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Bill Analysis
Legislative Service Commission

S.B. 19
123rd General Assembly
(As Introduced)

Sens. Drake, Prentiss

BILL SUMMARY

- Prohibits the delegation of nursing tasks to persons who are not nurses unless the tasks are delegated at the direction of a registered nurse.
- Repeals a provision specifying that the nursing laws do not prohibit the activities of certain persons, including nursing aides, attendants, orderlies, and persons practicing at the direction of physicians and dentists, but adds a provision specifying that nursing laws do not prohibit a physician from delegating duties to another individual.
- Increases the criminal penalties that may be imposed for the unauthorized practice of nursing to \$1,500 or 120 days imprisonment, or both (from \$500 or 90 days imprisonment, or both).
- Increases to \$1,500 (from \$500) the fine that the Board may impose against a nurse for violating the nursing laws.
- Permits the Attorney General, a prosecuting attorney, and any person with knowledge of a violation of the nursing laws to seek an injunction against the violation.
- Specifies that county prosecutors must take charge of and prosecute cases involving violations of the nursing laws when requested by the secretary of the Board of Nursing.
- Expressly allows a nurse to make direct reports to regulatory agencies when an employer is violating any law and prohibits the employer from taking any disciplinary or retaliatory action against the nurse.

- Specifies that a person has immunity from civil liability when reporting to or testifying before the Board of Nursing regarding any violation of the nursing laws.
- Requires the Department of Health to maintain a toll-free telephone line for accepting complaints regarding patient safety and to report violations to the appropriate regulatory agencies.
- Requires that health care providers report to the Department of Health certain facts about patient outcomes and the use of nurses, and that the information be maintained as a public record.

CONTENT AND OPERATION

Delegation of nursing tasks

(secs. 4723.03(F) and 4723.32(I))

Under current law, the practice of nursing as a registered nurse includes delegating nursing practice. According to rules adopted by the Board of Nursing, "delegation" is the transfer of responsibility for the performance of a selected nursing activity or task from a licensed nurse authorized to perform the activity or task to an individual who does not have the authority to perform the activity or task. The rules specify procedures to be followed in the act of delegation, including the requirement that delegation occur at the direction of a registered nurse.

The bill creates a statutory prohibition on delegating nursing tasks included in the practice of nursing as registered nurse or licensed practice nurse to a person who is not a registered nurse or licensed practical nurse, unless the tasks are delegated at the direction of a registered nurse. Violators are subject to the criminal penalties that are being increased by the bill (see "*Criminal penalties*," below).

The bill specifies that delegation by a registered nurse is permissible as long as it is done in accordance with the Board's rules. Under this specification, a registered nurse may delegate nursing tasks, other than medication administration, nursing assessment, analysis, or evaluation.

Exemptions from the nursing law

(sec. 4723.32)

The activities of certain persons are currently exempt from the laws regulating the practice of nursing. Included in the exemptions are: (1) persons who render medical assistance to a licensed physician, podiatrist, or dentist when under the direction, supervision, and control of the physician, podiatrist, or dentist, and (2) 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."

The bill repeals the exemptions that apply to persons who render medical assistance to physicians, podiatrists, or dentists and to nursing aides, attendants, orderlies, or other auxiliary workers. It provides, however, that the nursing laws do not prohibit a physician from delegating duties to another individual, if the physician is acting in accordance with the laws regulating the practice of medicine. The bill further provides that the nursing laws do not prohibit the activities of an individual who holds a valid license, certificate, or registration authorizing the practice of a profession in Ohio that is regulated by a board or other state agency that takes disciplinary actions against the individuals it regulates, if the individual is acting within the scope of that profession. The practical effect appears to be that a person is subject to the Board of Nursing's rules for delegation of nursing tasks unless the person holds a professional license, certificate, or registration or the activity being performed was delegated by a physician.

Criminal penalties

(sec. 4723.99)

Current law provides that an individual who violates the prohibition against the unauthorized practice of nursing may be fined \$500 or imprisoned not more than 90 days, or both. The bill increases the penalty to \$1,500 or 120 days imprisonment, or both.

Administrative fines imposed on nurses

(sec. 4723.28)

The Board of Nursing's current authority to discipline nurses for violating the nursing laws includes imposing a fine of not more than \$500 for each violation. The bill increases the maximum fine that may be imposed to \$1,500.

Investigation and prosecution of nursing law violations

(secs. 4723.04 and 4723.10)

The bill requires that the Board of Nursing elect one of its registered nurse members to serve as the supervising member for disciplinary matters and specifies that the supervising member is required to enforce the laws relating to the practice of nursing. If the supervising member has knowledge or notice of a violation, the member must investigate the matter and, on finding probable cause, file a complaint and prosecute the offender. When requested by the supervising member, the prosecuting attorney of the proper county is required by the bill to take charge of and conduct the prosecution.

Injunctions against the unlawful practice of nursing

(sec. 4723.40)

Under current law, the Board may apply to an appropriate court for an order enjoining the violation of any provision of the nursing law. The bill permits the Board to apply for an injunction when the violation involves any "unlawful activity." In addition to the Board, the bill allows the Attorney General, prosecuting attorney, or other person having knowledge of the unauthorized practice of nursing or other unlawful activity to pursue an action to enjoin the person engaged in the unauthorized practice or unlawful activity. Before applying for an injunction, the Attorney General, prosecuting attorney, or other person must notify the Board's supervising member for disciplinary matters and provide sufficient information.

