



Bill Analysis

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Legislative Service Commission

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BILL SUMMARY

- Modifies the current law providing that the nursing law does not prohibit the activities of nursing aides and other auxiliary workers in nursing homes and similar institutions by specifying that this provision applies as long as the activities are performed in accordance with rules adopted by the Board of Nursing regarding delegation of nursing tasks by registered nurses (RNs) to trained but unlicensed individuals.
- Specifies that the nursing student exception to the nursing law applies only if the student's practice is under the auspices of a prelicensure nursing education program and the student acts under the direct supervision of an RN serving for the program as a faculty member, teaching assistant, or preceptor.
- Expands the practice of nursing to include nursing through electronic communication.
- Permits an RN or licensed practical nurse (LPN) to administer local anesthesia in conjunction with procedures performed by an individual who is authorized to practice in this state and is acting within the course of the individual's professional practice.
- Provides immunity from civil action to any nurse or other individual who follows the orders of an advanced practice nurse, certified nurse-midwife, certified registered nurse-anesthetist, certified nurse practitioner, or clinical nurse specialist.
- Expands the activities permitted in Ohio by individuals licensed to practice nursing in another jurisdiction.

- Provides that to be approved as an advanced practice nurse for the existing pilot programs an RN must meet the same educational or national certification requirements that must be met to receive a certificate to practice as a certified nurse-midwife, clinical nurse specialist, or certified nurse practitioner.
- Requires a nurse to report any violation of a statute or administrative rule governing the practice of nursing that the nurse becomes aware of in the course of employment, including a violation by the employer or another nurse.
- Requires an employer to report to the Board any nurse the employer believes has violated any statute or rule governing the practice of nursing.
- Permits the Board to publish the name of an employer that fails to report a violation.
- Subjects a nurse to discipline by the Board for failing to establish and maintain professional boundaries with a patient.
- Modifies certain aspects of investigating and disciplining a nurse, including procedures for conducting an adjudication, confidentiality of disciplinary actions, and jurisdiction over inactive nurses.
- Provides that the Board is not required to act on a minor violation of the nursing law if certain circumstances exist.
- Permits the Board to enter into a consent agreement with a license holder to resolve an alleged violation of the nursing law.
- Permits employees of the Board to have access to certain drug records.
- Modifies the Alternative Program for Chemically Dependent Nurses by specifying that the program is a monitoring program, making the program available to additional persons, and eliminating the Board's duty to approve treatment providers.
- Specifies that any disciplinary action taken by the Board may be permanent.
- Changes the term of office for Board members to four years from five.

- Requires the Board to elect one of its registered nurse members to serve as the supervising member for disciplinary matters.
- Requires the Board to provide guidance and make recommendations to certain governmental entities regarding the practice of nursing.
- Modifies the procedure the Board must follow when issuing a license to practice nursing and renewing a license to practice nursing or certificate to practice in a specialized area of nursing.
- Modifies the fees for renewal of a certificate to practice in a specialized area of nursing, reinstatement of a lapsed license or certificate, and application and renewal of approval to practice as an advanced practice nurse.
- Modifies the schedule for authorization to approve continuing nurse education (CNE) programs and courses, adds a required CNE topic to the program, and permits the Board to use random sampling to ensure completion of CNE.
- Eliminates specific references to agreements between the Board and the Department of Health regarding nurse aide training.

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CONTENT AND OPERATION

Scope of practice

Delegation of nursing tasks to unlicensed individuals

(sec. 4723.32)

Current law specifies that the activities of persons employed as nursing aides, attendants, orderlies, or other auxiliary workers in patient homes, nurseries, nursing homes, hospitals, home health agencies, or other similar institutions are not prohibited by the nursing law. The bill specifies that this provision applies as long as the activities are performed in accordance with rules adopted by the Board of Nursing regarding delegation of nursing tasks by registered nurses (RNs) to trained but unlicensed individuals.

