of use in discrete form or as a blend component in the operation of engines of the diesel type, including transmix when mixed with diesel fuel.

(E) "Gasoline" means any of the following:

(1) All products, commonly or commercially known or sold as gasoline;

(2) Any blend stocks or additives, including alcohol, that are sold for blending with gasoline, other than products typically sold in containers of five gallons or less;

(3) Transmix when mixed with gasoline, unless certified, as required by the tax commissioner, for withdrawal from terminals for reprocessing at refineries;

(4) Alcohol that is offered for sale or sold for use as, or commonly and commercially used as, a fuel for internal combustion engines.

Gasoline does not include diesel fuel, commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed, sold, or used exclusively for purposes other than as a motor fuel for a motor vehicle or vessel. The blending of any of the products listed in the preceding sentence, regardless of name or characteristics, is conclusively presumed to have been done to produce gasoline, unless the product obtained by the blending is entirely incapable for use as fuel to operate a motor vehicle. An additive, blend stock, or alcohol is presumed to be sold for blending unless a certification is obtained as required by the tax commissioner.

(F) "Public highways" means lands and lots over which the public, either as user or owner, generally has a right to pass,

even though the same are closed temporarily by the authorities 3687  
for the purpose of construction, reconstruction, maintenance, or 3688  
repair. 3689

(G) "Waters within the boundaries of this state" means all 3690  
streams, lakes, ponds, marshes, water courses, and all other 3691  
bodies of surface water, natural or artificial, which are 3692  
situated wholly or partially within this state or within its 3693  
jurisdiction, except private impounded bodies of water. 3694

(H) "Person" includes individuals, partnerships, firms, 3695  
associations, corporations, receivers, trustees in bankruptcy, 3696  
estates, joint-stock companies, joint ventures, the state and 3697  
its political subdivisions, and any combination of persons of 3698  
any form. 3699

(I) (1) "Motor fuel dealer" means any person who satisfies 3700  
any of the following: 3701

(a) The person imports from another state or foreign 3702  
country or acquires motor fuel by any means into a terminal in 3703  
this state; 3704

(b) The person imports motor fuel from another state or 3705  
foreign country in bulk lot vehicles for subsequent sale and 3706  
distribution in this state from bulk lot vehicles; 3707

(c) The person refines motor fuel in this state; 3708

(d) The person acquires motor fuel from a motor fuel 3709  
dealer for subsequent sale and distribution by that person in 3710  
this state from bulk lot vehicles; 3711

(e) The person possesses an unrevoked permissive motor 3712  
fuel dealer's license. 3713

(2) Any person who obtains dyed diesel fuel for use other 3714

than the operation of motor vehicles upon the public highways or 3715  
upon waters within the boundaries of this state, but later uses 3716  
that motor fuel for the operation of motor vehicles upon the 3717  
public highways or upon waters within the boundaries of this 3718  
state, is deemed a motor fuel dealer as regards any unpaid motor 3719  
fuel taxes levied on the motor fuel so used. 3720

(J) As used in section 5735.05 of the Revised Code only: 3721

(1) With respect to gasoline, "received" or "receipt" 3722  
shall be construed as follows: 3723

(a) Gasoline produced at a refinery in this state or 3724  
delivered to a terminal in this state is deemed received when it 3725  
is disbursed through a loading rack at that refinery or 3726  
terminal; 3727

(b) Except as provided in division (J) (1) (a) of this 3728  
section, gasoline imported into this state or purchased or 3729  
otherwise acquired in this state by any person is deemed 3730  
received within this state by that person when the gasoline is 3731  
withdrawn from the container in which it was transported; 3732

(c) Gasoline delivered or disbursed by any means from a 3733  
terminal directly to another terminal is not deemed received. 3734

(2) With respect to motor fuel other than gasoline, 3735  
"received" or "receipt" means distributed or sold for use or 3736  
used to generate power for the operation of motor vehicles upon 3737  
the public highways or upon waters within the boundaries of this 3738  
state. All diesel fuel that is not dyed diesel fuel, regardless 3739  
of its use, shall be considered as used to generate power for 3740  
the operation of motor vehicles upon the public highways or upon 3741  
waters within the boundaries of this state when the fuel is sold 3742  
or distributed to a person other than a licensed motor fuel 3743

dealer or to a person licensed under section 5735.026 of the Revised Code.

(K) Motor fuel used for the operation of licensed motor vehicles employed in the maintenance, construction, or repair of public highways is deemed to be used for the operation of motor vehicles upon the public highways.

(L) "Licensed motor fuel dealer" means any dealer possessing an unrevoked motor fuel dealer's license issued by the tax commissioner as provided in section 5735.02 of the Revised Code.

(M) "Licensed retail dealer" means any retail dealer possessing an unrevoked retail dealer's license issued by the tax commissioner as provided in section 5735.022 of the Revised Code.

(N) "Refinery" means a facility used to produce motor fuel and from which motor fuel may be removed by pipeline, by vessel, or at a rack.

(O) "Retail dealer" means any person that sells or distributes motor fuel at a retail service station located in this state.

(P) "Retail service station" means a location from which motor fuel is sold to the general public and is dispensed or pumped directly into motor vehicle fuel tanks for consumption.

(Q) "Transit bus" means a motor vehicle that is operated for public transit or paratransit service on a regular and continuing basis within the state by or for a county, a municipal corporation, a county transit board pursuant to sections 306.01 to 306.13 of the Revised Code, a regional transit authority pursuant to sections 306.30 to 306.54 of the

Revised Code, or a regional transit commission pursuant to 3773  
sections 306.80 to 306.90 of the Revised Code. Public transit or 3774  
paratransit service may include fixed route, demand-responsive, 3775  
or subscription bus service transportation, but does not include 3776  
shared-ride taxi service, carpools, vanpools, jitney service, 3777  
school bus transportation, or charter or sightseeing services. 3778

(R) "Export" means to obtain motor fuel in this state for 3779  
sale or other distribution outside this state. For the purposes 3780  
of this division, motor fuel delivered outside this state by or 3781  
for the seller constitutes an export by the seller, and motor 3782  
fuel delivered outside this state by or for the purchaser 3783  
constitutes an export by the purchaser. 3784

(S) "Import" means motor fuel delivered into this state 3785  
from outside this state. Motor fuel delivered into this state 3786  
from outside this state by or for the seller constitutes an 3787  
import by the seller. Motor fuel delivered into this state from 3788  
outside this state by or for the purchaser constitutes an import 3789  
by the purchaser. 3790

(T) "Terminal" means a motor fuel storage or distribution 3791  
facility that ~~has been assigned a terminal control number by the~~ 3792  
~~internal revenue service, that is~~ supplied by pipeline or marine 3793  
vessel, ~~and from which motor fuel may be removed at a rack.~~ 3794

(U) ~~"Terminal operator" means a person that owns,~~ 3795  
~~operates, or otherwise controls a terminal~~Consumer" means a 3796  
buyer of motor fuel for purposes other than resale in any form. 3797

(V) "Bulk lot vehicle" means railroad tank cars, transport 3798  
tank trucks, and tank wagons with a capacity of at least 1,400 3799  
gallons. 3800

(W) "Licensed permissive motor fuel dealer" means any 3801

person possessing an unrevoked permissive motor fuel dealer's 3802  
license issued by the tax commissioner under section 5735.021 of 3803  
the Revised Code. 3804

(X) "Licensed terminal operator" means any person 3805  
possessing an unrevoked terminal operator's license issued by 3806  
the tax commissioner under section 5735.026 of the Revised Code. 3807

(Y) "Licensed exporter" means any person possessing an 3808  
unrevoked exporter's license issued by the tax commissioner 3809  
under section 5735.026 of the Revised Code. 3810

(Z) "Dyed diesel fuel" means diesel fuel satisfying the 3811  
requirements of 26 U.S.C. 4082. 3812

(AA) "Gross gallons" means U.S. gallons without 3813  
temperature or barometric adjustments. 3814

(BB) "Bulk plant" means a motor fuel storage and 3815  
distribution facility, other than a terminal, from which motor 3816  
fuel may be withdrawn by railroad car, transport trucks, tank 3817  
wagons, or marine vessels. 3818

(CC) "Transporter" means either of the following: 3819

(1) A railroad company, street, suburban, or interurban 3820  
railroad company, a pipeline company, or water transportation 3821  
company that transports motor fuel, either in interstate or 3822  
intrastate commerce, to points in this state; 3823

(2) A person that transports motor fuel by any manner to a 3824  
point in this state. 3825

(DD) "Exporter" means either of the following: 3826

(1) A person that is licensed to collect and remit motor 3827  
fuel taxes in a specified state of destination; 3828

(2) A person that is statutorily prohibited from obtaining 3829  
a license to collect and remit motor fuel taxes in a specified 3830  
state of destination, and is licensed to sell or distribute tax- 3831  
paid motor fuel in the specified state of destination. 3832

(EE) "Report" means a report or return required to be 3833  
filed under this chapter and may be used interchangeably with, 3834  
and for all purposes has the same meaning as, "return." 3835

(FF) "Aviation fuel" means aviation gasoline or aviation 3836  
grade kerosene or any other fuel that is used in aircraft. 3837

(GG) "Aviation gasoline" means fuel specifically 3838  
compounded for use in reciprocating aircraft engines. 3839

(HH) "Aviation grade kerosene" means any kerosene type jet 3840  
fuel covered by ASTM Specification D1655 or meeting 3841  
specification MIL-DTL-5624T (Grade JP-5) or MTL-DTL-83133E 3842  
(Grade JP-8). 3843

(II) "Aviation fuel dealer" means a person that acquires 3844  
aviation fuel from a supplier or from another aviation fuel 3845  
dealer for subsequent sale to a person other than an end user. 3846

**Sec. 5735.024.** (A) No aviation fuel dealer shall purchase 3847  
aviation fuel for ~~consumption-resale~~ in this state without first 3848  
being ~~registered-licensed~~ as an aviation fuel dealer by the tax 3849  
commissioner to engage in such activities. 3850

(B) The failure to register with the commissioner as an 3851  
aviation fuel dealer does not relieve a person from the 3852  
requirement to file returns under this title. 3853

(C) No person shall make a false or fraudulent statement 3854  
on the application required by this section. 3855

(D) Each aviation fuel dealer shall file a report with the 3856



commissioner on or before the ~~twenty-third-last~~ day of each 3857  
month for the preceding month. The commissioner shall adopt 3858  
rules pursuant to Chapter 119. of the Revised Code specifying 3859  
the information that shall be required to be included in the 3860  
report. 3861

(E) If an aviation fuel dealer files a false monthly 3862  
report of the information required by the commissioner or fails 3863  
to file a monthly report as required by this section, the 3864  
commissioner may revoke the license of the aviation fuel dealer 3865  
and notify the aviation fuel dealer in writing of such 3866  
revocation by certified mail sent to the last known address of 3867  
the aviation fuel dealer appearing in the files of the 3868  
commissioner. 3869

**Sec. 5735.04.** If a motor fuel dealer files a false monthly 3870  
report of the information required under section 5735.06 of the 3871  
Revised Code, fails to file a monthly report as required by that 3872  
section or section 5735.024 of the Revised Code, or fails to pay 3873  
the full amount of the tax as required by the motor fuel laws of 3874  
the state or as may be agreed upon by the tax commissioner and 3875  
the motor fuel dealer, ~~or fails to file an inventory report as~~ 3876  
~~required by section 5735.061 (B) of the Revised Code,~~ the 3877  
commissioner may revoke the license of the motor fuel dealer, 3878  
and notify the motor fuel dealer in writing of such revocation 3879  
by certified mail sent to the last known address of the motor 3880  
fuel dealer appearing on the files of the commissioner. 3881

