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Bill Analysis
Legislative Service Commission

H.B. 499

123rd General Assembly
(As Introduced)

Reps. Brading, Distel, Mead, Hollister, Callender, Redfern, Hartnett, Aslanides, Gardner, Cates, Evans, Grendell, Jolivette, Taylor, Willamowski

BILL SUMMARY

- Authorizes a coroner, deputy coroner, or representative of either to inspect and receive copies of a deceased person's medical and psychiatric records.
- Exempts medical and psychiatric records so acquired by a coroner, deputy coroner, or representative of either from the Public Records Law and from certain provisions of the Coroner's Law involving compulsory disclosure of information in a coroner's records to prosecuting attorneys.
- Provides that a physician who permits a coroner, deputy coroner, or representative of either to inspect or receive copies of a deceased person's medical and psychiatric records in accordance with the bill's procedures cannot be considered by the State Medical Board to have willfully betrayed a professional confidence that, under other circumstances, could have resulted in disciplinary action.
- Requires newly elected and newly appointed coroners to complete 16 hours of specified continuing education within a prescribed timeframe, requires all coroners to complete 32 hours of specified continuing education during their terms of office.

CONTENT AND OPERATION

Coroner acquisition of medical and psychiatric records

Existing "background" law

Physician-patient testimonial privilege. Existing law generally prohibits a physician from testifying concerning a *communication* made to the physician by a

patient in the physician-patient relationship or the physician's *advice* to the patient in that relationship.¹ This commonly referred to physician-patient "testimonial privilege" is or may be *waived* under specified circumstances.² If a waiver circumstance exists, a physician may testify or may be compelled to testify with respect to certain or all matters otherwise considered to be confidential communications or advice under the physician-patient testimonial privilege. (Sec. 2317.02(B)--not in the bill.)

Disciplinary action. Existing law authorizes the State Medical Board to discipline a licensed physician for, among other reasons, *willfully betraying a professional confidence*, violating a provision of the American Medical Association's Code of Ethics or of another applicable code of ethics of a national professional association, or violating provisions of the State Medical Board Law or rules adopted under it (sec. 4731.22(B)(4), (18), and (20)--not in the bill).

Coroner office records. Existing law appears to require a county coroner to keep a complete record of death certificates and other types of reports and records in all cases coming under the coroner's jurisdiction. All of the coroner's records must be kept in the coroner's office or, in the absence of that office, in the office of the clerk of the court of common pleas and must be properly indexed. The records must state (1) the name, if known, of every deceased person who "dies

¹ A "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician to diagnose, treat, prescribe, or act for a patient. The term includes any medical, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis. (Sec. 2317.02(B)(4)--not in the bill.)

² Those circumstances include, but are not limited to, the following: (a) in any civil action, in accordance with the Civil Rules' discovery provisions, or in connection with a workers' compensation claim, if the patient or the patient's guardian or other legal representative gives express consent, or if the spouse or the executor or administrator of the estate of a deceased patient gives express consent, or if a patient, a patient's guardian or other legal representative, or the personal representative of a deceased patient's estate commences a "medical claim" (i.e., malpractice action), an action for wrongful death, another type of civil action, or a workers' compensation claim, (b) in certain criminal prosecutions, and (c) in certain instances in which the physician is acting in a professional capacity and knows or suspects a minor or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect. (Secs. 2151.421(A) and 2317.02(B)--not in the bill.)

as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, or . . . suddenly when in apparent good health . . .," (2) the place where the body of the deceased person was found, (3) the date of the deceased person's death, (4) the cause of the deceased person's death, and (5) all other available information. Detailed findings of an autopsy must be attached to a coroner's report for each of the latter types of cases. (Sec. 313.09; sec. 313.12--not in the bill.)

The coroner must promptly *deliver* to the county's prosecuting attorney copies of all necessary records relating to every death in which, in the judgment of the coroner or prosecuting attorney, further investigation is advisable. A county prosecuting attorney also is permitted to obtain copies of records and other necessary information from the coroner's office. (Sec. 313.09.)

All records of a coroner are county property and, whether made by the coroner or by an individual acting under the coroner's direction or supervision, are *public records*. Those records, as "public records," must be open to inspection by the public, and any person may receive a copy of any of them or of parts of any of them upon a written demand accompanied by payment of a transcript fee at the rate of 15¢ per hundred words or a minimum fee of \$1. (Secs. 313.09 and 313.10.)