Nursing students

(sec. 4723.32(A))

Under current law, the practice of nursing by students is an exception to the nursing law only if the student's practice is an integral part of a program of study leading to initial licensure and approved by the Board. The bill specifies that the nursing student exception applies only if the student's practice is under the auspices of a prelicensure nursing education program and the student acts under the direct supervision of an RN serving for the program as a faculty member, teaching assistant, or preceptor.

Nursing care through electronic communication

(sec. 4723.01)

Under current law, the practice of nursing as an RN means providing nursing care requiring specialized knowledge, judgment, and skill derived from principles of biological, physical, behavioral, social, and nursing sciences. The practice of nursing as a licensed practical nurse (LPN) means providing nursing care requiring the application of basic knowledge of the biological, physical, behavioral, social, and nursing sciences. The bill includes providing nursing care through electronic communication in the practice of nursing as an RN and the practice of nursing as an LPN.

Administering local anesthetics

(sec. 4723.151)

The bill permits an RN or LPN to administer topical or intradermal medications for the purpose of producing localized decreased sensation in conjunction with procedures performed by an individual who is authorized to practice in this state and is acting within the course of the individual's professional practice.

Practice of nursing as authorized by others

(secs. 4723.01 and 4723.17)

Under current law, part of the practice of nursing as an RN consists of administering medications, treatments, and executing regimens prescribed by physicians, dentists, optometrists, podiatrists, and advanced practice nurses. All of the nursing care provided by an LPN is provided at the direction of a physician, dentist, optometrist, podiatrist, or RN. Rather than specifying the particular individuals who prescribe certain activities that an RN performs or the individuals who direct an LPN's activities, the bill provides that an RN performs the acts and

that the LPN practices as "authorized" by an individual who has authority to practice in Ohio and is acting within the course of the individual's professional practice.

Immunity for individuals following the orders of a nurse

(secs. 4723.48 and 4723.591)

The bill provides an RN, LPN, or other individual who follows the orders of an individual who is a certified nurse-midwife, certified registered nurse anesthetist, certified nurse practitioner, clinical nurse specialist, or advanced practice nurse qualified immunity from liability in a civil action for injury, death, or loss to person or property resulting from the RN's, LPN's, or other individual's acts or omissions in performing any procedure, treatment, or other health care service pursuant to the orders, unless the act or omission was willful or wanton misconduct. Immunity applies if the RN, LPN, or other individual reasonably believed that the individual giving the orders was acting within the proper scope of practice or was relaying medical orders or other instructions from a collaborating or supervising physician, podiatrist, or dentist.

The practice of nursing by individuals licensed in another jurisdiction

(sec. 4723.32(G))

Under current law, the activities of an individual licensed to practice nursing in another jurisdiction are not prohibited if one of the following is the case:

- (1) The individual is engaging in the practice of nursing by discharging official duties while employed by the U.S. government or any agency thereof;
- (2) The individual is an employee of an individual, agency, or corporation located in the other jurisdiction in a position with employment opportunities that include transporting patients into, out of, or through Ohio, as long as each trip in Ohio does not exceed 48 hours.

The bill changes the provision of (2) above to a period that does not exceed 72 hours. The bill also permits an individual licensed to practice nursing in another jurisdiction to do the following:

- (1) Consult with an individual licensed in Ohio to practice any health related profession;
- (2) Engage in activities associated with teaching in Ohio as a guest lecturer at or for a nursing education program, continuing nurse education program, or in-service presentation;

(3) Conduct evaluations of nursing care that are undertaken on behalf of any nationally recognized accrediting organization;

(4) Provide nursing care to an individual who is in Ohio on a temporary basis, not to exceed six months in any calendar year, if the nurse is directly employed by or under contract with or on behalf of the individual;

(5) Provide nursing care during any disaster, natural or otherwise, that has been officially declared to be a disaster by a public announcement issued by an appropriate federal, state, county, or municipal official.

