Alan Van Dyne *Legislative Service Commission*

Sub. S.B. 19

123rd General Assembly
(As Reported by S. Health, Human Services & Aging)

Sens. Drake, Prentiss

BILL SUMMARY

- Prohibits the delegation of nursing tasks, unless the tasks are delegated at the direction of a registered nurse.
- Repeals a provision of current law 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 the nursing laws do not prohibit a physician or dentist 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 the Board of Nursing may impose on 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 a person has immunity from civil liability and protection from retaliation by an employer 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.
- Permits the Public Health Council to adopt rules that require hospitals to report any information the Council considers relevant to patient safety.

CONTENT AND OPERATION

Delegation of nursing tasks

(secs. 4723.03(F), 4723.031, 4723.321, and 4723.32(I))

Under current law, the practice of nursing as a registered nurse includes delegating nursing practice. Under 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, 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 its prohibition on delegation does not prohibit either of the following:

(1) A health professional from acting in accordance with the professional's practice established by holding a license, certificate, or registration authorizing the practice of a health profession in Ohio that is regulated by a board or other state agency that takes disciplinary actions against the individuals it regulates;

(2) An individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under existing laws pertaining to schools.

Standards and limitations

(sec. 4723.321)

The bill provides that delegation by a registered nurse is permissible as long as it is done in accordance with specified requirements. The delegation must be made in accordance with the Board's rules, which the bill expressly requires the Board to adopt. The nursing task being delegated must not involve nursing assessment, analysis, or evaluation. In general, the nursing task being delegated must not involve any part of the process of medication administration. The bill

establishes two exceptions to the general prohibition on delegating medication administration:

(1) When the delegation occurs pursuant to existing laws governing schools and programs for the individuals with mental retardation and developmental disabilities;

(2) When the delegation is limited to the task of applying an over-the-counter topical medication to intact skin for the purpose of improving a skin condition or providing a barrier. In this case, the nurse may delegate the task to an individual who is not licensed as a health professional only if the individual has been trained to apply the medication.

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, and 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 and the individual performing the duties acts under the direction, supervision, and control of the physician. The bill extends the same provisions to duties delegated by a dentist.

Penalty for unauthorized practice of nursing

(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.

Board's supervising member

(sec. 4723.04)

The bill requires that the Board of Nursing elect one of its registered nurse members to serve as the supervising member for disciplinary matters.

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 regarding the practice of nursing." In addition to the Board, the bill allows the Attorney General, a 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 alleged offender 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) if a particular individual can be identified, the name of the person involved in the practice or activity, (3) the name and address of the facility, institution, or other place where the practice or activity occurred, (4) the approximate dates that the practice or activity occurred, and (5) any additional information the Attorney General, prosecuting attorney, or other person considers relevant.

The alleged offender has 30 days to respond to the notice. If that person fails to provide a timely and sufficient response, 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 petition. The court hearing the petition must give the same preference to the proceeding as is given to 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.

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.

Employee reports regarding patient safety

(sec. 4113.512)

Current law prohibits an employer 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.

Under the bill, the employer of an employee whose duties include performing or supervising the performance of services related to the health care of individuals is required to make information available to the employee explaining the employee's duty to make reports under existing law, as well as the employee's opportunity to make reports regarding patient safety through the Department of Health's patient safety toll-free telephone line.

Reports from nurses

(secs. 4723.28 and 4723.33)

The bill permits the Board of Nursing to take disciplinary action against a registered nurse or licensed practical nurse for failing to make a report that is required by the Board or the Revised Code when the license holder has reason to believe that an action or failure to act has resulted or is likely to result in harm to a patient. This provision specifically applies to a nurse's failure to make the reports that all employees are required to make under existing law.

In turn, the bill expressly extends the existing protections from employer retaliation to a nurse who makes a mandatory patient safety report or a report that may be made through the Department of Health's patient safety toll-free telephone line. The protections extend to the nurse's participation in any investigation, administrative proceeding, or judicial proceeding resulting from the report.

General immunity for reporting to the Board

(secs. 4723.33 and 4723.341)

Current law provides that, in the absence of fraud or bad faith, an individual, a Board of Nursing member or employee, a health care facility, association, or society, or an insurer is not subject to civil actions or liable for damages as a result of making a report to the Board or testifying in an adjudication involving specified incidents. These incidents are identified as (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 the immunity provision by applying it 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 as those 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 remedies.

Information reported by hospitals

(sec. 3701.07)

Under current law that authorizes the Public Health Council to adopt rules, hospitals and dispensaries are required to report specified information to the Department of Health. The information is limited to that necessary to classify the facilities as general or specialty facilities.

The bill provides for the reporting of information from a hospital or dispensary for purposes other than classification. It permits the Council to adopt rules requiring the reporting of any information that the Council considers relevant to the safety of patients served by the institution. In place of the existing requirement to prescribe forms for reporting information, the bill requires the Council to prescribe the manner in which reports must be submitted.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 28
Reported, S. Health, Human Services & Aging	11-23-99	p. 1196

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