



Alan Van Dyne

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 241\***

123rd General Assembly

(As Reported by S. Health, Human Services & Aging)

**Reps. Hollister, Womer Benjamin, Grendell, R. Miller, Terwilleger, Ogg, Opfer, Mead, Jones, Sulzer, Sutton, Perz, Williams, Allen, Hartnett, Callender, D. Miller, Hood, Young, Bender, Householder, Smith, Carey, Van Vyven, Schuring, Olman, Padgett, Maier, DePiero, Barnes, Damschroder, Mottley, Schuler, Buehrer, Corbin, Boyd, Barrett, Salerno, Goodman, Jerse, Flannery, Sykes, Wilson, Metelsky, Healy, Perry, Kilbane**

**Sens. Kearns, Spada, Prentiss, Blessing, Hagan, Drake**

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### **BILL SUMMARY**

- Provides that the Board of Nursing may issue a certificate to prescribe drugs and therapeutic devices to a certified nurse-midwife (CNM), certified nurse practitioner (CNP), or clinical nurse specialist (CNS) who meets the bill's requirements and has successfully completed a course of study in advanced pharmacology.
- Creates the Committee on Prescriptive Governance and requires it to develop recommendations on which the Board of Nursing must base its rules governing the formulary of drugs and therapeutic devices that may be prescribed by a nurse who holds a certificate to prescribe, the externship a nurse must complete after receiving an initial certificate to prescribe, the manner in which the nurse is to be supervised during the externship, and the manner in which collaboration is to occur after the externship is successfully completed.
- Permits a nurse with authority to prescribe to personally furnish antibiotics, antifungals, scabicides, contraceptives, and prenatal vitamins

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*\* This analysis was prepared before the report of the Senate Health, Human Services and Aging Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

to patients at local health departments, federally funded primary care clinics, and nonprofit health care clinics or programs.

- Accelerates termination of the pilot programs for use of advanced practice nurses in medically underserved areas.
- Provides that, of the eight members of the Board of Nursing who are registered nurses, at least one must be a CNM, CNP, CNS, or certified registered nurse anesthetist.
- Subjects a nurse to discipline for failing to return to the Board of Nursing a license or certificate that has lapsed or been suspended.
- Provides that nurses are prohibited from prescribing drugs and devices to perform or induce an abortion, or otherwise performing or inducing an abortion.

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## CONTENT AND OPERATION

### **Background**

Am. Sub. S.B. 154 of the 121st General Assembly recognized three advanced nursing specialties: certified nurse practitioner (CNP), certified registered nurse anesthetist (CRNA), and clinical nurse specialist (CNS) and changed the prior designation "nurse-midwife" to "certified nurse-midwife" (CNM). To practice in one of these specialties, an individual must be a registered nurse and obtain a certificate of authority from the Board of Nursing by meeting specified graduate-level education requirements and the certification and examination requirements of national organizations that credential nurses in advanced practices.

In addition to the four categories of nursing specialties, three pilot programs exist for the use of "advanced practice nurses" in medically underserved areas of the state. After completing pharmacology training, nurses participating or seeking to participate in the pilot programs may apply for approval to prescribe drugs and therapeutic devices. Authority for the pilot programs is scheduled to expire January 1, 2010.

### **Certificates to prescribe drugs and therapeutic devices**

(sec. 4723.48)

The bill establishes requirements and procedures for the issuance of certificates to prescribe to clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners. Rules governing the process must be adopted by the Board of Nursing not later than 20 months after the bill's effective date.

The Board's rules are to be adopted in accordance with recommendations submitted by the Committee on Prescriptive Governance, a committee the bill creates consisting of nurses, physicians, and pharmacists, including representatives of the professionals' respective licensing boards. The bill requires the Committee to submit its recommendations not later than 14 months after its effective date.

### **Formulary**

(secs. 4723.06 and 4723.50)

The types of drugs and therapeutic devices that may be prescribed are to be established in rules adopted by the Board of Nursing. The formulary may contain controlled substances. The Board is required to make an annual edition of the formulary available to the public either in printed form or by electronic means. As

soon as possible after any revision of the formulary becomes effective, the Board must make the revision available in printed or electronic form.