Advanced practice nurses for the pilot programs

Educational requirements for approval as an advanced practice nurse

(sec. 4723.55)

Under current law, for the purposes of the pilot program the Board may approve registered nurses as advanced practice nurses.¹ An applicant must have at least three years of experience in the practice of nursing as a registered nurse and be a certified nurse-midwife under Ohio law or be certified as a nurse practitioner or clinical nurse specialist by a national certifying organization recognized by the Board of Nursing. The bill does not change the requirements for an applicant who is a certified nurse-midwife, but provides that any other applicant must meet the educational or national certification requirements that must be met to receive a certificate of authority from the Board of Nursing to practice as a certified nurse practitioner or clinical nurse specialist.

Protocol for prescribing drugs

(secs. 4723.56, 4723.57, 4723.58, and 4723.59)

Current law requires an advanced practice nurse to practice according to a written standard care arrangement that has been developed with a collaborating physician. If the nurse is approved to prescribe drugs and therapeutic devices, the nurse and physician must develop a written protocol that establishes their arrangement with respect to the nurse's prescribing activities. Instead of requiring that a separate protocol be developed, the bill requires that the prescriptive authority provisions of the nurse's practice be included in the standard care arrangement.

¹ Section 4723.52 of the Revised Code establishes pilot programs to provide access to health care in underserved areas through the use of advanced practice nurses.

More than one standard care arrangement for nurses certified in a specialized area of nursing

(sec. 4723.01)

A standard care arrangement is a written, formal guide for planning and evaluating a patient's health care that is developed by a collaborating physician or podiatrist and a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner. The bill clarifies that nurses certified in a specialized area of nursing may have a standard care arrangement with more than one podiatrist or physician.

Reports by nurses of employers who violate the law

(secs. 4113.51 and 4113.52)

An employer in Ohio is prohibited from taking disciplinary or retaliatory action against an employee who reports that the employer is violating any local, state, or federal law, if the employee has made a reasonable and good faith effort to determine the accuracy of the information reported and has complied with statutory procedures. An employee is required to make a report to a supervisor or other responsible employment officer if the employee (1) becomes aware of a violation that the employer has the authority to correct and (2) reasonably believes that the violation is a felony or a criminal offense likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety. If the employer does not correct the violation within 24 hours, the employee may report the violation to a prosecuting attorney, a peace officer, the Inspector General, or another appropriate public official or agency that has authority over the employer. A civil action for injunctive relief or other remedies may be brought against an employer that takes any disciplinary or retaliatory action against an employee for making a report about the employer's violation.

These procedures continue to apply under the bill, but when the employee is an RN or LPN, the bill modifies or expressly restates the procedures. Under the bill, the requirement for a nurse to make a report applies whenever the nurse becomes aware in the course of employment of an action or omission that may be a violation of a statute or rule that is enforced by a state agency. "State agency" is expressly identified as every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government. The length of time for the employer to take corrective action is extended to the later of 24 hours after a nurse notifies the employer of the violation or until the close of the next regular business day. If the employer does not correct the violation, the bill expressly authorizes the nurse to make direct notification to the appropriate state agency. The bill also expressly prohibits an employer from taking disciplinary or retaliatory action against a nurse who makes a report against the employer.

Reports by employers and nurses of nurses who violate the law

(sec. 4723.34)

Under current law, every employer of RNs or LPNs must report to the Board the name of any nurse whose employment has been terminated due to conduct that would be grounds for disciplinary action by the Board. The bill requires every employer to report to the Board any current or former employee licensed as a nurse who has engaged in conduct that would be subject to disciplinary action by the Board. The bill also provides that if an employer fails to report a violation, the Board may publish the employer's name in any of the Board's publications, including information the Board maintains on the Internet.

The bill requires a licensed nurse to report to the Board any other RN or LPN the nurse believes has violated any statute or rule governing the practice of nursing.

Sanctioning power of the Board

Actions taken by the Board may be permanent

(sec. 4723.28(K))

Current law permits the Board to deny, permanently revoke, suspend, or place restrictions on any license or certificate issued by the Board. Under the bill, when the Board refuses to grant a license or certificate, revokes a license or certificate, or refuses to reinstate a license or certificate, the Board may specify that its action is permanent. An individual subject to permanent action taken by the Board is forever ineligible to hold a license or certificate of the type that was refused or revoked and the Board must not accept from the individual an application for reinstatement of the license or certificate or for a new license or certificate.

