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5123.47 Authorizing in-home worker to perform health care tasks.

(A) As used in this section:

(1) "In-home care" means the supportive services provided within the home of an individual with mental retardation or a developmental disability who receives funding for the services through a county board of developmental disabilities, including any recipient of residential services funded as home and community-based services, family support services provided under section 5126.11 of the Revised Code, or supported living provided in accordance with sections 5126.41 to 5126.47 of the Revised Code. "In-home care" includes care that is provided outside an individual's home in places incidental to the home, and while traveling to places incidental to the home, except that "in-home care" does not include care provided in the facilities of a county board of developmental disabilities or care provided in schools.

(2) "Parent" means either parent of a child, including an adoptive parent but not a foster parent.

(3) "Unlicensed in-home care worker" means an individual who provides in-home care but is not a health care professional.

(4) "Family member" means a parent, sibling, spouse, son, daughter, grandparent, aunt, uncle, cousin, or guardian of the individual with mental retardation or a developmental disability if the individual with mental retardation or developmental disabilities lives with the person and is dependent on the person to the extent that, if the supports were withdrawn, another living arrangement would have to be found.

(5) "Health care professional" means any of the following:

(a) A dentist who holds a valid license issued under Chapter 4715. of the Revised Code;

(b) A registered or licensed practical nurse who holds a valid license issued under Chapter 4723. of the Revised Code;

(c) An optometrist who holds a valid license issued under Chapter 4725. of the Revised Code;

(d) A pharmacist who holds a valid license issued under Chapter 4729. of the Revised Code;

(e) A person who holds a valid certificate issued under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited brand of medicine;

(f) A physician assistant who holds a valid certificate issued under Chapter 4730. of the Revised Code;

(g) An occupational therapist or occupational therapy assistant or a physical therapist or physical therapist assistant who holds a valid license issued under Chapter 4755. of the Revised Code;

(h) A respiratory care professional who holds a valid license issued under Chapter 4761. of the Revised Code.

(6) "Health care task" means a task that is prescribed, ordered, delegated, or otherwise directed by a health care professional acting within the scope of the professional's practice.

(B) Except as provided in division (E) of this section, a family member of an individual with mental retardation or a developmental disability may authorize an unlicensed in-home care worker to administer oral and topical prescribed medications or perform other health care tasks as part of the in-home care the worker provides to the individual, if all of the following apply:

(1) The family member is the primary supervisor of the care.

(2) The unlicensed in-home care worker has been selected by the family member or the individual receiving care and is under the direct supervision of the family member.

(3) The unlicensed in-home care worker is providing the care through an employment or other arrangement entered into directly with the family member and is not otherwise employed by or under contract with a person or government entity to provide services to individuals with mental retardation and developmental disabilities.

(C) A family member shall obtain a prescription, if applicable, and written instructions from a health care professional for the care to be provided to the individual. The family member shall authorize the unlicensed in-home care worker to provide the care by preparing a written document granting the authority. The family member shall provide the unlicensed in-home care worker with appropriate training and written instructions in accordance with the instructions obtained from the health care professional.

(D) A family member who authorizes an unlicensed in-home care worker to administer oral and topical prescribed medications or perform other health care tasks retains full responsibility for the health and safety of the individual receiving the care and for ensuring that the worker provides the care appropriately and safely. No entity that funds or monitors the provision of in-home care may be held liable for the results of the care provided under this section by an unlicensed in-home care worker, including such entities as the county board of developmental disabilities and the department of developmental disabilities.

An unlicensed in-home care worker who is authorized under this section by a family member to provide care to an individual may not be held liable for any injury caused in providing the care, unless the worker provides the care in a manner that is not in accordance with the training and instructions received or the worker acts in a manner that constitutes wanton or reckless misconduct.

(E) A county board of developmental disabilities may evaluate the authority granted by a family member under this section to an unlicensed in-home care worker at any time it considers necessary and shall evaluate the authority on receipt of a complaint. If the board determines that a family member has acted in a manner that is inappropriate for the health and safety of the individual receiving the care, the authorization granted by the family member to an unlicensed

in-home care worker is void, and the family member may not authorize other unlicensed in-home care workers to provide the care. In making such a determination, the board shall use appropriately licensed health care professionals and shall provide the family member an opportunity to file a complaint under section 5126.06 of the Revised Code.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

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