### **Pharmacology training**

(sec. 4723.482(B))

To qualify for an initial certificate to prescribe, an applicant must successfully complete instruction in advanced pharmacology and related topics. The instruction must be obtained not longer than three years before the application for the certificate to prescribe is filed. It must be obtained through a course of study consisting of planned classroom and clinical study that is approved by the Board of Nursing in accordance with standards established in rules. The content of the instruction must be specific to the applicant's nursing specialty and include all of the following:

- (1) A minimum of 30 contact hours of training in advanced pharmacology that includes pharmacokinetic principles and clinical application and the use of drugs and therapeutic devices in the prevention of illness and maintenance of health;
- (2) Training in the fiscal and ethical implications of prescribing drugs and therapeutic devices;
- (3) Training in the state and federal laws that apply to the authority to prescribe;
- (4) Any additional training required in rules adopted by the Board.

### **Externship**

(secs. 4723.48 and 4723.50)

The initial certificate to prescribe that the Board issues to an applicant is to be issued as an externship certificate. Under the certificate, the nurse is authorized to obtain experience in prescribing drugs and therapeutic devices by participating in an externship that evaluates the nurse's competence, knowledge, and skill in pharmacokinetic principles and their clinical application to the specialty being practiced. During the externship, the nurse may prescribe drugs and therapeutic devices only when one or more physicians are providing supervision.

Supervision must be provided by the physician in accordance with standards and procedures established in rules adopted by the Board. The rules must specify standards and procedures for supervision that is provided by working with the nurse and supervision that is provided by making timely reviews of the records of patients treated by the nurse. The bill provides that the manner in

which a nurse is supervised may vary according to the location where the nurse is practicing and with the nurse's level of experience.

Evaluation by the physician of the nurse's participation in an externship must be made according to the Board's rules. However, regardless of the method of evaluation used, the nurse cannot be required to participate in an externship longer than 1,800 hours.

The bill requires that the physician responsible for evaluating the externship provide the State Medical Board with the name of the nurse. The physician also must notify the Board if the externship is terminated for any reason. Likewise, the bill requires that the nurse inform the Board of Nursing if the externship is terminated.

An externship certificate is to be valid for not more than one year, unless earlier suspended or revoked by the Board of Nursing. The certificate may be extended for an additional year if the holder submits to the Board evidence of continued participation in an externship.

### **Collaboration**

(secs. 4723.43, 4723.431, and 4723.48)

After completing the externship, the holder of an externship certificate may apply for a new certificate to prescribe. On receipt of the new certificate, the nurse may prescribe drugs and therapeutic devices in collaboration with one or more physicians or podiatrists.

The bill provides for the prescriptive authority collaboration to occur in the same manner that the nurse and physician collaborate under current law for the nurse to practice as a CNS, CNM, or CNP. Under collaboration, a nurse and physician are required to enter into a standard care arrangement, which is a written, formal guide for planning and evaluating a patient's health care. The bill requires that the Board of Nursing adopt rules establishing criteria for the prescriptive authority components of a standard care arrangement. The rules must include (1) quality assurance standards, (2) standards for periodic review by a collaborating physician or podiatrist of the records of patients treated by the nurse, (3) acceptable travel time between the physician and nurse when prescribing, and (4) any other criteria recommended by the Committee on Prescriptive Governance.

With respect to CRNAs, the bill specifies that a certificate to prescribe is not needed for the nurse to provide the anesthesia care that the nurse is authorized to provide under current law.

### **Scope of authority to prescribe**

(sec. 4723.481)

The bill establishes requirements to be followed when a CNS, CNM, or CNP prescribes drugs and therapeutic devices. Failure to comply is grounds for the Board of Nursing to take disciplinary action. Under the bill, the nurse is subject to all of the following:

(1) The nurse cannot prescribe any drug or therapeutic device that is not included in the types of drugs and devices listed on the formulary established by the Board in rules.

(2) The nurse's prescriptive authority cannot exceed the prescriptive authority of the collaborating physician or podiatrist.

(3) The nurse may prescribe a Schedule II controlled substance only for a patient with a terminal condition, only if the nurse's collaborating physician initially prescribed the substance, and only in an amount for use in a single, 24-hour period. The nurse is not authorized to prescribe a Schedule II controlled substance in collaboration with a podiatrist.

(4) The nurse may personally furnish to a patient a sample of any drug or therapeutic device included in the types of drugs and devices listed on the formulary. The amount of the sample being furnished cannot exceed a 72-hour supply, except when the minimum available quantity of the sample is packaged in an amount that is greater than a 72-hour supply, in which case the nurse may furnish the sample in the packaged amount. The nurse may not impose a charge for the sample or for furnishing it. No sample of a controlled substance may be personally furnished by the nurse to a patient.

(5) The nurse may personally furnish to a patient a complete or partial supply of antibiotics, antifungals, scabicides, contraceptives, or prenatal vitamins. This authority cannot be exercised in any location other than a local health department, a federally funded comprehensive primary care clinic, or a nonprofit health care clinic or program. The nurse is required to comply with all safety standards for personally furnishing supplies of drugs and devices, as established in rules adopted by the Board.