Sanctions in cases of a plea of no contest or a finding of eligibility for treatment in lieu of conviction

(sec. 4723.28(B))

Under current law, the reasons for which the Board may impose a sanction include the conviction of, plea of guilty to, or a judicial finding of guilt for various crimes. Regarding these crimes, the bill authorizes the Board to also impose a sanction if there is a judicial finding of guilt resulting from a plea of no contest or a judicial finding of eligibility for treatment in lieu of a conviction.

Sanction for failure to establish and maintain professional boundaries

(secs. 4723.07 and 4723.28(B))

The bill permits the Board to sanction a license or certificate holder for failure to establish and maintain professional boundaries with a patient. The bill requires the Board to adopt rules that establish the actions, omissions, or other circumstances that constitute a nurse's failure to establish and maintain professional boundaries with a patient.

Extending discipline to different nursing licenses

(sec. 4723.28(B)(1)(b))

The bill authorizes the Board to take disciplinary action against a nurse when the nurse has been subject to Board sanctions with respect to either a license to practice as an RN or LPN while holding the opposing license or prior to applying for the opposing license. For example, if an RN is also licensed as an LPN, and the Board imposes a sanction against the person's license as an RN, the bill permits the Board to impose a sanction for the same reason against the person's LPN license. As another example, if an LPN is disciplined under that license and later tries to receive a license as an RN, the bill permits the Board to use the same reason that the person was sanctioned as an LPN as a reason for refusing to issue a license to the person to practice as an RN.

Consent agreement to resolve an alleged violation of the law

(sec. 4723.28(C))

The bill permits the Board to enter into a consent agreement with an individual to resolve an allegation of a violation of a statute or rule governing the practice of nursing. A consent agreement, when ratified by a vote of a quorum, constitutes the findings and order of the Board with respect to the matter addressed in the agreement. If the Board refuses to ratify a consent agreement, the admissions and findings contained in the agreement are of no effect.

Minor violations

(sec. 4723.061)

The bill provides that the Board is not required to act on minor violations of the nursing law or rules adopted under it, if the violations are committed by individuals licensed under the nursing law and the Board determines that the public is adequately protected by issuing a notice or warning to the alleged offender.

The Board may investigate an individual's criminal background

(sec. 4723.28(F))

The bill provides that the Board may investigate an individual's criminal background by requesting information from the Bureau of Criminal Identification and Investigation. The Board may also apply for access to the computerized databases administered by the National Crime Information Center and the Law Enforcement Automated Data System, as well as other computerized databases administered for the purpose of making criminal justice information accessible to state agencies. The bill designates the Board as a criminal justice agency for the purposes of any state or federal law requiring, as a condition of being authorized to apply for access to these databases, that an entity be recognized under state law as a criminal justice agency.

Board not required to seal, destroy, redact, or modify its records

(sec. 4723.28(E))

Under current law, if the court seals a record of conviction on which the Board has based a disciplinary action, the sealing of the record has no effect on the Board's action or any sanction imposed by the Board. The bill specifies that the Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

Board action without a hearing

(secs. 4723.28(D) and 4723.281)

Under current law, the Board may impose a suspension without a hearing on a person licensed to practice nursing if it determines there is evidence that the license holder is subject to disciplinary action by the Board and that there is clear and convincing evidence that continued practice by the license holder presents a danger of immediate and serious harm to the public. The Board president and director are to make the preliminary determinations and present the evidence to the Board. The Board may then, by an affirmative vote of seven members of the Board not including the president, impose a suspension without a hearing. The bill provides that after consideration of the evidence that continued practice by the license holder presents a danger of immediate and serious harm to the public, the Board's president and director are to impose a suspension without a hearing.

The bill also provides that in situations in which it would otherwise be required to hold a hearing the Board is not required to hold the hearing if the applicant or license holder does not make a timely request for a hearing. If a hearing is not held, the Board may adopt, by vote of a quorum, a final order that

contains the Board's findings. In the final order, the Board may order any of the sanctions authorized by the nursing law.