The commissioner may cancel any license issued to any 3882  
motor fuel dealer, and the cancellation shall become effective 3883  
at the time that may be determined by the commissioner. The 3884  
commissioner also may cancel the license of any motor fuel 3885  
dealer upon sixty days' notice mailed to the last known address 3886

of the motor fuel dealer if the commissioner, upon 3887  
investigation, finds that the person to whom the license has 3888  
been issued is no longer engaged in the receipt, use, or sale of 3889  
motor fuel as a motor fuel dealer, and has not been so engaged 3890  
for the period of six months prior to the cancellation. No 3891  
license shall be canceled upon the request of any motor fuel 3892  
dealer unless the motor fuel dealer, prior to the date of 3893  
cancellation, has paid to the state all motor fuel taxes payable 3894  
or assumed by the motor fuel dealer under the laws of the state, 3895  
together with all penalties and fines accruing by reason of any 3896  
failure of the motor fuel dealer to make accurate reports of 3897  
receipts of motor fuel or to pay the taxes and penalties. 3898

If the license of any motor fuel dealer is canceled by the 3899  
commissioner as provided in this section, and if the motor fuel 3900  
dealer has paid to the state all motor fuel taxes due and 3901  
payable by the motor fuel dealer under the laws of the state, or 3902  
assumed by the motor fuel dealer upon the receipt, sale, or use 3903  
of motor fuel, together with all penalties accruing by reason of 3904  
any failure on the part of the motor fuel dealer to make 3905  
accurate reports or to pay the tax and penalties, then the 3906  
commissioner shall cancel and surrender the bond theretofore 3907  
filed by the motor fuel dealer. 3908

**Sec. 5747.01.** Except as otherwise expressly provided or 3909  
clearly appearing from the context, any term used in this 3910  
chapter that is not otherwise defined in this section has the 3911  
same meaning as when used in a comparable context in the laws of 3912  
the United States relating to federal income taxes or if not 3913  
used in a comparable context in those laws, has the same meaning 3914  
as in section 5733.40 of the Revised Code. Any reference in this 3915  
chapter to the Internal Revenue Code includes other laws of the 3916  
United States relating to federal income taxes. 3917

As used in this chapter:	3918
(A) "Adjusted gross income" or "Ohio adjusted gross income" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:	3919 3920 3921 3922
(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.	3923 3924 3925 3926
(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.	3927 3928 3929 3930 3931
(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.	3932 3933 3934 3935 3936 3937
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	3938 3939
(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.	3940 3941 3942 3943
(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the	3944 3945 3946

beneficiary's taxable years beginning before 2002, the portion, 3947  
if any, of such distribution that does not exceed the 3948  
undistributed net income of the trust for the three taxable 3949  
years preceding the taxable year in which the distribution is 3950  
made to the extent that the portion was not included in the 3951  
trust's taxable income for any of the trust's taxable years 3952  
beginning in 2002 or thereafter. "Undistributed net income of a 3953  
trust" means the taxable income of the trust increased by (a) (i) 3954  
the additions to adjusted gross income required under division 3955  
(A) of this section and (ii) the personal exemptions allowed to 3956  
the trust pursuant to section 642(b) of the Internal Revenue 3957  
Code, and decreased by (b) (i) the deductions to adjusted gross 3958  
income required under division (A) of this section, (ii) the 3959  
amount of federal income taxes attributable to such income, and 3960  
(iii) the amount of taxable income that has been included in the 3961  
adjusted gross income of a beneficiary by reason of a prior 3962  
accumulation distribution. Any undistributed net income included 3963  
in the adjusted gross income of a beneficiary shall reduce the 3964  
undistributed net income of the trust commencing with the 3965  
earliest years of the accumulation period. 3966

(7) Deduct the amount of wages and salaries, if any, not 3967  
otherwise allowable as a deduction but that would have been 3968  
allowable as a deduction in computing federal adjusted gross 3969  
income for the taxable year, had the targeted jobs credit 3970  
allowed and determined under sections 38, 51, and 52 of the 3971  
Internal Revenue Code not been in effect. 3972

(8) Deduct any interest or interest equivalent on public 3973  
obligations and purchase obligations to the extent that the 3974  
interest or interest equivalent is included in federal adjusted 3975  
gross income. 3976

(9) Add any loss or deduct any gain resulting from the 3977  
sale, exchange, or other disposition of public obligations to 3978  
the extent that the loss has been deducted or the gain has been 3979  
included in computing federal adjusted gross income. 3980

(10) Deduct or add amounts, as provided under section 3981  
5747.70 of the Revised Code, related to contributions to 3982  
variable college savings program accounts made or tuition units 3983  
purchased pursuant to Chapter 3334. of the Revised Code. 3984

(11) (a) Deduct, to the extent not otherwise allowable as a 3985  
deduction or exclusion in computing federal or Ohio adjusted 3986  
gross income for the taxable year, the amount the taxpayer paid 3987  
during the taxable year for medical care insurance and qualified 3988  
long-term care insurance for the taxpayer, the taxpayer's 3989  
spouse, and dependents. No deduction for medical care insurance 3990  
under division (A) (11) (a) of this section shall be allowed 3991  
either to any taxpayer who is eligible to participate in any 3992  
subsidized health plan maintained by any employer of the 3993  
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 3994  
entitled to, or on application would be entitled to, benefits 3995  
under part A of Title XVIII of the "Social Security Act," 49 3996  
Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 3997  
division (A) (11) (a) of this section, "subsidized health plan" 3998  
means a health plan for which the employer pays any portion of 3999  
the plan's cost. The deduction allowed under division (A) (11) (a) 4000  
of this section shall be the net of any related premium refunds, 4001  
related premium reimbursements, or related insurance premium 4002  
dividends received during the taxable year. 4003

(b) Deduct, to the extent not otherwise deducted or 4004  
excluded in computing federal or Ohio adjusted gross income 4005  
during the taxable year, the amount the taxpayer paid during the 4006

taxable year, not compensated for by any insurance or otherwise, 4007  
for medical care of the taxpayer, the taxpayer's spouse, and 4008  
dependents, to the extent the expenses exceed seven and one-half 4009  
per cent of the taxpayer's federal adjusted gross income. 4010

(c) Deduct, to the extent not otherwise deducted or 4011  
excluded in computing federal or Ohio adjusted gross income, any 4012  
amount included in federal adjusted gross income under section 4013  
105 or not excluded under section 106 of the Internal Revenue 4014  
Code solely because it relates to an accident and health plan 4015  
for a person who otherwise would be a "qualifying relative" and 4016  
thus a "dependent" under section 152 of the Internal Revenue 4017  
Code but for the fact that the person fails to meet the income 4018  
and support limitations under section 152(d)(1)(B) and (C) of 4019  
the Internal Revenue Code. 4020

(d) For purposes of division (A)(11) of this section, 4021  
"medical care" has the meaning given in section 213 of the 4022  
Internal Revenue Code, subject to the special rules, 4023  
limitations, and exclusions set forth therein, and "qualified 4024  
long-term care" has the same meaning given in section 7702B(c) 4025  
of the Internal Revenue Code. Solely for purposes of divisions 4026  
(A)(11)(a) and (c) of this section, "dependent" includes a 4027  
person who otherwise would be a "qualifying relative" and thus a 4028  
"dependent" under section 152 of the Internal Revenue Code but 4029  
for the fact that the person fails to meet the income and 4030  
support limitations under section 152(d)(1)(B) and (C) of the 4031  
Internal Revenue Code. 4032

(12)(a) Deduct any amount included in federal adjusted 4033  
gross income solely because the amount represents a 4034  
reimbursement or refund of expenses that in any year the 4035  
taxpayer had deducted as an itemized deduction pursuant to 4036

section 63 of the Internal Revenue Code and applicable United 4037  
States department of the treasury regulations. The deduction 4038  
otherwise allowed under division (A) (12) (a) of this section 4039  
shall be reduced to the extent the reimbursement is attributable 4040  
to an amount the taxpayer deducted under this section in any 4041  
taxable year. 4042

(b) Add any amount not otherwise included in Ohio adjusted 4043  
gross income for any taxable year to the extent that the amount 4044  
is attributable to the recovery during the taxable year of any 4045  
amount deducted or excluded in computing federal or Ohio 4046  
adjusted gross income in any taxable year. 4047

(13) Deduct any portion of the deduction described in 4048  
section 1341(a) (2) of the Internal Revenue Code, for repaying 4049  
previously reported income received under a claim of right, that 4050  
meets both of the following requirements: 4051

(a) It is allowable for repayment of an item that was 4052  
included in the taxpayer's adjusted gross income for a prior 4053  
taxable year and did not qualify for a credit under division (A) 4054  
or (B) of section 5747.05 of the Revised Code for that year; 4055

(b) It does not otherwise reduce the taxpayer's adjusted 4056  
gross income for the current or any other taxable year. 4057

(14) Deduct an amount equal to the deposits made to, and 4058  
net investment earnings of, a medical savings account during the 4059  
taxable year, in accordance with section 3924.66 of the Revised 4060  
Code. The deduction allowed by division (A) (14) of this section 4061  
does not apply to medical savings account deposits and earnings 4062  
otherwise deducted or excluded for the current or any other 4063  
taxable year from the taxpayer's federal adjusted gross income. 4064

(15) (a) Add an amount equal to the funds withdrawn from a 4065

medical savings account during the taxable year, and the net 4066  
investment earnings on those funds, when the funds withdrawn 4067  
were used for any purpose other than to reimburse an account 4068  
holder for, or to pay, eligible medical expenses, in accordance 4069  
with section 3924.66 of the Revised Code; 4070

(b) Add the amounts distributed from a medical savings 4071  
account under division (A) (2) of section 3924.68 of the Revised 4072  
Code during the taxable year. 4073

(16) Add any amount claimed as a credit under section 4074  
5747.059 or 5747.65 of the Revised Code to the extent that such 4075  
amount satisfies either of the following: 4076

(a) The amount was deducted or excluded from the 4077  
computation of the taxpayer's federal adjusted gross income as 4078  
required to be reported for the taxpayer's taxable year under 4079  
the Internal Revenue Code; 4080

(b) The amount resulted in a reduction of the taxpayer's 4081  
federal adjusted gross income as required to be reported for any 4082  
of the taxpayer's taxable years under the Internal Revenue Code. 4083

(17) Deduct the amount contributed by the taxpayer to an 4084  
individual development account program established by a county 4085  
department of job and family services pursuant to sections 4086  
329.11 to 329.14 of the Revised Code for the purpose of matching 4087  
funds deposited by program participants. On request of the tax 4088  
commissioner, the taxpayer shall provide any information that, 4089  
in the tax commissioner's opinion, is necessary to establish the 4090  
amount deducted under division (A) (17) of this section. 4091

(18) Beginning in taxable year 2001 but not for any 4092  
taxable year beginning after December 31, 2005, if the taxpayer 4093  
is married and files a joint return and the combined federal 4094



adjusted gross income of the taxpayer and the taxpayer's spouse 4095  
for the taxable year does not exceed one hundred thousand 4096  
dollars, or if the taxpayer is single and has a federal adjusted 4097  
gross income for the taxable year not exceeding fifty thousand 4098  
dollars, deduct amounts paid during the taxable year for 4099  
qualified tuition and fees paid to an eligible institution for 4100  
the taxpayer, the taxpayer's spouse, or any dependent of the 4101  
taxpayer, who is a resident of this state and is enrolled in or 4102  
attending a program that culminates in a degree or diploma at an 4103  
eligible institution. The deduction may be claimed only to the 4104  
extent that qualified tuition and fees are not otherwise 4105  
deducted or excluded for any taxable year from federal or Ohio 4106  
adjusted gross income. The deduction may not be claimed for 4107  
educational expenses for which the taxpayer claims a credit 4108  
under section 5747.27 of the Revised Code. 4109

