



Jennifer A. Parker

Final Analysis
Legislative Service Commission

Sub. H.B. 261

123rd General Assembly
(As Passed by the General Assembly)

Reps. Roman, Schuring, Amstutz, Mead, Netzley, Tiberi, Jerse, Britton, Jacobson, Goodman, Bender, Clancy, Schuler, Grendell, O'Brien, Vesper, Krebs, Terwilleger, Padgett, Corbin, Roberts, Hood, Van Vyven, Householder, Willamowski, Buchy, Hollister, Krupinski, Jolivette, Healy, Salerno, Damschroder, Carey, Williams, Mottley, Brading, Trakas, Calvert, Evans, Metzger, Patton, Verich, Young, Winkler, Haines, Kilbane, Core, Boyd

Sens. Nein, Cupp, Watts, Mumper, Wachtmann, Spada, White, Oelslager, Johnson, Gardner, Drake

Effective date: *

ACT SUMMARY

- Repeals the scheduled repeal on November 15, 2000, of the laws providing qualified immunity from civil liability for health care providers, health care workers, and facilities that provide free health care services to indigent and uninsured persons.
- Extends that immunity to retired dentists and dental hygienists who provide free dental services to such persons.

CONTENT AND OPERATION

Background

Sections 2305.234, 3701.071, and 4731.295 of the Revised Code, laws providing qualified immunity from civil liability for certain health care providers and facilities, were enacted by Am. Sub. H.B. 218 of the 121st General Assembly (effective November 15, 1995). Section 2 of Am. Sub. H.B. 218 provided for the repeal of these sections in five years. Section 2 was amended by Am. Sub.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

S.B. 259 of the 121st General Assembly to provide for the repeal of the sections on November 15, 1998. It was most recently amended by Am. Sub. H.B. 612 of the 122nd General Assembly to change the future repeal date of sections 2305.234, 3701.071, and 4731.295 of the Revised Code from November 15, 1998, to November 15, 2000.

Section 2305.234(B) of the Revised Code grants a qualified immunity from civil liability to those health care professionals providing free health care services to indigent and uninsured persons:

[A] health care professional who is a volunteer . . . is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, . . . or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer in the provision at a nonprofit shelter or health care facility to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment . . . unless the action or omission constitutes willful or wanton misconduct.

Section 2305.234 of the Revised Code grants a similar qualified immunity to volunteer health care workers providing health care services under the direction of these health care professionals, and grants a qualified immunity to the nonprofit shelters and health care facilities at which the health care services are performed.

Section 3701.071 of the Revised Code requires nonprofit shelters and health care facilities to register annually with the Department of Health in order to claim the immunity granted by section 2305.234 of the Revised Code. Section 4731.295 of the Revised Code permits the State Medical Board to issue a volunteer's certificate to retired physicians wishing to volunteer their services at nonprofit shelters and health care facilities.

Continuation of qualified immunity for health care providers, health care workers, and facilities serving the indigent and uninsured

(Sections 2 and 3)

The act provides for the continuation of the grant of a qualified immunity from civil liability to health care professionals involved in the provision of health care services to the indigent and uninsured, the grant of a similar qualified immunity to volunteer health care workers providing health care services under the direction of these health care professionals, and the grant of a qualified immunity

to the nonprofit shelters and health care facilities at which the health care services are performed. The act repeals Section 2 of Am. Sub. H.B. 218 of the 121st General Assembly, as subsequently amended, which provides for the repeal, effective November 15, 2000, of sections 2305.234, 3701.071, and 4731.295 of the Revised Code.

The act states that its intent is to "remove the limitation imposed by such repeal upon the continued existence of sections 2305.234, 3701.071, and 4731.295 of the Revised Code, which intent is not affected by the rule of construction contained in section 1.57 of the Revised Code." Section 1.57 of the Revised Code provides that the "repeal of a repealing statute does not revive the statute originally repealed."