Board's jurisdiction when a license or certificate is classified as inactive

(sec. 4723.28(L))

The bill specifies that the Board maintains jurisdiction to take disciplinary action even when an individual has a license or certificate of authority classified as inactive or fails to renew a license or certificate.

Access to certain drug records

(sec. 3719.13)

Under current law, prescriptions, orders, and other drug records required by law governing dangerous drugs and controlled substances are open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. The prescriptions, orders, records, and stocks are also open for inspection by employees of the State Medical Board for enforcement of the laws governing physicians. The bill expands access to these materials by requiring that they be open for inspection to employees of the Board of Nursing for purposes of enforcing the law governing the practice of nursing.

Monitoring of chemically dependent nurses

(sec. 4723.35)

Current law requires that the Board of Nursing establish the Alternative Program of Chemically Dependent Nurses, a program for nurses who abuse alcohol, controlled substances, harmful intoxicants, or other dangerous drugs. Under rules adopted by the Board, the program has been implemented as a monitoring program. The bill makes changes to reflect the monitoring nature of the program. Rather than having the program's name specified in statute, the bill requires the Board to select the name. The bill changes the title of the program's administrator to coordinator.

As under current law, the monitoring program must be made available to registered nurses and licensed practical nurses. The bill extends the program to other individuals under the Board's jurisdiction, including, for example, applicants for licensure and nurses who have lost their licenses to practice.

The bill eliminates provisions of current law that limit the Board's authority to conduct investigations and impose sanctions against persons who participate in the monitoring program, particularly with respect to voluntary participants. The

bill's conditions on the Board's authority to abstain from taking disciplinary action against a program participant are: (1) the individual must meet the eligibility requirements for admission into the program, (2) the individual must enter into a monitoring agreement with the program coordinator, (3) the individual must comply with the terms and conditions for continued participation in the program, as specified in the monitoring agreement, and (4) the individual must successfully complete the terms and conditions of the agreement.

Under current law, records of participants in the program are not public records and are confidential, except to the extent that the Board is given reports on individuals who fail to complete the program. The bill continues to provide for the confidentiality of the records, but permits the program's coordinator to disclose to the Board more than failure to complete the program. Under the bill, the coordinator may disclose records or information regarding an individual's progress and state of participation in the program to the Board's disciplinary section and to any person or government entity that the participant authorizes in writing to be given the records or information. In making these disclosures, the coordinator is prohibited from including any record of information that is protected under state or federal law providing for the confidentiality of mental health or substance abuse records. If the information or records are disclosed properly, the bill provides that the program coordinator, the Board, and the Board's employees and representatives are immune from civil liability as a result of making the disclosure.

Approval of treatment providers

(sec. 4723.342 (repealed))

The bill eliminates the provisions of current law requiring that the Board approve and designate treatment providers for "impaired" nurses.

Modifications relative to the Board of Nursing

Term of office for Board of Nursing members

(sec. 4723.02)

Under current law, Board of Nursing members are appointed for a term of five years. The bill reduces the term of office to four years.

Current law allows a person to serve one full term as a member of the Board. The bill permits a member to serve two full terms. A partial term of 30 months continues to be considered a full term.

Election of an RN to oversee disciplinary matters

(sec. 4723.02)

Current law requires that eight of the 13 members of the Board of Nursing be registered nurses. The bill requires the Board to elect one of its registered nurse members to serve as the supervising member for disciplinary matters.

Additional duty of the Board

(sec. 4723.06)

The bill adds to the duties of the Board the duty to provide guidance and recommendations to the General Assembly, the Governor, state agencies, and the federal government with respect to the practice of nursing.

File on applicants

(sec. 4723.06)

Under current law, the Board is required to maintain and have open for public inspection a file of applicants for and holders of licenses, registrations, and certificates granted by the Board. The bill eliminates the requirements that the Board maintain a file of applicants for licenses, registrations, and certificates.