(19) Add any reimbursement received during the taxable 4110  
year of any amount the taxpayer deducted under division (A) (18) 4111  
of this section in any previous taxable year to the extent the 4112  
amount is not otherwise included in Ohio adjusted gross income. 4113

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 4114  
(v) of this section, add five-sixths of the amount of 4115  
depreciation expense allowed by subsection (k) of section 168 of 4116  
the Internal Revenue Code, including the taxpayer's 4117  
proportionate or distributive share of the amount of 4118  
depreciation expense allowed by that subsection to a pass- 4119  
through entity in which the taxpayer has a direct or indirect 4120  
ownership interest. 4121

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 4122  
of this section, add five-sixths of the amount of qualifying 4123  
section 179 depreciation expense, including the taxpayer's 4124

proportionate or distributive share of the amount of qualifying 4125  
section 179 depreciation expense allowed to any pass-through 4126  
entity in which the taxpayer has a direct or indirect ownership 4127  
interest. 4128

(iii) Subject to division (A) (20) (a) (v) of this section, 4129  
for taxable years beginning in 2012 or thereafter, if the 4130  
increase in income taxes withheld by the taxpayer is equal to or 4131  
greater than ten per cent of income taxes withheld by the 4132  
taxpayer during the taxpayer's immediately preceding taxable 4133  
year, "two-thirds" shall be substituted for "five-sixths" for 4134  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 4135

(iv) Subject to division (A) (20) (a) (v) of this section, 4136  
for taxable years beginning in 2012 or thereafter, a taxpayer is 4137  
not required to add an amount under division (A) (20) of this 4138  
section if the increase in income taxes withheld by the taxpayer 4139  
and by any pass-through entity in which the taxpayer has a 4140  
direct or indirect ownership interest is equal to or greater 4141  
than the sum of (I) the amount of qualifying section 179 4142  
depreciation expense and (II) the amount of depreciation expense 4143  
allowed to the taxpayer by subsection (k) of section 168 of the 4144  
Internal Revenue Code, and including the taxpayer's 4145  
proportionate or distributive shares of such amounts allowed to 4146  
any such pass-through entities. 4147

(v) If a taxpayer directly or indirectly incurs a net 4148  
operating loss for the taxable year for federal income tax 4149  
purposes, to the extent such loss resulted from depreciation 4150  
expense allowed by subsection (k) of section 168 of the Internal 4151  
Revenue Code and by qualifying section 179 depreciation expense, 4152  
"the entire" shall be substituted for "five-sixths of the" for 4153  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 4154

The tax commissioner, under procedures established by the 4155  
commissioner, may waive the add-backs related to a pass-through 4156  
entity if the taxpayer owns, directly or indirectly, less than 4157  
five per cent of the pass-through entity. 4158

(b) Nothing in division (A) (20) of this section shall be 4159  
construed to adjust or modify the adjusted basis of any asset. 4160

(c) To the extent the add-back required under division (A) 4161  
(20) (a) of this section is attributable to property generating 4162  
nonbusiness income or loss allocated under section 5747.20 of 4163  
the Revised Code, the add-back shall be situated to the same 4164  
location as the nonbusiness income or loss generated by the 4165  
property for the purpose of determining the credit under 4166  
division (A) of section 5747.05 of the Revised Code. Otherwise, 4167  
the add-back shall be apportioned, subject to one or more of the 4168  
four alternative methods of apportionment enumerated in section 4169  
5747.21 of the Revised Code. 4170

(d) For the purposes of division (A) (20) (a) (v) of this 4171  
section, net operating loss carryback and carryforward shall not 4172  
include the allowance of any net operating loss deduction 4173  
carryback or carryforward to the taxable year to the extent such 4174  
loss resulted from depreciation allowed by section 168(k) of the 4175  
Internal Revenue Code and by the qualifying section 179 4176  
depreciation expense amount. 4177

(e) For the purposes of divisions (A) (20) and (21) of this 4178  
section: 4179

(i) "Income taxes withheld" means the total amount 4180  
withheld and remitted under sections 5747.06 and 5747.07 of the 4181  
Revised Code by an employer during the employer's taxable year. 4182

(ii) "Increase in income taxes withheld" means the amount 4183

by which the amount of income taxes withheld by an employer 4184  
during the employer's current taxable year exceeds the amount of 4185  
income taxes withheld by that employer during the employer's 4186  
immediately preceding taxable year. 4187

(iii) "Qualifying section 179 depreciation expense" means 4188  
the difference between (I) the amount of depreciation expense 4189  
directly or indirectly allowed to a taxpayer under section 179 4190  
of the Internal Revised Code, and (II) the amount of 4191  
depreciation expense directly or indirectly allowed to the 4192  
taxpayer under section 179 of the Internal Revenue Code as that 4193  
section existed on December 31, 2002. 4194

(21) (a) If the taxpayer was required to add an amount 4195  
under division (A) (20) (a) of this section for a taxable year, 4196  
deduct one of the following: 4197

(i) One-fifth of the amount so added for each of the five 4198  
succeeding taxable years if the amount so added was five-sixths 4199  
of qualifying section 179 depreciation expense or depreciation 4200  
expense allowed by subsection (k) of section 168 of the Internal 4201  
Revenue Code; 4202

(ii) One-half of the amount so added for each of the two 4203  
succeeding taxable years if the amount so added was two-thirds 4204  
of such depreciation expense; 4205

(iii) One-sixth of the amount so added for each of the six 4206  
succeeding taxable years if the entire amount of such 4207  
depreciation expense was so added. 4208

(b) If the amount deducted under division (A) (21) (a) of 4209  
this section is attributable to an add-back allocated under 4210  
division (A) (20) (c) of this section, the amount deducted shall 4211  
be situated to the same location. Otherwise, the add-back shall 4212

be apportioned using the apportionment factors for the taxable 4213  
year in which the deduction is taken, subject to one or more of 4214  
the four alternative methods of apportionment enumerated in 4215  
section 5747.21 of the Revised Code. 4216

(c) No deduction is available under division (A) (21) (a) of 4217  
this section with regard to any depreciation allowed by section 4218  
168(k) of the Internal Revenue Code and by the qualifying 4219  
section 179 depreciation expense amount to the extent that such 4220  
depreciation results in or increases a federal net operating 4221  
loss carryback or carryforward. If no such deduction is 4222  
available for a taxable year, the taxpayer may carry forward the 4223  
amount not deducted in such taxable year to the next taxable 4224  
year and add that amount to any deduction otherwise available 4225  
under division (A) (21) (a) of this section for that next taxable 4226  
year. The carryforward of amounts not so deducted shall continue 4227  
until the entire addition required by division (A) (20) (a) of 4228  
this section has been deducted. 4229

(d) No refund shall be allowed as a result of adjustments 4230  
made by division (A) (21) of this section. 4231

(22) Deduct, to the extent not otherwise deducted or 4232  
excluded in computing federal or Ohio adjusted gross income for 4233  
the taxable year, the amount the taxpayer received during the 4234  
taxable year as reimbursement for life insurance premiums under 4235  
section 5919.31 of the Revised Code. 4236

(23) Deduct, to the extent not otherwise deducted or 4237  
excluded in computing federal or Ohio adjusted gross income for 4238  
the taxable year, the amount the taxpayer received during the 4239  
taxable year as a death benefit paid by the adjutant general 4240  
under section 5919.33 of the Revised Code. 4241

(24) Deduct, to the extent included in federal adjusted 4242  
gross income and not otherwise allowable as a deduction or 4243  
exclusion in computing federal or Ohio adjusted gross income for 4244  
the taxable year, military pay and allowances received by the 4245  
taxpayer during the taxable year for active duty service in the 4246  
United States army, air force, navy, marine corps, or coast 4247  
guard or reserve components thereof or the national guard. The 4248  
deduction may not be claimed for military pay and allowances 4249  
received by the taxpayer while the taxpayer is stationed in this 4250  
state. 4251

(25) Deduct, to the extent not otherwise allowable as a 4252  
deduction or exclusion in computing federal or Ohio adjusted 4253  
gross income for the taxable year and not otherwise compensated 4254  
for by any other source, the amount of qualified organ donation 4255  
expenses incurred by the taxpayer during the taxable year, not 4256  
to exceed ten thousand dollars. A taxpayer may deduct qualified 4257  
organ donation expenses only once for all taxable years 4258  
beginning with taxable years beginning in 2007. 4259

For the purposes of division (A) (25) of this section: 4260

(a) "Human organ" means all or any portion of a human 4261  
liver, pancreas, kidney, intestine, or lung, and any portion of 4262  
human bone marrow. 4263

(b) "Qualified organ donation expenses" means travel 4264  
expenses, lodging expenses, and wages and salary forgone by a 4265  
taxpayer in connection with the taxpayer's donation, while 4266  
living, of one or more of the taxpayer's human organs to another 4267  
human being. 4268

(26) Deduct, to the extent not otherwise deducted or 4269  
excluded in computing federal or Ohio adjusted gross income for 4270

the taxable year, amounts received by the taxpayer as retired 4271  
personnel pay for service in the uniformed services or reserve 4272  
components thereof, or the national guard, or received by the 4273  
surviving spouse or former spouse of such a taxpayer under the 4274  
survivor benefit plan on account of such a taxpayer's death. If 4275  
the taxpayer receives income on account of retirement paid under 4276  
the federal civil service retirement system or federal employees 4277  
retirement system, or under any successor retirement program 4278  
enacted by the congress of the United States that is established 4279  
and maintained for retired employees of the United States 4280  
government, and such retirement income is based, in whole or in 4281  
part, on credit for the taxpayer's uniformed service, the 4282  
deduction allowed under this division shall include only that 4283  
portion of such retirement income that is attributable to the 4284  
taxpayer's uniformed service, to the extent that portion of such 4285  
retirement income is otherwise included in federal adjusted 4286  
gross income and is not otherwise deducted under this section. 4287  
Any amount deducted under division (A) (26) of this section is 4288  
not included in a taxpayer's adjusted gross income for the 4289  
purposes of section 5747.055 of the Revised Code. No amount may 4290  
be deducted under division (A) (26) of this section on the basis 4291  
of which a credit was claimed under section 5747.055 of the 4292  
Revised Code. 4293

(27) Deduct, to the extent not otherwise deducted or 4294  
excluded in computing federal or Ohio adjusted gross income for 4295  
the taxable year, the amount the taxpayer received during the 4296  
taxable year from the military injury relief fund created in 4297  
section 5902.05 of the Revised Code. 4298

(28) Deduct, to the extent not otherwise deducted or 4299  
excluded in computing federal or Ohio adjusted gross income for 4300  
the taxable year, the amount the taxpayer received as a veterans 4301

bonus during the taxable year from the Ohio department of 4302  
veterans services as authorized by Section 2r of Article VIII, 4303  
Ohio Constitution. 4304

(29) Deduct, to the extent not otherwise deducted or 4305  
excluded in computing federal or Ohio adjusted gross income for 4306  
the taxable year, any income derived from a transfer agreement 4307  
or from the enterprise transferred under that agreement under 4308  
section 4313.02 of the Revised Code. 4309

(30) Deduct, to the extent not otherwise deducted or 4310  
excluded in computing federal or Ohio adjusted gross income for 4311  
the taxable year, Ohio college opportunity or federal Pell grant 4312  
amounts received by the taxpayer or the taxpayer's spouse or 4313  
dependent pursuant to section 3333.122 of the Revised Code or 20 4314  
U.S.C. 1070a, et seq., and used to pay room or board furnished 4315  
by the educational institution for which the grant was awarded 4316  
at the institution's facilities, including meal plans 4317  
administered by the institution. For the purposes of this 4318  
division, receipt of a grant includes the distribution of a 4319  
grant directly to an educational institution and the crediting 4320  
of the grant to the enrollee's account with the institution. 4321

