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Bill Analysis
Legislative Service Commission

S.B. 111
123rd General Assembly
(As Introduced)

Sen. Drake

BILL SUMMARY

- Requires that the Board of Nursing assume the duty of certifying dialysis technicians and prohibits a dialysis technician from practicing without a certificate.
- Requires that dialysis technicians practice only under the supervision of a physician or registered nurse.
- Establishes sexual misconduct with a patient as a reason for the Board to impose administrative sanctions against a dialysis technician and extends the provision to registered nurses and licensed practical nurses.
- Creates, under the Board of Nursing, the Advisory Group on Dialysis.

CONTENT AND OPERATION

Dialysis technician certification

(secs. 4723.02(Q), 4723.72(A)(1)(a) and (B), 4723.73, and 4723.99; Section 3)

The bill prohibits a person from performing dialysis (as a dialysis technician), and from claiming to the public to be a dialysis technician, unless the person holds a current, valid certificate to practice as a dialysis technician. "Dialysis care" is defined as performing and monitoring dialysis procedures, including initiating, monitoring, and discontinuing dialysis, drawing blood, administering medications essential to the dialysis process, and responding to complications that arise during dialysis.

Under the bill, the Board of Nursing issues certificates as permanent and temporary certificates. Only a person who holds a permanent certificate may use the title "Ohio Certified Dialysis Technician" or "OCDT." The bill prohibits the

use of any other title or initials representing that a person is authorized to perform dialysis unless the person holds a permanent certificate.

The bill's requirements to be certified and to perform dialysis as specified in the bill are delayed until one year after the bill's effective date. Any person who violates these requirements is subject to a fine of \$500, imprisonment of not more than 90 days, or both.

Practice limitations

(secs. 4723.72(A)(1)(b) to (e) and 4723.79(J))

For a dialysis technician to perform a dialysis procedure, the bill requires that the procedure be delegated to the technician by a physician or registered nurse. The bill permits a dialysis technician to administer medication, but only in accordance with standards adopted by the Board and as ordered by a licensed health professional authorized to prescribe drugs.¹ The technician must be under the supervision of a physician or registered nurse and in the immediate presence of the physician or nurse. If the technician is providing home dialysis care, the person must be supervised in accordance with rules for home dialysis adopted by the Board. The rules must include a requirement for monthly home visits by a registered nurse to monitor the quality of dialysis care.

With regard to medication administration by a dialysis technician, only the following medications may be administered: (1) intradermal lidocaine or other single therapeutically equivalent local anesthetic for the purpose of initiating dialysis treatment, (2) intravenous heparin or other single therapeutically equivalent anticoagulant for the purpose of initiating and maintaining dialysis treatment, (3) intravenous normal saline, and (4) patient specific dialysate, to which the person may add electrolytes but no other additive or medication.

¹ *In this context, the licensed health professionals authorized to prescribe drugs would primarily be physicians. Podiatrists and dentists may prescribe drugs, as well as veterinarians. Certain advanced practice nurses may prescribe drugs, but only those listed on a formulary established by the Board of Nursing. Some optometrists may prescribe drugs, but the statutory list of drugs they may prescribe does not appear to include the medications that a dialysis technician may administer.*

Exemptions

(sec. 4723.72(A)(2))

The prohibition against performing dialysis without a certificate as a dialysis technician does not apply to the following: (1) a patient who performs self or home dialysis with little or no professional assistance, if the patient has completed a Medicare-approved self or home dialysis training program, (2) a person who assists a friend or family member in performing self or home dialysis, if the person has completed a Medicare-approved self or home dialysis training program, (3) a student performing dialysis under the supervision of an instructor as an integral part of a dialysis training program approved by the Board of Nursing, (4) a registered nurse or licensed practical nurse, or (5) a physician.

Dialysis training programs

(secs. 4723.72(C), 4723.74, 4723.79(A), and 4723.99)

The bill prohibits a person from operating a dialysis training program unless the program is approved by the Board of Nursing under the bill. Anyone who violates this provision is subject to a fine of \$500, imprisonment of not more than 90 days, or both.