Changes in procedure for licensing and license renewal

Licensing examination

(secs. 4723.06, 4723.07, 4723.09, and 4723.10)

Current law requires that the Board examine applicants for licensure to practice as an RN or LPN and permits the Board to use, in administering examinations for licensure, all or any part of the licensure examination of the National Council of State Boards of Nursing or any other national standardized nursing examination that determines whether a person is competent to commence practicing nursing as an RN or LPN. The bill eliminates the requirement that the Board administer the licensing examinations, instead it requires that the Board accept all or any part of a national standardized licensing examination. The bill provides that if the Board incurs any cost in its acceptance of an examination or in making the accepted examination available to applicants, the Board may require applicants to pay an amount sufficient to cover the cost incurred.

Elimination of notice to an applicant of additionally required documents

(sec. 4723.42(A))

The bill eliminates the requirement that the Board provide, not later than 15 days after receipt of an application for authorization to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-

midwife, or certified nurse practitioner, the applicant with written notice, by mail, of any additionally required documents that have yet to be submitted.

Board to provide application for renewal

(secs. 4723.24 and 4723.42(B))

Current law requires the Board to mail an application for renewal of a license to practice nursing to every active license holder and a renewal application for authorization to practice as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner to certificate holders. The bill modifies this procedure and requires that the Board "provide" a renewal application to every holder of an active license and certificate holders, except when the Board is aware that an individual is ineligible for license or certificate renewal for any reason, including pending criminal charges in this state or another jurisdiction, failure to comply with a disciplinary order from the Board or the terms of a consent agreement entered into with the Board, failure to pay fines or fees owed to the Board, or failure to provide on the Board's request documentation of having completed continuing nursing education requirements.

Fees

(sec. 4723.08; Section 8)

The bill reduces, to \$85 from \$100, the fee for biennial renewal of a certificate of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner. The reduction takes effect July 1, 2001.

The bill creates a new fee of \$100 for reinstatement of a lapsed license or certificate.

Current law requires the Board to establish by rule the application fees, not to exceed \$50, for approval and renewal of approval of advanced practice nurses. The bill establishes that the fee is \$50.

Status of a certificate when license is classified as inactive

(sec. 4723.47)

Under current law, if a certified nurse anesthetist's, clinical nurse specialist's, certified nurse-midwife's, or certified nurse practitioner's license to practice nursing expires for failure to renew, the nurse's certificate to practice nursing in one of specialized areas of nursing is automatically suspended until the license is reinstated. If the license is revoked or suspended due to sanctioning by the Board, the certificate of authority is automatically revoked or suspended. The

bill adds that if the license is classified as inactive, the certificate of authority is automatically classified as inactive while the license remains inactive.

Continuing nursing education

(sec. 4723.24(C))

Current law requires, for license renewal, that holders of active licenses to practice nursing complete in each two-year period 24 hours of continuing nursing education. The bill adds the requirements that at least one hour be directly related to the statutes and rules pertaining to the practice of nursing in Ohio.

The bill authorizes the Board to conduct a random sample of license holders to determine completion of required continuing nursing education.

Under current law, the Board authorizes, for a period of two years with the possibility of renewal, persons to approve continuing nursing education programs and courses. Instead of authorization for the specified two-year period, the bill permits the Board to establish by rule a schedule for authorization and renewal of authorization for those persons.

Training of nurse aides used by nursing homes

(secs. 3721.34 and 4723.061)

Current law requires that the nurse aides used in nursing homes be trained and evaluated for competency to perform nursing and nursing-related services. In implementing this requirement, the Director of Health is authorized to enter into agreements with the Board of Nursing or another state agency to conduct the process of approving programs for training and competency evaluation. In turn, the Board is authorized to enter into the agreements with the Director.

The bill eliminates the Board's express authority to enter into the agreements with the Director. In so doing, it eliminates the Nurse Aide Fund created in the state treasury for the Board's use in carrying out the agreements. Although the bill also eliminates the Director's express authority to advise, consult or cooperate with, or enter into agreements with the Board, it retains the Director's general authority to enter into agreements and otherwise work with any state agency.

HISTORY

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Introduced	11-29-99	p. 1375



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