(31) (a) For taxable years beginning in 2015, deduct from 4322  
the portion of an individual's adjusted gross income that is 4323  
business income, to the extent not otherwise deducted or 4324  
excluded in computing federal or Ohio adjusted gross income for 4325  
the taxable year, the lesser of the following amounts: 4326

(i) Seventy-five per cent of the individual's business 4327  
income; 4328

(ii) Ninety-three thousand seven hundred fifty dollars for 4329  
each spouse if spouses file separate returns under section 4330



5747.08 of the Revised Code or one hundred eighty-seven thousand 4331  
five hundred dollars for all other individuals. 4332

(b) For taxable years beginning in 2016 or thereafter, 4333  
deduct from the portion of an individual's adjusted gross income 4334  
that is business income, to the extent not otherwise deducted or 4335  
excluded in computing federal adjusted gross income for the 4336  
taxable year, one hundred twenty-five thousand dollars for each 4337  
spouse if spouses file separate returns under section 5747.08 of 4338  
the Revised Code or two hundred fifty thousand dollars for all 4339  
other individuals. 4340

(32) Deduct, as provided under section 5747.78 of the 4341  
Revised Code, contributions to ABLE savings accounts made in 4342  
accordance with sections 113.50 to 113.56 of the Revised Code. 4343

(B) "Business income" means income, including gain or 4344  
loss, arising from transactions, activities, and sources in the 4345  
regular course of a trade or business and includes income, gain, 4346  
or loss from real property, tangible property, and intangible 4347  
property if the acquisition, rental, management, and disposition 4348  
of the property constitute integral parts of the regular course 4349  
of a trade or business operation. "Business income" includes 4350  
income, including gain or loss, from a partial or complete 4351  
liquidation of a business, including, but not limited to, gain 4352  
or loss from the sale or other disposition of goodwill. 4353

(C) "Nonbusiness income" means all income other than 4354  
business income and may include, but is not limited to, 4355  
compensation, rents and royalties from real or tangible personal 4356  
property, capital gains, interest, dividends and distributions, 4357  
patent or copyright royalties, or lottery winnings, prizes, and 4358  
awards. 4359

(D) "Compensation" means any form of remuneration paid to 4360  
an employee for personal services. 4361

(E) "Fiduciary" means a guardian, trustee, executor, 4362  
administrator, receiver, conservator, or any other person acting 4363  
in any fiduciary capacity for any individual, trust, or estate. 4364

(F) "Fiscal year" means an accounting period of twelve 4365  
months ending on the last day of any month other than December. 4366

(G) "Individual" means any natural person. 4367

(H) "Internal Revenue Code" means the "Internal Revenue 4368  
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 4369

(I) "Resident" means any of the following, provided that 4370  
division (I) (3) of this section applies only to taxable years of 4371  
a trust beginning in 2002 or thereafter: 4372

(1) An individual who is domiciled in this state, subject 4373  
to section 5747.24 of the Revised Code; 4374

(2) The estate of a decedent who at the time of death was 4375  
domiciled in this state. The domicile tests of section 5747.24 4376  
of the Revised Code are not controlling for purposes of division 4377  
(I) (2) of this section. 4378

(3) A trust that, in whole or part, resides in this state. 4379  
If only part of a trust resides in this state, the trust is a 4380  
resident only with respect to that part. 4381

For the purposes of division (I) (3) of this section: 4382

(a) A trust resides in this state for the trust's current 4383  
taxable year to the extent, as described in division (I) (3) (d) 4384  
of this section, that the trust consists directly or indirectly, 4385  
in whole or in part, of assets, net of any related liabilities, 4386

that were transferred, or caused to be transferred, directly or 4387  
indirectly, to the trust by any of the following: 4388

(i) A person, a court, or a governmental entity or 4389  
instrumentality on account of the death of a decedent, but only 4390  
if the trust is described in division (I) (3) (e) (i) or (ii) of 4391  
this section; 4392

(ii) A person who was domiciled in this state for the 4393  
purposes of this chapter when the person directly or indirectly 4394  
transferred assets to an irrevocable trust, but only if at least 4395  
one of the trust's qualifying beneficiaries is domiciled in this 4396  
state for the purposes of this chapter during all or some 4397  
portion of the trust's current taxable year; 4398

(iii) A person who was domiciled in this state for the 4399  
purposes of this chapter when the trust document or instrument 4400  
or part of the trust document or instrument became irrevocable, 4401  
but only if at least one of the trust's qualifying beneficiaries 4402  
is a resident domiciled in this state for the purposes of this 4403  
chapter during all or some portion of the trust's current 4404  
taxable year. If a trust document or instrument became 4405  
irrevocable upon the death of a person who at the time of death 4406  
was domiciled in this state for purposes of this chapter, that 4407  
person is a person described in division (I) (3) (a) (iii) of this 4408  
section. 4409

(b) A trust is irrevocable to the extent that the 4410  
transferor is not considered to be the owner of the net assets 4411  
of the trust under sections 671 to 678 of the Internal Revenue 4412  
Code. 4413

(c) With respect to a trust other than a charitable lead 4414  
trust, "qualifying beneficiary" has the same meaning as 4415

"potential current beneficiary" as defined in section 1361(e) (2) 4416  
of the Internal Revenue Code, and with respect to a charitable 4417  
lead trust "qualifying beneficiary" is any current, future, or 4418  
contingent beneficiary, but with respect to any trust 4419  
"qualifying beneficiary" excludes a person or a governmental 4420  
entity or instrumentality to any of which a contribution would 4421  
qualify for the charitable deduction under section 170 of the 4422  
Internal Revenue Code. 4423

(d) For the purposes of division (I) (3) (a) of this 4424  
section, the extent to which a trust consists directly or 4425  
indirectly, in whole or in part, of assets, net of any related 4426  
liabilities, that were transferred directly or indirectly, in 4427  
whole or part, to the trust by any of the sources enumerated in 4428  
that division shall be ascertained by multiplying the fair 4429  
market value of the trust's assets, net of related liabilities, 4430  
by the qualifying ratio, which shall be computed as follows: 4431

(i) The first time the trust receives assets, the 4432  
numerator of the qualifying ratio is the fair market value of 4433  
those assets at that time, net of any related liabilities, from 4434  
sources enumerated in division (I) (3) (a) of this section. The 4435  
denominator of the qualifying ratio is the fair market value of 4436  
all the trust's assets at that time, net of any related 4437  
liabilities. 4438

(ii) Each subsequent time the trust receives assets, a 4439  
revised qualifying ratio shall be computed. The numerator of the 4440  
revised qualifying ratio is the sum of (1) the fair market value 4441  
of the trust's assets immediately prior to the subsequent 4442  
transfer, net of any related liabilities, multiplied by the 4443  
qualifying ratio last computed without regard to the subsequent 4444  
transfer, and (2) the fair market value of the subsequently 4445

transferred assets at the time transferred, net of any related 4446  
liabilities, from sources enumerated in division (I) (3) (a) of 4447  
this section. The denominator of the revised qualifying ratio is 4448  
the fair market value of all the trust's assets immediately 4449  
after the subsequent transfer, net of any related liabilities. 4450

(iii) Whether a transfer to the trust is by or from any of 4451  
the sources enumerated in division (I) (3) (a) of this section 4452  
shall be ascertained without regard to the domicile of the 4453  
trust's beneficiaries. 4454

(e) For the purposes of division (I) (3) (a) (i) of this 4455  
section: 4456

(i) A trust is described in division (I) (3) (e) (i) of this 4457  
section if the trust is a testamentary trust and the testator of 4458  
that testamentary trust was domiciled in this state at the time 4459  
of the testator's death for purposes of the taxes levied under 4460  
Chapter 5731. of the Revised Code. 4461

(ii) A trust is described in division (I) (3) (e) (ii) of 4462  
this section if the transfer is a qualifying transfer described 4463  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 4464  
trust is an irrevocable inter vivos trust, and at least one of 4465  
the trust's qualifying beneficiaries is domiciled in this state 4466  
for purposes of this chapter during all or some portion of the 4467  
trust's current taxable year. 4468

(f) For the purposes of division (I) (3) (e) (ii) of this 4469  
section, a "qualifying transfer" is a transfer of assets, net of 4470  
any related liabilities, directly or indirectly to a trust, if 4471  
the transfer is described in any of the following: 4472

(i) The transfer is made to a trust, created by the 4473  
decedent before the decedent's death and while the decedent was 4474

domiciled in this state for the purposes of this chapter, and, 4475  
prior to the death of the decedent, the trust became irrevocable 4476  
while the decedent was domiciled in this state for the purposes 4477  
of this chapter. 4478

(ii) The transfer is made to a trust to which the 4479  
decedent, prior to the decedent's death, had directly or 4480  
indirectly transferred assets, net of any related liabilities, 4481  
while the decedent was domiciled in this state for the purposes 4482  
of this chapter, and prior to the death of the decedent the 4483  
trust became irrevocable while the decedent was domiciled in 4484  
this state for the purposes of this chapter. 4485

(iii) The transfer is made on account of a contractual 4486  
relationship existing directly or indirectly between the 4487  
transferor and either the decedent or the estate of the decedent 4488  
at any time prior to the date of the decedent's death, and the 4489  
decedent was domiciled in this state at the time of death for 4490  
purposes of the taxes levied under Chapter 5731. of the Revised 4491  
Code. 4492

(iv) The transfer is made to a trust on account of a 4493  
contractual relationship existing directly or indirectly between 4494  
the transferor and another person who at the time of the 4495  
decedent's death was domiciled in this state for purposes of 4496  
this chapter. 4497

(v) The transfer is made to a trust on account of the will 4498  
of a testator who was domiciled in this state at the time of the 4499  
testator's death for purposes of the taxes levied under Chapter 4500  
5731. of the Revised Code. 4501

(vi) The transfer is made to a trust created by or caused 4502  
to be created by a court, and the trust was directly or 4503

indirectly created in connection with or as a result of the 4504  
death of an individual who, for purposes of the taxes levied 4505  
under Chapter 5731. of the Revised Code, was domiciled in this 4506  
state at the time of the individual's death. 4507

(g) The tax commissioner may adopt rules to ascertain the 4508  
part of a trust residing in this state. 4509

(J) "Nonresident" means an individual or estate that is 4510  
not a resident. An individual who is a resident for only part of 4511  
a taxable year is a nonresident for the remainder of that 4512  
taxable year. 4513

(K) "Pass-through entity" has the same meaning as in 4514  
section 5733.04 of the Revised Code. 4515

(L) "Return" means the notifications and reports required 4516  
to be filed pursuant to this chapter for the purpose of 4517  
reporting the tax due and includes declarations of estimated tax 4518  
when so required. 4519

(M) "Taxable year" means the calendar year or the 4520  
taxpayer's fiscal year ending during the calendar year, or 4521  
fractional part thereof, upon which the adjusted gross income is 4522  
calculated pursuant to this chapter. 4523

(N) "Taxpayer" means any person subject to the tax imposed 4524  
by section 5747.02 of the Revised Code or any pass-through 4525  
entity that makes the election under division (D) of section 4526  
5747.08 of the Revised Code. 4527

(O) "Dependents" means dependents as defined in the 4528  
Internal Revenue Code and as claimed in the taxpayer's federal 4529  
income tax return for the taxable year or which the taxpayer 4530  
would have been permitted to claim had the taxpayer filed a 4531  
federal income tax return. 4532

(P) "Principal county of employment" means, in the case of 4533  
a nonresident, the county within the state in which a taxpayer 4534  
performs services for an employer or, if those services are 4535  
performed in more than one county, the county in which the major 4536  
portion of the services are performed. 4537

(Q) As used in sections 5747.50 to 5747.55 of the Revised 4538  
Code: 4539

(1) "Subdivision" means any county, municipal corporation, 4540  
park district, or township. 4541

(2) "Essential local government purposes" includes all 4542  
functions that any subdivision is required by general law to 4543  
exercise, including like functions that are exercised under a 4544  
charter adopted pursuant to the Ohio Constitution. 4545