A person seeking to operate a training program must apply to the Board and pay the fee prescribed by the Board. If the program meets the Board's requirements for approval, the Board must approve the program. The bill requires the Board to adopt rules prescribing the application process, the fee to be paid, and the requirements that must be met for approval. The requirements for approval must include standards to be satisfied regarding curriculum, length of training, and instructions in patient care. The rules adopted apply to reapproval of training programs, as well as withdrawal of approval.

Qualifications for certification

(sec. 4723.75)

A person seeking to perform dialysis as a dialysis technician must apply to the Board of Nursing for a certificate to practice as a dialysis technician. The application must include the fee established in rules adopted by the Board. The Board must issue a certificate to each applicant who meets the requirements specified in the bill and in rules adopted by the Board.

Under the bill, to receive the certificate, the applicant must (1) be 18 years of age or older, (2) possess a high school diploma or high school equivalence



diploma, (3) successfully complete a dialysis training program, (4) perform dialysis as an employee of a dialysis provider for not less than 12 months before applying for certification, and (5) pass a certification examination that demonstrates the applicant's competence to perform dialysis.

The applicant must pass the examination not later than 18 months after entering a Board-approved dialysis training program. If an applicant does not pass the examination within 18 months, the applicant must repeat and successfully complete the same training program, or complete another Board-approved training program, and pass the examination not less than six months after entering the program. If an applicant does not pass the examination within six months, the applicant must wait not less than one year before entering or reentering a training program. The applicant then must successfully complete the program and pass the examination not later than six months after entering the program.

The certification examinations may be conducted by the Board itself or by testing organizations that have been approved by the Board in accordance with rules adopted under the bill. If the Board conducts the examinations, it may use all or part of a standard examination created by an approved testing organization. Regardless of who conducts the examination, it must cover all of the subjects the Board specifies in its rules.

Persons who passed certification examinations before the bill

(sec. 4723.75(A)(4)(b))

The bill provides for the issuance of certificates to persons who passed a certification examination before the bill's effective date. The operative difference appears to be that a person who qualifies under this provision is not required to complete a Board-approved dialysis training program. To receive a certificate under this provision, an applicant must hold a current certificate from a Board-approved testing organization or provide evidence to the Board of having passed an approved testing organization's examination not longer than five years before the bill's effective date. The applicant's employer must provide the Board with information attesting to the person's competence to perform dialysis, as specified in rules adopted by the Board.

Endorsement of out-of-state licenses

(secs. 4723.07(G) and 4723.75(A)(4)(c))

The bill provides for the issuance of a certificate to practice as a dialysis technician to a person who submits to the Board satisfactory proof of holding a

license, certificate, or other form of authority to perform dialysis issued by another state. The other state must have standards for dialysis technicians that the Board considers comparable to those in Ohio. The Board is required to adopt rules establishing requirements for issuing certificates by endorsement.

Renewal and continuing education

(secs. 4723.77 and 4723.79(F))

A certificate to practice as a dialysis technician expires biennially and may be renewed. The standard renewal procedures of existing law apply to the renewal process. Renewal also must be done in accordance with rules adopted by the Board. The rules must include a schedule for renewal, a renewal fee, and continuing education requirements. The bill specifies that the renewal fee can be no greater than the fee the Board charges for renewing the licenses of nurses (\$35).

Temporary certificates

(secs. 4723.76 and 4723.79(C))

The bill provides for the issuance of a temporary certificate to practice as a dialysis technician. The Board of Nursing is required to adopt rules regarding the application process, fee, and requirements for issuance of a temporary certificate. The bill specifies that the fee can be no greater than the fee the Board charges for issuing licenses by examination to nurses (\$50).