The act also repeals Section 3 of Am. Sub. H.B. 218 of the 121st General Assembly, as subsequently amended, which provides for the automatic termination of all volunteers' certificates issued to retired physicians by the State Medical Board pursuant to section 4731.295 of the Revised Code on November 15, 2000, to coincide with the scheduled repeal of the grant of qualified immunity. The scheduled termination of issued volunteers' certificates would have conflicted with the continued operation of sections 2305.234 and 4731.295 of the Revised Code provided for by the act.

Extension of immunity to retired dentists and dental hygienists

(sec. 4715.42; Section 4)

The act permits the State Dental Board to issue a volunteer's certificate to retired dentists and dental hygienists, and extends the qualified immunity described above to those certificate holders who provide dental services to indigent and uninsured persons at nonprofit shelters or health care facilities.

To apply for a volunteer's certificate, an applicant must submit all of the following:

(1) A copy of the applicant's degree from dental college or dental hygiene school.

(2) A copy of the applicant's most recent license to practice dentistry or dental hygiene issued by a jurisdiction in the United States that licenses persons to practice dentistry or dental hygiene, or a copy of the applicant's most recent license equivalent to a license to practice dentistry or dental hygiene in one or more branches of the United States armed services that the United States government issued.

(3) Evidence that the applicant has maintained for at least ten years prior to retirement full licensure in good standing in any jurisdiction in the United States that licenses persons to practice dentistry or dental hygiene, or that the applicant has practiced as a dentist or dental hygienist in good standing for at least ten years prior to retirement in one or more of the branches of the United States armed services.

(4) A notarized statement from the applicant, on a form prescribed by the Board, that the applicant will not accept any form of remuneration for any dental services rendered while in possession of a volunteer's certificate.

The holder of a volunteer's certificate may provide dental services only on the premises of a nonprofit shelter or health care facility and only to indigent and uninsured persons. The holder cannot accept any form of remuneration for providing dental services while in possession of the certificate. Except in a dental emergency, the holder is prohibited from performing any operation. The Board may revoke a volunteer's certificate on receiving proof satisfactory to the Board that the holder has engaged in practice in Ohio outside the scope of the holder's certificate or that there are grounds for disciplinary action against the person under continuing law.

The act specifies that a volunteer's certificate is valid for three years, and may be renewed upon the application of the holder, unless the certificate was previously revoked by the Board. The Board must maintain a register of all persons who hold volunteer's certificates, and cannot charge a fee for issuing or renewing a certificate.

To be eligible for renewal of a volunteer's certificate, the holder must certify to the Board completion of 60 hours of continuing dental education or 18 hours of continuing dental hygiene education, as the case may be. The Board is prohibited from renewing a certificate if the holder has not complied with the appropriate continuing education requirements. The nonprofit shelter or health care facility in which the holder provides dental services may pay for or reimburse the holder for any costs incurred in obtaining the required continuing education credits.

The act requires the Board to issue to each person who qualifies for a volunteer's certificate a wallet certificate and a wall certificate that state that the certificate holder is authorized to provide dental services pursuant to Ohio law. The holder must keep the wallet certificate on his or her person while providing dental services and must display the wall certificate prominently in the nonprofit shelter or health care facility where the holder primarily practices.

The act states that its extension of immunity applies only to causes of action against holders of a volunteer's certificate issued pursuant to this portion of the act for injury, death, or loss to person or property that allegedly arise from an action or omission occurring *on or after the effective date of the act* in the provision of dental services to an indigent and uninsured person at a nonprofit shelter or health care facility. With respect to causes of action against those individuals occurring *prior* to that date that have not been barred by a statute of limitations, the liability or immunity from liability of those individuals, and the defenses available to them, are to be determined as if the act had not been enacted.

Lastly, the Board is required by the act to adopt rules in accordance with the Administrative Procedure Act to administer and enforce this portion of the act.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-22-99	p. 330
Reported, H. Insurance	05-26-99	p. 725
Passed House (94-4)	06-02-99	pp. 747-748
Reported, S. Insurance, Commerce & Labor	11-09-99	pp. 1142-1143
Passed Senate (32-0)	11-09-99	pp. 1157-1158
House concurred in Senate amendments (87-2)	11-10-99	pp. 1348-1349

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