(R) "Overpayment" means any amount already paid that 4546  
exceeds the figure determined to be the correct amount of the 4547  
tax. 4548

(S) "Taxable income" or "Ohio taxable income" applies only 4549  
to estates and trusts, and means federal taxable income, as 4550  
defined and used in the Internal Revenue Code, adjusted as 4551  
follows: 4552

(1) Add interest or dividends, net of ordinary, necessary, 4553  
and reasonable expenses not deducted in computing federal 4554  
taxable income, on obligations or securities of any state or of 4555  
any political subdivision or authority of any state, other than 4556  
this state and its subdivisions and authorities, but only to the 4557  
extent that such net amount is not otherwise includible in Ohio 4558  
taxable income and is described in either division (S) (1) (a) or 4559  
(b) of this section: 4560

(a) The net amount is not attributable to the S portion of 4561



an electing small business trust and has not been distributed to 4562  
beneficiaries for the taxable year; 4563

(b) The net amount is attributable to the S portion of an 4564  
electing small business trust for the taxable year. 4565

(2) Add interest or dividends, net of ordinary, necessary, 4566  
and reasonable expenses not deducted in computing federal 4567  
taxable income, on obligations of any authority, commission, 4568  
instrumentality, territory, or possession of the United States 4569  
to the extent that the interest or dividends are exempt from 4570  
federal income taxes but not from state income taxes, but only 4571  
to the extent that such net amount is not otherwise includible 4572  
in Ohio taxable income and is described in either division (S) 4573  
(1) (a) or (b) of this section; 4574

(3) Add the amount of personal exemption allowed to the 4575  
estate pursuant to section 642(b) of the Internal Revenue Code; 4576

(4) Deduct interest or dividends, net of related expenses 4577  
deducted in computing federal taxable income, on obligations of 4578  
the United States and its territories and possessions or of any 4579  
authority, commission, or instrumentality of the United States 4580  
to the extent that the interest or dividends are exempt from 4581  
state taxes under the laws of the United States, but only to the 4582  
extent that such amount is included in federal taxable income 4583  
and is described in either division (S) (1) (a) or (b) of this 4584  
section; 4585

(5) Deduct the amount of wages and salaries, if any, not 4586  
otherwise allowable as a deduction but that would have been 4587  
allowable as a deduction in computing federal taxable income for 4588  
the taxable year, had the targeted jobs credit allowed under 4589  
sections 38, 51, and 52 of the Internal Revenue Code not been in 4590

effect, but only to the extent such amount relates either to 4591  
income included in federal taxable income for the taxable year 4592  
or to income of the S portion of an electing small business 4593  
trust for the taxable year; 4594

(6) Deduct any interest or interest equivalent, net of 4595  
related expenses deducted in computing federal taxable income, 4596  
on public obligations and purchase obligations, but only to the 4597  
extent that such net amount relates either to income included in 4598  
federal taxable income for the taxable year or to income of the 4599  
S portion of an electing small business trust for the taxable 4600  
year; 4601

(7) Add any loss or deduct any gain resulting from sale, 4602  
exchange, or other disposition of public obligations to the 4603  
extent that such loss has been deducted or such gain has been 4604  
included in computing either federal taxable income or income of 4605  
the S portion of an electing small business trust for the 4606  
taxable year; 4607

(8) Except in the case of the final return of an estate, 4608  
add any amount deducted by the taxpayer on both its Ohio estate 4609  
tax return pursuant to section 5731.14 of the Revised Code, and 4610  
on its federal income tax return in determining federal taxable 4611  
income; 4612

(9) (a) Deduct any amount included in federal taxable 4613  
income solely because the amount represents a reimbursement or 4614  
refund of expenses that in a previous year the decedent had 4615  
deducted as an itemized deduction pursuant to section 63 of the 4616  
Internal Revenue Code and applicable treasury regulations. The 4617  
deduction otherwise allowed under division (S) (9) (a) of this 4618  
section shall be reduced to the extent the reimbursement is 4619  
attributable to an amount the taxpayer or decedent deducted 4620

under this section in any taxable year. 4621

(b) Add any amount not otherwise included in Ohio taxable 4622  
income for any taxable year to the extent that the amount is 4623  
attributable to the recovery during the taxable year of any 4624  
amount deducted or excluded in computing federal or Ohio taxable 4625  
income in any taxable year, but only to the extent such amount 4626  
has not been distributed to beneficiaries for the taxable year. 4627

(10) Deduct any portion of the deduction described in 4628  
section 1341(a)(2) of the Internal Revenue Code, for repaying 4629  
previously reported income received under a claim of right, that 4630  
meets both of the following requirements: 4631

(a) It is allowable for repayment of an item that was 4632  
included in the taxpayer's taxable income or the decedent's 4633  
adjusted gross income for a prior taxable year and did not 4634  
qualify for a credit under division (A) or (B) of section 4635  
5747.05 of the Revised Code for that year. 4636

(b) It does not otherwise reduce the taxpayer's taxable 4637  
income or the decedent's adjusted gross income for the current 4638  
or any other taxable year. 4639

(11) Add any amount claimed as a credit under section 4640  
5747.059 or 5747.65 of the Revised Code to the extent that the 4641  
amount satisfies either of the following: 4642

(a) The amount was deducted or excluded from the 4643  
computation of the taxpayer's federal taxable income as required 4644  
to be reported for the taxpayer's taxable year under the 4645  
Internal Revenue Code; 4646

(b) The amount resulted in a reduction in the taxpayer's 4647  
federal taxable income as required to be reported for any of the 4648  
taxpayer's taxable years under the Internal Revenue Code. 4649

(12) Deduct any amount, net of related expenses deducted 4650  
in computing federal taxable income, that a trust is required to 4651  
report as farm income on its federal income tax return, but only 4652  
if the assets of the trust include at least ten acres of land 4653  
satisfying the definition of "land devoted exclusively to 4654  
agricultural use" under section 5713.30 of the Revised Code, 4655  
regardless of whether the land is valued for tax purposes as 4656  
such land under sections 5713.30 to 5713.38 of the Revised Code. 4657  
If the trust is a pass-through entity investor, section 5747.231 4658  
of the Revised Code applies in ascertaining if the trust is 4659  
eligible to claim the deduction provided by division (S) (12) of 4660  
this section in connection with the pass-through entity's farm 4661  
income. 4662

Except for farm income attributable to the S portion of an 4663  
electing small business trust, the deduction provided by 4664  
division (S) (12) of this section is allowed only to the extent 4665  
that the trust has not distributed such farm income. Division 4666  
(S) (12) of this section applies only to taxable years of a trust 4667  
beginning in 2002 or thereafter. 4668

(13) Add the net amount of income described in section 4669  
641(c) of the Internal Revenue Code to the extent that amount is 4670  
not included in federal taxable income. 4671

(14) Add or deduct the amount the taxpayer would be 4672  
required to add or deduct under division (A) (20) or (21) of this 4673  
section if the taxpayer's Ohio taxable income were computed in 4674  
the same manner as an individual's Ohio adjusted gross income is 4675  
computed under this section. In the case of a trust, division 4676  
(S) (14) of this section applies only to any of the trust's 4677  
taxable years beginning in 2002 or thereafter. 4678

(T) "School district income" and "school district income 4679

tax" have the same meanings as in section 5748.01 of the Revised Code. 4680  
4681

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S) 4682  
(7) of this section, "public obligations," "purchase 4683  
obligations," and "interest or interest equivalent" have the 4684  
same meanings as in section 5709.76 of the Revised Code. 4685

(V) "Limited liability company" means any limited 4686  
liability company formed under Chapter 1705. of the Revised Code 4687  
or under the laws of any other state. 4688

(W) "Pass-through entity investor" means any person who, 4689  
during any portion of a taxable year of a pass-through entity, 4690  
is a partner, member, shareholder, or equity investor in that 4691  
pass-through entity. 4692

(X) "Banking day" has the same meaning as in section 4693  
1304.01 of the Revised Code. 4694

(Y) "Month" means a calendar month. 4695

(Z) "Quarter" means the first three months, the second 4696  
three months, the third three months, or the last three months 4697  
of the taxpayer's taxable year. 4698

(AA)(1) "Eligible institution" means a state university or 4699  
state institution of higher education as defined in section 4700  
3345.011 of the Revised Code, or a private, nonprofit college, 4701  
university, or other post-secondary institution located in this 4702  
state that possesses a certificate of authorization issued by 4703  
the chancellor of higher education pursuant to Chapter 1713. of 4704  
the Revised Code or a certificate of registration issued by the 4705  
state board of career colleges and schools under Chapter 3332. 4706  
of the Revised Code. 4707

(2) "Qualified tuition and fees" means tuition and fees 4708  
imposed by an eligible institution as a condition of enrollment 4709  
or attendance, not exceeding two thousand five hundred dollars 4710  
in each of the individual's first two years of post-secondary 4711  
education. If the individual is a part-time student, "qualified 4712  
tuition and fees" includes tuition and fees paid for the 4713  
academic equivalent of the first two years of post-secondary 4714  
education during a maximum of five taxable years, not exceeding 4715  
a total of five thousand dollars. "Qualified tuition and fees" 4716  
does not include: 4717

(a) Expenses for any course or activity involving sports, 4718  
games, or hobbies unless the course or activity is part of the 4719  
individual's degree or diploma program; 4720

(b) The cost of books, room and board, student activity 4721  
fees, athletic fees, insurance expenses, or other expenses 4722  
unrelated to the individual's academic course of instruction; 4723

(c) Tuition, fees, or other expenses paid or reimbursed 4724  
through an employer, scholarship, grant in aid, or other 4725  
educational benefit program. 4726

(BB) (1) "Modified business income" means the business 4727  
income included in a trust's Ohio taxable income after such 4728  
taxable income is first reduced by the qualifying trust amount, 4729  
if any. 4730

(2) "Qualifying trust amount" of a trust means capital 4731  
gains and losses from the sale, exchange, or other disposition 4732  
of equity or ownership interests in, or debt obligations of, a 4733  
qualifying investee to the extent included in the trust's Ohio 4734  
taxable income, but only if the following requirements are 4735  
satisfied: 4736

(a) The book value of the qualifying investee's physical 4737  
assets in this state and everywhere, as of the last day of the 4738  
qualifying investee's fiscal or calendar year ending immediately 4739  
prior to the date on which the trust recognizes the gain or 4740  
loss, is available to the trust. 4741

(b) The requirements of section 5747.011 of the Revised 4742  
Code are satisfied for the trust's taxable year in which the 4743  
trust recognizes the gain or loss. 4744

Any gain or loss that is not a qualifying trust amount is 4745  
modified business income, qualifying investment income, or 4746  
modified nonbusiness income, as the case may be. 4747

(3) "Modified nonbusiness income" means a trust's Ohio 4748  
taxable income other than modified business income, other than 4749  
the qualifying trust amount, and other than qualifying 4750  
investment income, as defined in section 5747.012 of the Revised 4751  
Code, to the extent such qualifying investment income is not 4752  
otherwise part of modified business income. 4753

(4) "Modified Ohio taxable income" applies only to trusts, 4754  
and means the sum of the amounts described in divisions (BB) (4) 4755  
(a) to (c) of this section: 4756

(a) The fraction, calculated under section 5747.013, and 4757  
applying section 5747.231 of the Revised Code, multiplied by the 4758  
sum of the following amounts: 4759

(i) The trust's modified business income; 4760

(ii) The trust's qualifying investment income, as defined 4761  
in section 5747.012 of the Revised Code, but only to the extent 4762  
the qualifying investment income does not otherwise constitute 4763  
modified business income and does not otherwise constitute a 4764  
qualifying trust amount. 4765