### **Cooperation in investigations**

(secs. 4723.432 and 4731.27)

The bill requires that a CNS, CNM, or CNP cooperate with the State Medical Board in any investigation the Board conducts with respect to a physician

or podiatrist who collaborates with the nurse. With respect to a CRNA, a nursing specialty that requires supervision of the nurse by a physician, podiatrist, or dentist rather than collaboration, the bill provides that the nurse must cooperate with the State Medical Board or State Dental Board in any investigation conducted with respect to a supervising physician, podiatrist, or dentist. The bill similarly requires a CNS, CNM, CNP, or CRNA to cooperate with the State Medical Board or State Dental Board in any investigation of the nurse's unauthorized practice of medicine or dentistry. In turn, the bill requires that a physician or podiatrist cooperate with the Board of Nursing in any investigation the Board conducts with respect to a CNS, CNM, CNP, or CRNA in collaboration with or under the supervision of the physician or podiatrist.

### **Application process**

(secs. 4723.482 and 4723.484)

A CNS, CNM, or CNP seeking authority to prescribe drugs and therapeutic devices must file a written application with the Board of Nursing. The Board must issue a certificate to each applicant who meets the requirements specified in the bill. An applicant for an initial certificate to prescribe must include with the application all of the following:

- (1) Evidence of holding a current, valid certificate of authority to practice as a CNS, CNM, or CNP;
- (2) Evidence of successfully completing the required instruction in advanced pharmacology and related topics;
- (3) A fee of \$50;
- (4) Any additional information the Board requires in the rules it adopts under the bill.

To be eligible for a certificate to prescribe after receiving an externship certificate, an applicant must include with the application all of the following:

- (1) A statement from a supervising physician attesting to the applicant's successful completion of the externship;
- (2) A fee of \$50;
- (3) Any additional information the Board requires by rule.

### **Renewal process**

(sec. 4723.485)



A certificate to prescribe, other than an externship certificate, is valid for two years, unless otherwise provided for in rules adopted by the Board or earlier suspended or revoked. The Board's rules must include procedures for renewal and a renewal schedule. The Board may renew a certificate to prescribe if the holder submits all of the following:

(1) Evidence of having completed during the previous two years at least 12 hours of continuing education in advanced pharmacology, or, if the certificate has been held for less than a full renewal period, the number of hours required by the Board in rules. The pharmacology education must be received from an accredited institution recognized by the Board and is in addition to any other continuing nursing education that the nurse must complete.

(2) A fee of \$50;

(3) Any additional information the Board requires by rule.

### **Grandfathering**

(sec. 4723.483)

In the case of a person who received a certificate of authority to practice as a CNM or CNP through current law's provisions exempting them from having to hold a graduate degree in a nursing specialty or related field, the bill prohibits the Board of Nursing from issuing a certificate to prescribe to the nurse, unless both of the following apply:

(1) The nurse submits an application for the certificate to prescribe not later than one year after the Board adopts initial rules for issuing certificates to prescribe.

(2) The nurse submits evidence of having obtained not less than ten years of clinical experience in the practice of a nursing specialty, three years of which were obtained in the five-year period immediately preceding the date the application is submitted.

### **Advanced practice nurse pilot programs**

(secs. 4723.51 to 4723.59 and 5111.74 (repealed); Sections 3 to 6)

The bill accelerates the termination of the three advanced practice nurse pilot programs, currently scheduled to occur January 1, 2010. The bill provides for the programs to expire three years and eight months after the bill's effective date.

If an advanced practice nurse has prescriptive authority on the bill's effective date, and the nurse applies for a certificate to prescribe, the bill provides for the nurse to be given a certificate without being required to complete another pharmacology training requirement and without being required to complete an externship. A nurse who enters the pilot programs after the bill goes into effect will be required to complete the pharmacology training and externship requirements. The number of positions for advanced practice nurses in the pilot programs cannot be increased after the bill goes into effect.

A reference to advanced practice nurses is contained in the statute that created the Butler County Fair Share Demonstration Project to study the viability of using certain managed care techniques in the Medicaid program. The bill eliminates the statute, which is now obsolete, to correspond with the accelerated elimination of the advanced practice nurse pilot programs.