Changes proposed by the bill

Access to a deceased person's records. The bill permits a coroner, deputy coroner, or a representative of a coroner or deputy coroner, in connection with the performance of duties under the Coroner's Law (see above), to submit a written request to inspect and receive a copy of the *medical and psychiatric records* of a deceased person. The person to whom the request is delivered (e.g., a physician) must make the requested records in that person's custody available *during normal business hours* to the coroner, deputy coroner, or representative for purposes of *inspection and copying*. A person who provides copies of medical or psychiatric records pursuant to that type of request is permitted, in turn, to make a written request for *reimbursement* in a specified amount for the necessary and reasonable costs of copying the requested records. In the case of the latter type of request, the coroner, deputy coroner, or representative must remit the amount to the person upon receipt of the copies. (Sec. 313.091, first paragraph.)

Effects of providing the deceased person's records. The bill specifies that all of the following are effects of the provision of medical and psychiatric records to a coroner, deputy coroner, or representative under the latter provisions:

- The provided medical and psychiatric records are not "public records" under the Public Records Law (sec. 313.091, second paragraph, and sec. 313.10).³

- The release of medical or psychiatric records does not constitute a willful betrayal of a professional confidence for which the State Medical Board could take disciplinary action under the State Medical Board Law (sec. 313.091, second paragraph). (See "Disciplinary action," above.)

- Copies of provided medical and psychiatric records are not to be delivered to a prosecuting attorney (1) when the coroner or the prosecuting attorney considers further investigation advisable into a particular death and (2) when the prosecuting attorney requests records or other information from the coroner's office (sec. 313.09). (See "Coroner office records," above.)

Continuing education for coroners

Existing law

A candidate for election to or an appointee to the office of county coroner must be a physician who has been licensed to practice as a physician in Ohio for a period of at least two years immediately preceding the election or appointment and must be in good standing in the profession (sec. 313.02).

³ *The Public Records Law generally requires that all "public records" be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a public office or person responsible for public records must make copies available at cost, within a reasonable period of time. These provisions in section 149.43 of the Revised Code are similar to the specific inspection and copying of records provisions in the Coroners Law.*

A public record generally is defined as any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units. However, both the Public Records Law and other statutes exclude certain records from the latter broad definition. One current exception is medical records, which are defined as any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment (sec. 149.43(A)(1)(a) and (3)). The bill specifies that the term "medical record" in its provisions is to have this same meaning (sec. 313.091).

Changes proposed by the bill

The bill provides two types of *continuing education requirements* for certain or all coroners. First, beginning in 2000 and in each fourth year thereafter, after the general election in November and prior to taking office, a *newly elected* coroner must attend and successfully complete 16 hours of specified continuing education (see below).⁴ Similarly, within 90 days after appointment to a coroner's office, a *newly appointed* coroner must attend and successfully complete 16 hours of the specified continuing education. These hours of continuing education must be sponsored by the Ohio State Coroners Association (OSCA) and do not count toward fulfilling the continuing education requirement for all coroners described in the next paragraph. (Sec. 313.02(B)(1).)

The bill's second continuing education requirement begins in 2001. Under it, *every coroner* generally must attend and successfully complete, during the coroner's four-year term of office, a total of 32 hours of continuing education at programs sponsored by the OSCA. Twenty-four of those 32 hours generally must be successfully completed at OSCA-sponsored *statewide* meetings, with the remaining eight of those 32 hours being successfully completed at OSCA-sponsored *regional* meetings. The bill permits the OSCA to approve a coroner's attendance at a continuing education program that it does not sponsor, but hours of successful completion at a non-sponsored program count only toward fulfilling the "24 hours--statewide meeting" component of this continuing education requirement. (Sec. 313.02(B)(2).)

Finally, the bill requires the OSCA or another sponsoring organization to provide a "successful completion" certificate to each coroner who successfully completes a continuing education program required by the bill (sec. 313.02(B)(3)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-16-99	pp. 1369-1370

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⁴ *The bill defines a "newly elected coroner" as a person who did not hold the office of coroner on the date the person was elected coroner (sec. 313.02(B)(1)).*