On receiving a notice with sufficient information to determine that a person may have engaged in the unauthorized practice of nursing or other unlawful activity, the supervising member is required to notify the person by registered mail that information has been received alleging the unauthorized practice or unlawful activity. To be considered as containing sufficient information, the notice provided to the supervising member must contain (1) a description of the alleged unauthorized practice or unlawful activity, (2) the name of the person allegedly engaging in the practice or activity, (3) the name and address of the facility, institution, or other place where the practice or activity occurred, and (4) the approximate dates that the practice or activity occurred. The notice may contain additional information.

The person has 30 days to provide a sufficient answer demonstrating that the person is either authorized to engage in the practice or activity or is not in violation of the nursing laws. If the person fails to do so, the supervising member

must investigate. Based on the investigation's findings, the supervising member may request that the Attorney General, prosecuting attorney, Board of Nursing, or other person seeking an injunction proceed with the injunction. The court hearing the application for an injunction must give the same preference to the proceeding as is given to other hearings under the Administrative Procedure Act, irrespective of the position of the proceeding on the court's calendar. The bill specifies that injunction proceedings are in addition to penalties and other remedies provided in the nursing law.

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 a registered nurse or licensed practical nurse, 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.

Immunity for reporting or testifying before the Board of Nursing

(sec. 4723.341)

Current law provides that, in the absence of fraud or bad faith, a person or other entity is not subject to civil actions or liable for damages for reporting to the Board of Nursing or testifying in an adjudication involving specified situations, including the following: (1) incidents of negligence or malpractice, (2) acts that subject a nurse to disciplinary action by the Board, and (3) a person's qualifications, fitness, or character to practice nursing. The bill modifies this provision by applying the immunity to persons or entities reporting or testifying about any matter subject to the nursing laws. It also prohibits an employer from disciplining or dismissing an employee for making a report or testifying. In this case, the bill provides that the employee has the same rights and duties conferred by existing employment laws. Under those laws, the employee may bring a civil action against the employer and may be entitled to injunctive relief or other remedies, including reemployment, payment of back wages, reinstatement of fringe benefits and seniority rights, or any combination of these.

Toll-free patient safety telephone line

(sec. 3701.90)

The bill requires that the Department of Health maintain a toll-free telephone line for accepting calls regarding patient safety. Calls may be accepted from any person reporting an action or failure to act that a prudent person possessing an average knowledge of medicine and health would reasonably believe is likely to result in harm to a patient. The bill authorizes the Department to make the toll-free line available by obtaining a separate line or by using a line that the Department maintains for accepting calls for other purposes.

The person submitting the report is not required to provide any information that could reveal the person's identity. The bill provides that the information reported is not a public record and may be used only for notifying the appropriate authorities.

Not later than 72 hours after receiving a report that identifies the person or government entity allegedly responsible for harming a patient, the Department must notify the person or government entity that enforces the laws or rules applicable to the person or entity allegedly responsible for the harm. The notice must include a description of the allegation that is the subject of the report. If the Department receives notice that it informed the incorrect enforcement agency, the

Department must determine the appropriate agency and provide notice to that agency.

The Department is permitted by the bill to adopt rules to implement the provisions regarding reports on patient safety. It does not specify that public hearings must be held on proposed rules.

Collection of data on health care providers

(sec. 3701.91)

The bill requires a health care provider to report to the Director of Health specified information on each of the provider's facilities. The health care providers subject to the reporting requirements are hospitals, home health agencies, ambulatory surgical facilities, emergency facilities, freestanding dialysis centers, freestanding inpatient rehabilitation facilities, freestanding birthing centers, freestanding radiation therapy centers, and freestanding or mobile diagnostic imaging centers.

Reports must be made in the form and manner and within the time limits prescribed in rules to be adopted by the Director under procedures that do not require public hearings. The following information must be reported and is to be open for review as a public record:

(1) Incidence of adverse patient care outcomes, including medication errors, patient injury, decubitus ulcers, urinary tract infections, pneumonia, and facility-acquired infections;

(2) Patient mortality rate;

(3) Patient satisfaction with the facility;

(4) Average length of stay;

(5) Number of registered nurses providing direct care and the average number of patients being cared for daily by each registered nurse who provides direct care;

(6) Number of individuals providing direct care who do not hold professional licenses;

(7) For each registered nurse employed, the total number of individuals in each of the following categories: (a) patients receiving direct care from the nurse, (b) patients not receiving direct care from the nurse but for whom the nurse is

responsible, and (c) individuals other than patients to whom the nurse delegated nursing tasks;

(8) Number of licensed practical nurses providing direct care to patients;

(9) Methods of determining and adjusting staffing levels and the provider's compliance with the methods;

(10) Employee satisfaction with the facility.

The bill authorizes the Director to assess any health care provider that fails to submit the required information a penalty of not more than \$1,000 for each day of the failure. If, ten days after the Director mails a bill for a penalty, the provider has not submitted the information, the appropriate court of common pleas, at the request of the Director, may issue an order requiring the provider to submit the information, pay the penalty, or both.

Penalties collected must be used for the administration and enforcement of the bill's reporting requirements and for the toll-free patient safety telephone line. Any amount collected that exceeds the amount necessary for those purposes is to be used in a manner determined by the Director.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 28

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