### **Penalties**

(secs. 3719.06 and 4723.44; 3719.99 and 4723.99, not in the bill)

Under the bill, a nurse who is a CNM, CNP, or CNS is prohibited from (1) prescribing drugs or therapeutic devices unless the nurse holds a current, valid certificate to prescribe issued by the Board, or (2) if the nurse holds a current, valid certificate to prescribe, prescribing drugs and therapeutic devices in a manner that does not comply with the bill. Under the nursing law, whoever violates these provisions may be fined \$500 or imprisoned not more than 90 days, or both. If a nurse violates the bill's restrictions pertaining to controlled substances, the nurse may, pursuant to the controlled substances law, be fined \$500 or imprisoned not more than 60 days, or both.

### **Validity of certificate to prescribe**

(sec. 4723.47)

Under the bill, if a nurse's certificate of authority to practice nursing as a CNM, CNP, or CNS expires for failure to renew, the nurse's certificate to prescribe is automatically lapsed until the certificate of authority is reinstated. If a nurse's certificate of authority becomes inactive, the nurse's certificate to prescribe is automatically lapsed until the certificate of the authority becomes active. If a nurse's certificate of authority is revoked or suspended, the nurse's certificate to prescribe is automatically revoked or suspended. If a restriction is placed on a nurse's certificate of authority, the same restriction is placed on the nurse's certificate to prescribe while the certificate of authority remains restricted.

**Revisions to the drug, prescription, and pharmacy laws**

(secs. 2925.02, 2925.03, 2925.11, 2925.12, 2925.14, 2925.23, 2925.36, 3719.06, 3719.81, 4729.01, and 4729.51)

The bill amends statutes regarding selling, possessing, or trafficking in drugs and controlled substances and furnishing sample drugs so that a CNM, CNP, CNS, or advanced practice nurse may do so without violating the criminal or pharmacy licensing laws.

**Committee on Prescriptive Governance**

(secs. 4723.49, 4723.491, and 4723.492)

The bill creates the Committee on Prescriptive Governance to develop recommendations regarding the authority of a CNS, CNM, or CNP to prescribe drugs and therapeutic devices. The Committee is required to submit recommendations to the Board of Nursing as necessary for the Board to fulfill its duty under the bill to adopt rules. The recommendations must be submitted not later than 14 months after the bill's effective date. At the Board's request, the Committee must reconsider a recommendation and resubmit it accordingly.

The Committee is to consist of the following members:

(1) Four nurses, to be appointed by the Board of Nursing, including one certified nurse-midwife, one certified nurse practitioner, one clinical nurse specialist, and a member of the Board of Nursing who at a minimum is a registered nurse.

(2) Four physicians, to be appointed by the State Medical Board. The members must be appointed in such a manner that the Committee at all times includes at least two physicians who collaborate with a CNS, CNM, or CNP; one physician certified in the medical specialty of family practice, and one member of the State Medical Board. If the family practice physician or Board member is also a collaborating physician, the member may be counted both as a collaborating physician and as a family practice physician or Board member.

(3) Two pharmacists, to be appointed by the State Board of Pharmacy, including one Board member and one pharmacist who is actively practicing as a clinical pharmacist.

The Committee is required to select a chairperson from its members who are nurses or collaborating physicians. The Committee may select a new chairperson at any time.

Five members of the Committee constitute a quorum. The clinical pharmacist member may participate in any meeting, but is to be included as a voting member only when the committee is considering the composition of the formulary of drugs and devices a nurse may prescribe, the manner in which a nurse may personally furnish to patients samples and partial or complete supplies of drugs and devices, and recommendations to be given to the Board of Nursing for use in adopting rules pertaining to these matters.

Recommendations for making initial appointments and filling vacancies may be submitted to the boards by professional nursing, medical, and pharmacy associations and by individuals. Each board must appoint members based on the recommendations submitted. If no recommendations are received or an insufficient number are submitted, the appropriate board must proceed on its own advice. If the State Medical Board or State Board of Pharmacy fails to fill a vacancy, the Board of Nursing is required to make the appointment. If the Board of Nursing fails to make an appointment, the State Medical Board must make the appointment after consulting with the State Board of Pharmacy.

### **Terms of office**

Initial appointments to the Committee must be made by the appropriate board not later than 60 days after the bill's effective date. After staggered initial terms, terms are for three years, with each term ending on the same day of the same month as the term it succeeds.

When a member's term expires, a successor is to be appointed who has the qualifications the vacancy requires. Any member appointed to fill a vacancy occurring prior to the expiration of a term holds office for the remainder of that term. A member continues in office after the member's term expires until the earlier of the date the member's successor takes office or until a 60-day period has elapsed. A member may be reappointed.

Committee members serve without compensation but receive payment for their actual and necessary expenses incurred in the performance of their official duties. The expenses are to be paid by the Board of Nursing.