(b) The qualifying trust amount multiplied by a fraction, 4766  
the numerator of which is the sum of the book value of the 4767  
qualifying investee's physical assets in this state on the last 4768  
day of the qualifying investee's fiscal or calendar year ending 4769  
immediately prior to the day on which the trust recognizes the 4770  
qualifying trust amount, and the denominator of which is the sum 4771  
of the book value of the qualifying investee's total physical 4772  
assets everywhere on the last day of the qualifying investee's 4773  
fiscal or calendar year ending immediately prior to the day on 4774  
which the trust recognizes the qualifying trust amount. If, for 4775  
a taxable year, the trust recognizes a qualifying trust amount 4776  
with respect to more than one qualifying investee, the amount 4777  
described in division (BB) (4) (b) of this section shall equal the 4778  
sum of the products so computed for each such qualifying 4779  
investee. 4780

(c) (i) With respect to a trust or portion of a trust that 4781  
is a resident as ascertained in accordance with division (I) (3) 4782  
(d) of this section, its modified nonbusiness income. 4783

(ii) With respect to a trust or portion of a trust that is 4784  
not a resident as ascertained in accordance with division (I) (3) 4785  
(d) of this section, the amount of its modified nonbusiness 4786  
income satisfying the descriptions in divisions (B) (2) to (5) of 4787  
section 5747.20 of the Revised Code, except as otherwise 4788  
provided in division (BB) (4) (c) (ii) of this section. With 4789  
respect to a trust or portion of a trust that is not a resident 4790  
as ascertained in accordance with division (I) (3) (d) of this 4791  
section, the trust's portion of modified nonbusiness income 4792  
recognized from the sale, exchange, or other disposition of a 4793  
debt interest in or equity interest in a section 5747.212 4794  
entity, as defined in section 5747.212 of the Revised Code, 4795  
without regard to division (A) of that section, shall not be 4796



allocated to this state in accordance with section 5747.20 of 4797  
the Revised Code but shall be apportioned to this state in 4798  
accordance with division (B) of section 5747.212 of the Revised 4799  
Code without regard to division (A) of that section. 4800

If the allocation and apportionment of a trust's income 4801  
under divisions (BB) (4) (a) and (c) of this section do not fairly 4802  
represent the modified Ohio taxable income of the trust in this 4803  
state, the alternative methods described in division (C) of 4804  
section 5747.21 of the Revised Code may be applied in the manner 4805  
and to the same extent provided in that section. 4806

(5) (a) Except as set forth in division (BB) (5) (b) of this 4807  
section, "qualifying investee" means a person in which a trust 4808  
has an equity or ownership interest, or a person or unit of 4809  
government the debt obligations of either of which are owned by 4810  
a trust. For the purposes of division (BB) (2) (a) of this section 4811  
and for the purpose of computing the fraction described in 4812  
division (BB) (4) (b) of this section, all of the following apply: 4813

(i) If the qualifying investee is a member of a qualifying 4814  
controlled group on the last day of the qualifying investee's 4815  
fiscal or calendar year ending immediately prior to the date on 4816  
which the trust recognizes the gain or loss, then "qualifying 4817  
investee" includes all persons in the qualifying controlled 4818  
group on such last day. 4819

(ii) If the qualifying investee, or if the qualifying 4820  
investee and any members of the qualifying controlled group of 4821  
which the qualifying investee is a member on the last day of the 4822  
qualifying investee's fiscal or calendar year ending immediately 4823  
prior to the date on which the trust recognizes the gain or 4824  
loss, separately or cumulatively own, directly or indirectly, on 4825  
the last day of the qualifying investee's fiscal or calendar 4826

year ending immediately prior to the date on which the trust 4827  
recognizes the qualifying trust amount, more than fifty per cent 4828  
of the equity of a pass-through entity, then the qualifying 4829  
investee and the other members are deemed to own the 4830  
proportionate share of the pass-through entity's physical assets 4831  
which the pass-through entity directly or indirectly owns on the 4832  
last day of the pass-through entity's calendar or fiscal year 4833  
ending within or with the last day of the qualifying investee's 4834  
fiscal or calendar year ending immediately prior to the date on 4835  
which the trust recognizes the qualifying trust amount. 4836

(iii) For the purposes of division (BB) (5) (a) (iii) of this 4837  
section, "upper level pass-through entity" means a pass-through 4838  
entity directly or indirectly owning any equity of another pass- 4839  
through entity, and "lower level pass-through entity" means that 4840  
other pass-through entity. 4841

An upper level pass-through entity, whether or not it is 4842  
also a qualifying investee, is deemed to own, on the last day of 4843  
the upper level pass-through entity's calendar or fiscal year, 4844  
the proportionate share of the lower level pass-through entity's 4845  
physical assets that the lower level pass-through entity 4846  
directly or indirectly owns on the last day of the lower level 4847  
pass-through entity's calendar or fiscal year ending within or 4848  
with the last day of the upper level pass-through entity's 4849  
fiscal or calendar year. If the upper level pass-through entity 4850  
directly and indirectly owns less than fifty per cent of the 4851  
equity of the lower level pass-through entity on each day of the 4852  
upper level pass-through entity's calendar or fiscal year in 4853  
which or with which ends the calendar or fiscal year of the 4854  
lower level pass-through entity and if, based upon clear and 4855  
convincing evidence, complete information about the location and 4856  
cost of the physical assets of the lower pass-through entity is 4857

not available to the upper level pass-through entity, then 4858  
solely for purposes of ascertaining if a gain or loss 4859  
constitutes a qualifying trust amount, the upper level pass- 4860  
through entity shall be deemed as owning no equity of the lower 4861  
level pass-through entity for each day during the upper level 4862  
pass-through entity's calendar or fiscal year in which or with 4863  
which ends the lower level pass-through entity's calendar or 4864  
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 4865  
shall be construed to provide for any deduction or exclusion in 4866  
computing any trust's Ohio taxable income. 4867

(b) With respect to a trust that is not a resident for the 4868  
taxable year and with respect to a part of a trust that is not a 4869  
resident for the taxable year, "qualifying investee" for that 4870  
taxable year does not include a C corporation if both of the 4871  
following apply: 4872

(i) During the taxable year the trust or part of the trust 4873  
recognizes a gain or loss from the sale, exchange, or other 4874  
disposition of equity or ownership interests in, or debt 4875  
obligations of, the C corporation. 4876

(ii) Such gain or loss constitutes nonbusiness income. 4877

(6) "Available" means information is such that a person is 4878  
able to learn of the information by the due date plus 4879  
extensions, if any, for filing the return for the taxable year 4880  
in which the trust recognizes the gain or loss. 4881

(CC) "Qualifying controlled group" has the same meaning as 4882  
in section 5733.04 of the Revised Code. 4883

(DD) "Related member" has the same meaning as in section 4884  
5733.042 of the Revised Code. 4885

(EE) (1) For the purposes of division (EE) of this section: 4886

(a) "Qualifying person" means any person other than a 4887  
qualifying corporation. 4888

(b) "Qualifying corporation" means any person classified 4889  
for federal income tax purposes as an association taxable as a 4890  
corporation, except either of the following: 4891

(i) A corporation that has made an election under 4892  
subchapter S, chapter one, subtitle A, of the Internal Revenue 4893  
Code for its taxable year ending within, or on the last day of, 4894  
the investor's taxable year; 4895

(ii) A subsidiary that is wholly owned by any corporation 4896  
that has made an election under subchapter S, chapter one, 4897  
subtitle A of the Internal Revenue Code for its taxable year 4898  
ending within, or on the last day of, the investor's taxable 4899  
year. 4900

(2) For the purposes of this chapter, unless expressly 4901  
stated otherwise, no qualifying person indirectly owns any asset 4902  
directly or indirectly owned by any qualifying corporation. 4903

(FF) For purposes of this chapter and Chapter 5751. of the 4904  
Revised Code: 4905

(1) "Trust" does not include a qualified pre-income tax 4906  
trust. 4907

(2) A "qualified pre-income tax trust" is any pre-income 4908  
tax trust that makes a qualifying pre-income tax trust election 4909  
as described in division (FF)(3) of this section. 4910

(3) A "qualifying pre-income tax trust election" is an 4911  
election by a pre-income tax trust to subject to the tax imposed 4912  
by section 5751.02 of the Revised Code the pre-income tax trust 4913  
and all pass-through entities of which the trust owns or 4914

controls, directly, indirectly, or constructively through 4915  
related interests, five per cent or more of the ownership or 4916  
equity interests. The trustee shall notify the tax commissioner 4917  
in writing of the election on or before April 15, 2006. The 4918  
election, if timely made, shall be effective on and after 4919  
January 1, 2006, and shall apply for all tax periods and tax 4920  
years until revoked by the trustee of the trust. 4921

(4) A "pre-income tax trust" is a trust that satisfies all 4922  
of the following requirements: 4923

(a) The document or instrument creating the trust was 4924  
executed by the grantor before January 1, 1972; 4925

(b) The trust became irrevocable upon the creation of the 4926  
trust; and 4927

(c) The grantor was domiciled in this state at the time 4928  
the trust was created. 4929

(GG) "Uniformed services" has the same meaning as in 10 4930  
U.S.C. 101. 4931

(HH) "Taxable business income" means the amount by which 4932  
an individual's business income that is included in federal 4933  
adjusted gross income exceeds the amount of business income the 4934  
individual is authorized to deduct under division (A) (31) of 4935  
this section for the taxable year. 4936

**Section 2.** That existing sections 3350.15, 5124.01, 4937  
5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 4938  
5124.191, 5124.192, 5124.193, 5124.195, 5124.21, 5124.23, 4939  
5124.28, 5124.29, 5124.30, 5124.38, 5124.39, 5124.40, 5124.41, 4940  
5124.46, 5124.68, 5705.21, 5709.121, 5709.17, 5735.01, 5735.024, 4941  
5735.04, and 5747.01 and sections 5124.155 and 5124.194 of the 4942  
Revised Code are hereby repealed. 4943

**Section 3.** That the amendment by this act of section 5709.121 of the Revised Code applies to tax year 2018 and thereafter and the tax years at issue in any application for exemption from taxation or any appeal from such an application pending before the Tax Commissioner, the Board of Tax Appeals, any Court of Common Pleas or Court of Appeals, or the Supreme Court on the effective date of this section and to the property that is the subject of any such application or appeal. That amendment is remedial in nature and the purpose thereof is to clarify the intent of the General Assembly that real property described in division (E) of section 5709.121 of the Revised Code, as amended by this act, is exempt from taxation.

That the amendment by this act of section 5709.17 of the Revised Code applies to tax years ending on or after the effective date of this act.

**Section 4.** The amendment by this act of section 5747.01 of the Revised Code is intended to clarify the law as it existed prior to the amendment of that section by this act.

**Section 5.** All items in this section are hereby appropriated as designated out of any moneys in the state treasury to the credit of the designated fund. The appropriations made in this act are for the biennium ending June 30, 2020. The appropriations made in this act are in addition to any other appropriations made for the FY 2019-FY 2020 biennium.