### **Board of Nursing membership**

(sec. 4723.04)

Under current law, the Board of Nursing is composed of eight registered nurses, four licensed practical nurses, and one consumer representative. The bill provides that of the members who are registered nurses, at least one must hold a valid certificate of authority to practice nursing as a CRNA, CNS, CNM, or CNP.

### **Certificates of authority to practice as a CNM, CNP, CRNA, or CNS**

(secs. 4723.41 and 4723.42)

Under current law, the Board of Nursing is required to issue or deny a certificate of authority to practice nursing as a CNM, CNP, CRNA, or CNS not later than 60 days after receiving all required documentation from an applicant. Not later than 15 days after receiving an application, the Board must provide an applicant with written notice by mail, of any required documents that have not been submitted. The bill repeals the 15-day deadline for providing the notice. Except in specified circumstances, a nurse can receive a certificate of authority only if the nurse holds at least a master's degree in a nursing specialty or a related field. The bill modifies this requirement to allow for receipt of any graduate degree. For example, some graduate programs confer only doctorates, without first issuing a master's degree.

### **Lapsed and suspended licenses and certificates**

(sec. 4723.28(B)(30) and (I))

Current law authorizes the Board of Nursing to deny, revoke permanently, suspend, or place restrictions on a nurse's license or certificate if the Board determines that the nurse has committed one or more acts specified in statute. Under the bill, a nurse is required to, and may be disciplined for failing to, return to the Board a license or certificate that has lapsed or been suspended.

### **Collaboration with nurses**

(secs. 4723.43 and 4723.431)

Under current law, each physician or podiatrist who collaborates with a CNM, CNP, or CNS, must hold an Ohio license to practice medicine or podiatry and be practicing in Ohio. The bill specifies that the physician or podiatrist must be actively engaged in "direct clinical practice."

Under current law, a CNM, CNP, and CNS may practice only in accordance with a standard care arrangement entered into with one or more collaborating physicians or podiatrists. If a collaborating physician or podiatrist enters into standard care arrangements with more than three nurses with certificates to prescribe, the bill prohibits the physician or podiatrist from collaborating at the same time with more than three of the nurses in the prescribing component of their practices.

Current law requires the physician or podiatrist "to practice" in accordance with the standard care arrangement. The bill instead requires that the physician or

podiatrist fulfill the responsibilities of collaboration, as specified in the arrangement. Failure to collaborate properly continues to be a reason for which the State Medical Board may impose disciplinary actions.

Under current law, a standard care arrangement is not required for a CNS specializing in mental health or psychiatric mental health. Under the bill, if the CNS holds a certificate to prescribe, there must be a standard care arrangement with the collaborating physician addressing the prescribing components of the nurse's practice.

**The practice of nursing as a registered nurse and licensed practical nurse**

(secs. 4723.02 and 4723.14)

Current law provides that the practice of nursing as a registered nurse or licensed practical nurse includes administering medications, treatments, and executing regimens prescribed by physicians, dentists, optometrists, and other specified individuals. Under the bill, the practice of nursing includes performing those same acts as authorized by an individual who is authorized to practice in Ohio and is acting within the course of the individual's professional practice, which includes a CNM, CNP, or CNS.

**Performing or inducing abortions**

(secs. 4723.151, 4723.28, 4723.44, 4723.50, 4723.52, 4723.563, and 4723.58)

Under current law, the practice of medicine and surgery, including performing or inducing an abortion, by any person other than a physician is prohibited. Current law governing the practice of nursing prohibits medical diagnosis, prescription of medical measures, and the practice of medicine or surgery or any of its branches by a registered nurse or licensed practical nurse. A CNM, CNP, CNS, or certified registered nurse anesthetist may, however, practice within the nurse's scope of practice and a CNM, CNP, and CNS who holds a certificate to prescribe under the bill's provisions may prescribe drugs and therapeutic devices in accordance with the bill's requirements.

The bill specifies that nurses are prohibited from prescribing a drug or device to perform or induce an abortion or from otherwise performing or inducing an abortion. The prohibition applies to the following:

- (1) Discipline of registered nurses and licensed practical nurses;
- (2) Restrictions on the practice of nursing as a CNM, CNP, CNS, or certified registered nurse anesthetist;

(3) Adoption of rules establishing the formulary of drugs and therapeutic devices that a CNM, CNP, or CNS may prescribe;

(4) Conduct of the advanced practice nurse pilot programs.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-10-99	pp. 285-286
Reported, H. Health, Retirement & Aging	06-23-99	p. 919
Passed House (93-2)	06-28-99	pp. 1062-1063
Reported, S. Health, Human Services & Aging	---	---

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