COT CENTRAL OHIO TECHNICAL COLLEGE			4968
Higher Education Improvement Fund (Fund 7034)			4969
C36924	Boys and Girls Club of Newark	\$750,000	4970
TOTAL Higher Education Improvement Fund		\$750,000	4971

TOTAL ALL FUNDS \$750,000 4972

**Section 6.** Within the limits set forth in this act, the 4973  
Director of Budget and Management shall establish accounts 4974  
indicating the source and amount of funds for each appropriation 4975  
made in this act, and shall determine the form and manner in 4976  
which appropriation accounts shall be maintained. Expenditures 4977  
from appropriations contained in this act shall be accounted for 4978  
as though made in the capital appropriations act of the 132nd 4979  
General Assembly. 4980

The appropriations made in this act are subject to all 4981  
provisions of the capital appropriations act of the 132nd 4982  
General Assembly that are generally applicable to such 4983  
appropriations. 4984

**Section 7.** That Section 261.168 of Am. Sub. H.B. 49 of the 4985  
132nd General Assembly be amended to read as follows: 4986

**Sec. 261.168.** MODIFICATIONS AND CAP FOR FISCAL YEAR-YEARS 4987  
2019, 2020, AND 2021 ICF/IID MEDICAID RATES ~~DETERMINED~~ UNDER 4988  
~~CURRENT-THE~~ FORMULA BEING PHASED OUT 4989

(A) As used in this section: 4990

(1) "Change of operator," "cost report year," "entering 4991  
operator," "exiting operator," "ICF/IID," "ICF/IID services," 4992  
"Medicaid days," "peer group 1-B," "peer group 2-B," "peer group 4993  
3-B," "provider," and "provider agreement" have the same 4994  
meanings as in section 5124.01 of the Revised Code. 4995

(2) "Formula being phased out" means the formula specified 4996  
in division (C) of section 5124.15 of the Revised Code. 4997

(3) "Franchise permit fee" means the fee imposed by 4998  
sections 5168.60 to 5168.71 of the Revised Code. 4999

(B) (1) This section applies to each ICF/IID that is in 5000  
peer group 1-B or peer group 2-B and to which ~~any either~~ of the 5001  
following ~~apply~~, as applicable to a fiscal year, applies: 5002

(a) ~~The~~ In the context of determining an ICF/IID's total 5003  
Medicaid payment rate for fiscal year 2019 under the formula 5004  
being phased out, either of the following is the case: 5005

(i) The provider of the ICF/IID has a valid Medicaid 5006  
provider agreement for the ICF/IID on June 30, 2018, and a valid 5007  
Medicaid provider agreement for the ICF/IID during fiscal year 5008  
2019; 5009

~~(b)~~ (ii) The ICF/IID undergoes a change of operator that 5010  
takes effect during fiscal year 2019, the exiting operator has a 5011  
valid Medicaid provider agreement for the ICF/IID on the day 5012  
immediately preceding the effective date of the change of 5013  
operator, and the entering operator has a valid Medicaid 5014  
provider agreement for the ICF/IID during fiscal year 2019. 5015

~~(c) The ICF/IID is a new ICF/IID for which the provider~~ 5016  
~~obtains an initial provider agreement during fiscal year 2019.~~ 5017

(b) In the context of determining an ICF/IID's total 5018  
Medicaid payment rate for fiscal year 2020, either of the 5019  
following is the case: 5020

(i) The provider of the ICF/IID has a valid Medicaid 5021  
provider agreement for the ICF/IID on June 30, 2019, and a valid 5022  
Medicaid provider agreement for the ICF/IID during fiscal year 5023  
2020; 5024

(ii) The ICF/IID undergoes a change of operator that takes 5025  
effect during fiscal year 2020, the exiting operator has a valid 5026  
Medicaid provider agreement for the ICF/IID on the day 5027  
immediately preceding the effective date of the change of 5028



operator, and the entering operator has a valid Medicaid 5029  
provider agreement for the ICF/IID during fiscal year 2020. 5030

(c) In the context of determining an ICF/IID's total 5031  
Medicaid payment rate for fiscal year 2021, either of the 5032  
following is the case: 5033

(i) The provider of the ICF/IID has a valid Medicaid 5034  
provider agreement for the ICF/IID on June 30, 2020, and a valid 5035  
Medicaid provider agreement for the ICF/IID during fiscal year 5036  
2021; 5037

(ii) The ICF/IID undergoes a change of operator that takes 5038  
effect during fiscal year 2021, the exiting operator has a valid 5039  
Medicaid provider agreement for the ICF/IID on the day 5040  
immediately preceding the effective date of the change of 5041  
operator, and the entering operator has a valid Medicaid 5042  
provider agreement for the ICF/IID during fiscal year 2021. 5043

(2) This section does not apply to ~~an~~ either of the 5044  
following: 5045

(a) An ICF/IID in peer group 3-B; 5046

(b) An ICF/IID for which the provider obtains an initial 5047  
provider agreement during a fiscal year for which modifications 5048  
to the formula being phased out are made under this section. 5049

~~(3) Notwithstanding anything to the contrary in Chapter~~ 5050  
~~5124. of the Revised Code, the Department of Developmental~~ 5051  
~~Disabilities shall follow this section in determining the rates~~ 5052  
~~to be paid under this section for ICF/IID services provided~~ 5053  
~~during fiscal year 2019 by ICFs/IID subject to this section.~~ 5054

~~(C) (1) Except as otherwise provided in this section and~~ 5055  
~~the section of this act titled "FISCAL YEAR 2019 ICF/IID"~~ 5056

~~MEDICAID RATES DETERMINED UNDER NEW FORMULA," the provider of an~~ 5057  
~~ICF/IID to which this section applies shall be paid, for ICF/IID~~ 5058  
~~services the ICF/IID provides during fiscal year 2019, the total~~ 5059  
~~per Medicaid day rate determined for the ICF/IID under division~~ 5060  
~~(C) (2) or (3) of this section.~~ 5061

~~(2) Except in the case of a new ICF/IID, Notwithstanding~~ 5062  
~~Chapter 5124. of the Revised Code, the following modifications~~ 5063  
~~shall be made when determining under the formula being phased~~ 5064  
~~out the fiscal year-years 2019, 2020, and 2021 total per~~ 5065  
~~Medicaid day rate-payment rates for an ICF/IID to which this~~ 5066  
~~section applies shall be the ICF/IID's total per Medicaid day~~ 5067  
~~rate determined for the ICF/IID in accordance with Chapter 5124.~~ 5068  
~~of the Revised Code for the fiscal year with the following~~ 5069  
~~modifications:~~ 5070

~~(a) (1) The ICF/IID's efficiency incentive for capital~~ 5071  
~~costs, as determined under division (F) of section 5124.17-~~ 5072  
~~5124.171 of the Revised Code, shall be reduced by 50%.~~ 5073

~~(b) (2) In place of the maximum cost per case-mix unit~~ 5074  
~~established for the ICF/IID's peer group under division (C) of~~ 5075  
~~section 5124.19-5124.195 of the Revised Code, the ICF/IID's~~ 5076  
~~maximum costs per case-mix unit shall be the amount the~~ 5077  
~~Department determined for the ICF/IID's peer group for fiscal~~ 5078  
~~year 2016 in accordance with division (E) of Section 259.160 of~~ 5079  
~~Am. Sub. H.B. 64 of the 131st General Assembly.~~ 5080

~~(c) (3) In place of the inflation adjustment otherwise~~ 5081  
~~calculated under division (D) of section 5124.19-5124.195 of the~~ 5082  
~~Revised Code for the purpose of division (A) (1) (b) of that~~ 5083  
~~section, an inflation adjustment of 1.014 shall be used.~~ 5084

~~(d) (4) In place of the efficiency incentive otherwise~~ 5085

calculated under division (B) (2) of section ~~5124.21~~ 5124.211 of 5086  
the Revised Code, the ICF/IID's efficiency incentive for 5087  
indirect care costs shall be the following: 5088

~~(i)~~ (a) In the case of an ICF/IID in peer group 1-B, not 5089  
more than \$3.69; 5090

~~(ii)~~ (b) In the case of an ICF/IID in peer group 2-B, not 5091  
more than \$3.19. 5092

~~(e)~~ (5) In place of the maximum rate for indirect care 5093  
costs established for the ICF/IID's peer group under division 5094  
(C) of section ~~5124.21~~ 5124.211 of the Revised Code, the maximum 5095  
rate for indirect care costs for the ICF/IID's peer group shall 5096  
be an amount the Department shall determine in accordance with 5097  
division ~~(E)~~ (D) of this section. 5098

~~(f)~~ (6) In place of the inflation adjustment otherwise 5099  
calculated under division (D) (1) of section ~~5124.21~~ 5124.211 of 5100  
the Revised Code for the purpose of division (B) (1) of that 5101  
section only, an inflation adjustment of 1.014 shall be used. 5102

~~(g)~~ (7) In place of the inflation adjustment otherwise 5103  
made under section ~~5124.23~~ 5124.231 of the Revised Code, the 5104  
ICF/IID's desk-reviewed, actual, allowable, per Medicaid day 5105  
other protected costs, excluding the franchise permit fee, from 5106  
~~calendar the applicable cost report year 2017~~ shall be 5107  
multiplied by 1.014. 5108

~~(h) After all of the modifications specified in divisions 5109  
(C) (2) (a) to (g) of this section have been made, the ICF/IID's 5110  
total per Medicaid day rate shall be increased by a direct 5111  
support personnel payment equal to 3.04% of the ICF/IID's desk- 5112  
reviewed, actual, allowable, per Medicaid day direct care costs 5113  
from calendar year 2017. 5114~~

~~(3) The fiscal year 2019 initial total per Medicaid day-~~ 5115  
~~rate for a new ICF/IID to which this section applies shall be-~~ 5116  
~~the ICF/IID's initial total per Medicaid day rate determined for-~~ 5117  
~~the ICF/IID in accordance with section 5124.151 of the Revised-~~ 5118  
~~Code for the fiscal year with the following modifications:-~~ 5119

~~(a) In place of the amount determined under division (B)~~ 5120  
~~(1) of section 5124.151 of the Revised Code, the new ICF/IID's-~~ 5121  
~~initial per Medicaid day rate for capital costs shall be the-~~ 5122  
~~median rate for all ICFs/IID determined under section 5124.17 of-~~ 5123  
~~the Revised Code with the modification made under division (C)~~ 5124  
~~(2)(a) of this section.-~~ 5125

~~(b) In place of the amount determined under division (B)~~ 5126  
~~(2)(a) of section 5124.151 of the Revised Code, if there are no-~~ 5127  
~~cost or resident assessment data for the new ICF/IID, the new-~~ 5128  
~~ICF/IID's initial per Medicaid day rate for direct care costs-~~ 5129  
~~shall be determined as follows:-~~ 5130

~~(i) Determine the median of the costs per case mix units-~~ 5131  
~~of each peer group;-~~ 5132

~~(ii) Multiply the median determined under division (C)(3)~~ 5133  
~~(b)(i) of this section by the median annual average case mix-~~ 5134  
~~score for the new ICF/IID's peer group for calendar year 2017;-~~ 5135

~~(iii) Multiply the product determined under division (C)~~ 5136  
~~(3)(b)(ii) of this section by 1.014.-~~ 5137

~~(c) In place of the amount determined under division (B)~~ 5138  
~~(3) of section 5124.151 of the Revised Code, the new ICF/IID's-~~ 5139  
~~initial per Medicaid day rate for indirect care costs shall be-~~ 5140  
~~the amount of the maximum rate for indirect costs determined for-~~ 5141  
~~the ICF/IID's peer group under division (E) of this section.-~~ 5142

~~(d) In place of the amount determined under division (B)~~ 5143

~~(4) of section 5124.151 of the Revised Code, the new ICF/IID's initial per Medicaid day rate for other protected costs shall be 115% of the median rate for ICFs/IID determined under section 5124.23 of the Revised Code with the modification made under division (C) (2) (g) of this section.~~

~~(e) After all of the modifications specified in divisions (C) (3) (a) to (d) of this section have been made, the new ICF/IID's initial total per Medicaid day rate shall be increased by the median direct support personnel payment made under division (C) (2) (h) of this section.~~

~~(D) A new ICF/IID's initial total modified per Medicaid day rate for fiscal year 2019 as determined under division (C) (3) of this section shall be adjusted at the applicable time specified in division (D) of section 5124.151 of the Revised Code. If the adjustment affects the ICF/IID's rate for ICF/IID services provided during fiscal year 2019, the modifications specified in division (C) (2) of this section apply to the adjustment.~~

~~(E)~~ In determining the amount of the maximum rate for indirect costs for the purposes purpose of divisions (C) (2) (e) and division (C) (3) (e) (5) of this section, the Department shall strive to the greatest extent possible to do both of the following:

(1) Avoid rate reductions under division ~~(F)~~ (E) (1) of this section;

(2) Have the amount so determined result in payment of all desk-reviewed, actual, allowable indirect care costs for the same percentage of Medicaid days for ICFs/IID in peer group 1-B as for ICFs/IID in peer group 2-B as of July 1, 2018 the first

day of the fiscal year for which the determination is made, 5173  
based on May 2018-Medicaid days from the calendar year in which 5174  
the fiscal year begins. 5175

~~(F)~~(E) (1) If the mean total per Medicaid day rate for all 5176  
ICFs/IID to which this section applies, as determined under 5177  
division (C) of this section as of July 1, 2018, the first day 5178  
of a fiscal year for which a rate is determined under this 5179  
section and weighted by May 2018-Medicaid days from the calendar 5180  
year in which the fiscal year begins, is other than the amount 5181  
determined under division ~~(F)~~(E) (2) of this section, the 5182  
Department shall adjust, for the fiscal year 2019 for which the 5183  
rate is determined, the total per Medicaid day rate for each 5184  
ICF/IID to which this section applies by a percentage that is 5185  
equal to the percentage by which the mean total per Medicaid day 5186  
rate is greater or less than the amount determined under 5187  
division ~~(F)~~(E) (2) of this section. 5188

(2) The amount to be used for the purpose of division ~~(F)~~ 5189  
~~(E)~~ (1) of this section shall be not less than \$290.10. The 5190  
Department, in its sole discretion, may use a larger amount for 5191  
the purpose of that division. In determining whether to use a 5192  
larger amount, the Department may consider any of the following: 5193

(a) The reduction in the total Medicaid-certified capacity 5194  
of all ICFs/IID that occurs in the fiscal year 2018 immediately 5195  
preceding the fiscal year for which the determination is made, 5196  
and the reduction that is projected to occur in the fiscal year 5197  
2019 for which the determination is made, as a result of either 5198  
of the following: 5199

(i) A downsizing pursuant to a plan approved by the 5200  
Department under section 5123.042 of the Revised Code; 5201

(ii) A conversion of beds to providing home and community- 5202  
based services under the Individual Options waiver pursuant to 5203  
section 5124.60 or 5124.61 of the Revised Code. 5204

(b) The increase in Medicaid payments made for ICF/IID 5205  
services provided during the fiscal year-2018 immediately 5206  
preceding the fiscal year for which the determination is made, 5207  
and the increase that is projected to occur in the fiscal year 5208  
2019 for which the determination is made, as a result of the 5209  
modifications to the payment rates made under section 5124.101 5210  
of the Revised Code; 5211

(c) The total reduction in the number of ICF/IID beds that 5212  
occurs pursuant to section 5124.67 of the Revised Code; 5213

(d) Other factors the Department determines to be 5214  
relevant. 5215

~~(G) If the United States Centers for Medicare and Medicaid-~~ 5216  
~~Services requires that the franchise permit fee be reduced or~~ 5217  
~~eliminated, the Department shall reduce the amount it pays~~ 5218  
~~ICF/IID providers under this section as necessary to reflect the~~ 5219  
~~loss to the state of the revenue and federal financial~~ 5220  
~~participation generated from the franchise permit fee.~~ 5221

**Section 8.** That existing Section 261.168 of Am. Sub. H.B. 5222  
49 of the 132nd General Assembly is hereby repealed. 5223

**Section 9.** That Section 261.169 of Am. Sub. H.B. 49 of the 5224  
132nd General Assembly is hereby repealed. 5225

**Section 10.** (A) As used in this section, "ICF/IID" and 5226  
"ICF/IID services" have the same meanings as in section 5124.01 5227  
of the Revised Code. 5228

(B) The Department of Developmental Disabilities may 5229

establish a pilot program that does both of the following: 5230

(1) Requires ICFs/IID to submit to the Department data 5231  
regarding their ability to meet proposed quality indicators 5232  
during the last six months of calendar year 2018; 5233

(2) Provides for ICFs/IID that submit the data to receive 5234  
an incentive payment in the form of an add-on to their total 5235  
Medicaid payment rates for ICF/IID services provided during 5236  
fiscal year 2020. 5237

(C) An incentive payment add-on paid under the pilot 5238  
program is not part of an ICF/IID's total per medicaid day 5239  
payment rate. 5240

**Section 11.** It is the General Assembly's intent to enact 5241  
legislation that goes into effect on or after July 1, 2021, and 5242  
does both of the following: 5243

(A) Repeals the following sections that become obsolete on 5244  
that date: sections 5124.171, 5124.195, 5124.196, 5124.197, 5245  
5124.198, 5124.199, 5124.211, 5124.231, and 5124.28 of the 5246  
Revised Code; 5247

(B) Amends other sections of the Revised Code as necessary 5248  
to reflect the repeal of the sections listed in division (A) of 5249  
this section. 5250

**Section 12.** All of the following go into effect on the 5251  
later of July 1, 2018, or the earliest time permitted by law: 5252

(A) The amendment by this act of sections 5124.01, 5253  
5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5254  
5124.191, 5124.192, 5124.193, 5124.195, 5124.21, 5124.23, 5255  
5124.28, 5124.29, 5124.30, 5124.38, 5124.39, 5124.40, 5124.41, 5256  
5124.46, and 5124.68 of the Revised Code; 5257



(B) The amendment by this act, for the purpose of adopting 5258  
new section numbers as indicated in parentheses, of sections 5259  
5124.17 (5124.171), 5124.19 (5124.195), 5124.191 (5124.196), 5260  
5124.192 (5124.197), 5124.193 (5124.198), 5124.195 (5124.199), 5261  
5124.21 (5124.211), and 5124.23 (5124.231) of the Revised Code; 5262

(C) The new enactment by this act of sections 5124.17, 5263  
5124.19, 5124.191, 5124.192, 5124.193, 5124.194, 5124.21, and 5264  
5124.23 of the Revised Code; 5265

(D) The enactment by this act of section 5124.24 of the 5266  
Revised Code; 5267

(E) The repeal by this act of sections 5124.155 and 5268  
5124.194 of the Revised Code; 5269

(F) Sections 6 through 10 of this act. 5270

**Section 13.** (A) The Governor may execute a deed(s) in the 5271  
name of the State conveying to the City of Columbus, Ohio, or an 5272  
alternate purchaser(s) and the purchaser's(s') heirs and assigns 5273  
or successors and assigns, all of the State's right, title, and 5274  
interest in the following described real estate: 5275

Situated in the County of Franklin in the State of Ohio, 5276  
and in the Township of Perry and bounded and described as 5277  
follows: 5278

Beginning at a stake on the South line of Lot Number One 5279  
(1) of Brown's Subdivision and 101.84 poles East from the 5280  
Southeast corner, thence North 2 deg. 45 minutes East 91.04 5281  
poles to a stake on the North line of said Lot Number One (1) 5282  
thence with said North line South 88 deg. East 101.43 poles to a 5283  
stake at the Northeast corner of Lot Number One (1), thence with 5284  
the East line of said Lot South 2 deg. 45 minutes West 91.58 5285  
poles to a stake at the Southeast corner of said Lot from which 5286

a sugar tree 8 inches in diameter bears South 87 deg. East 17 5287  
feet distant, thence on the South line North 87 deg. 45 minutes 5288  
West 101.43 poles to a stake, thence North 2 deg. 45 minutes 5289  
East 91.04 poles to the place of beginning, containing 57.78 5290  
acres, being the East half of Lot Number One (1) of Brown's 5291  
survey of lands in the fourth quarter of Township 2, Range 19, 5292  
United States Military Lands. Being the same premises conveyed 5293  
by Esther A. Matters and Harvey E. Matters her husband, to 5294  
William F. Lane and Maud Lane by deed recorded in Deed Book 575, 5295  
page 495, Recorder's Office, Franklin County, Ohio. 5296

Subject to all easements and restrictions contained in 5297  
former deeds of record. 5298

The foregoing legal description may be corrected or 5299  
modified by the Department of Administrative Services to a final 5300  
form if such corrections or modifications are needed to 5301  
facilitate the sale(s) of all or a part of the above described 5302  
property and recordation of the deed(s). 5303

(B) (1) The conveyance(s) includes improvements situated on 5304  
the real estate, and is/are subject to all easements, covenants, 5305  
conditions, and restrictions of record; all legal highways and 5306  
public rights-of-way; zoning, building, and other laws, 5307  
ordinances, restrictions, and regulations; and real estate taxes 5308  
and assessments not yet due and payable. The real estate shall 5309  
be conveyed in an "as-is, where-is, with all faults" condition. 5310

(2) The deed(s) for the conveyance(s) of the subject real 5311  
estate described in division (A) of this section may contain 5312  
restrictions, exceptions, reservations, reversionary interests, 5313  
and other terms and conditions specified in the real estate 5314  
purchase agreement(s) entered into by the parties, and/or the 5315  
resolution(s) adopted by the Board of Trustees of the Ohio State 5316

University approving the sale(s). 5317

(3) Subsequent to the conveyance(s), any restrictions, 5318  
exceptions, reservations, reversionary interests, or other terms 5319  
and conditions contained in the deed(s) may be released by the 5320  
State or the Ohio State University without the necessity of 5321  
further legislation. 5322

(4) The above referenced property is known as Franklin 5323  
County Parcel Number 590-159023. 5324

(C) (1) Not later than July 31, 2018, the Ohio State 5325  
University may enter into a real estate purchase agreement with 5326  
the City of Columbus, Ohio, to convey the real estate described 5327  
in division (A) of this section. 5328

(2) If the Ohio State University and the City of Columbus 5329  
do not enter into a real estate purchase agreement by July 31, 5330  
2018, the real estate described in division (A) of this section 5331  
may be sold via real estate purchase agreement or agreements to 5332  
one or more purchasers, as determined by the Board of Trustees 5333  
of the Ohio State University, as an entire tract or in multiple 5334  
tracts. 5335

(D) Consideration for the conveyance(s) of the real estate 5336  
described in division (A) of this section shall be a purchase 5337  
price and any terms and conditions acceptable to the Board of 5338  
Trustees of the Ohio State University. 5339

(E) All costs associated with the purchase(s), the 5340  
closing(s), and the conveyance(s) of the real estate described 5341  
in division (A) of this section shall be paid in the manner 5342  
provided for in the real estate purchase agreement(s). 5343

(F) The net proceeds of the sale(s) shall be deposited 5344  
into university accounts for purposes to be determined by the 5345

Board of Trustees of the Ohio State University. 5346

(G) Subsequent to the effective date of this section, the 5347  
Department of Administrative Services shall request the Auditor 5348  
of State, with the assistance of the Attorney General, to 5349  
prepare a deed(s) for the conveyance(s) of the real estate 5350  
described in division (A) of this section. The deed(s) shall 5351  
state the consideration and shall be executed by the Governor in 5352  
the name of the State, countersigned by the Secretary of State, 5353  
sealed with the Great Seal of the State, presented in the Office 5354  
of the Auditor of State for recording, and delivered to the City 5355  
of Columbus or other purchaser(s). The City of Columbus or other 5356  
purchaser(s) shall present the deed(s) for recording in the 5357  
Office of the Franklin County Recorder. 5358

(H) This section expires five years after its effective 5359  
date. 5360

**Section 14.** This act is hereby declared to be an emergency 5361  
measure necessary for the immediate preservation of the public 5362  
peace, health, and safety. The reason for such necessity is to 5363  
enable taxpayers to avoid making adjustments to the medical 5364  
expense deduction on their 2017 tax returns that increase costs 5365  
of compliance. Therefore, this act shall go into immediate 5366  
effect. 5367