A temporary certificate is to be issued to an applicant who provides documentation from an employer demonstrating that the person is competent to perform dialysis, if one of the following applies to the applicant:

(1) The person has successfully completed a Board-approved dialysis training program. Under this provision, the certificate is valid for 18 months from the date on which the person entered a dialysis training program;

(2) The person is, on the bill's effective date, employed as a dialysis technician but has been so employed for less than 12 months. In this case, the certificate is valid for the number of months equal to 18 months minus the number of months of employment. For example, if the person has worked for seven months, the certificate will be valid for 11 months.

(3) The person has experience as a dialysis technician in a jurisdiction that does not regulate dialysis technicians and the Board believes that the person does not require additional training. If the person has worked for 12 months or longer, the certificate is valid for six months. If the person has worked for less than 12



months, the certificate is valid for the number of months equal to 18 months minus the number of months of employment.

A temporary certificate may be renewed once if the holder enrolls or re-enrolls in a dialysis training program. A person holding a temporary certificate must provide a copy of the certificate to the dialysis provider who employs the person. The bill prohibits a temporary certificate holder from acting as a trainer or preceptor in a dialysis training program.

Disciplinary action

(secs. 4723.28 and 4723.281)

For purposes of the Board's regulation of dialysis technicians, the bill extends the same authority to take disciplinary action as the Board currently has in its regulation of registered nurses and licensed practical nurses. The sanctions that may be imposed are as follows: denial or refusal to grant a certificate, revocation or permanent revocation, suspension, placing restrictions on the certificate, reprimanding or otherwise imposing discipline, and imposition of a fine of not more than \$500. The procedures for taking disciplinary action against a dialysis technician are the same as those used by the Board for imposing sanctions against a nurse.

Most of the grounds for taking disciplinary action against nurses are likewise extended to dialysis technicians. For example, sanctions may be imposed for (1) committing fraud in obtaining a certificate, (2) being convicted of a felony, a misdemeanor committed in the course of practice, or any crime involving moral turpitude, (3) being impaired in the ability to practice by substance abuse, physical disability, or mental disability, and (4) failing to practice in accordance with acceptable and prevailing standards for providing safe care to patients. A summary suspension, which occurs prior to the opportunity for a hearing, may be imposed when the Board determines there is evidence that a dialysis technician has committed one of several specified crimes, including murder, rape, arson, and aggravated burglary.

Sexual misconduct

(sec. 4723.28(B)(28))

The bill adds a new reason for which the Board may take disciplinary action against nurses, and again, permits the Board to discipline dialysis technicians for the same reason. Under this provision, the Board may impose sanctions for engaging in certain sexual behavior with a patient, other than the person's spouse.

The restricted acts are as follows: (1) sexual contact, defined as any touching of an erogenous zone of another person for the purpose of arousing or gratifying either person, and (2) verbal behavior that is sexually demeaning to the patient or may be reasonably interpreted by the patient as sexually demeaning. Such an act is restricted regardless of whether it is consensual.

Dialysis registry

(sec. 4723.78)

The bill requires the Board of Nursing to establish a dialysis registry. The registry must include (1) the names of, and other identifying information about persons who have enrolled in a dialysis training program and persons who hold a permanent or temporary certificate to practice as a dialysis technician and (2) the name and location of the dialysis providers who employ certified dialysis technicians. The bill requires that all persons provide information as needed for the registry. Procedures for providing information and for the Board's release of information from the registry are to be established in rules adopted under the bill.

Rule-making authority

(sec. 4723.79; Section 4)

The bill requires the Board of Nursing to adopt rules to administer and enforce the certification and practice of dialysis technicians. In addition to the rules expressly referenced in the bill, the rules must include any other procedures or requirements necessary for the administration and enforcement of the certification program. All rules adopted under the bill must be adopted in accordance with the Administrative Procedure Act.

Initial rules must be adopted not later than 180 days after the bill's effective date. In adopting the rules, the Board is required to consult with representatives designated by the Ohio Renal Association, Ohio Renal Physicians Association, National Association of Nephrology Technologists, and American Nephrology Nurses Association.

Advisory Group on Dialysis

(sec. 4723.71; Section 5)

The bill establishes under the Board of Nursing the Advisory Group on Dialysis. The advisory group is to advise the Board on the qualifications, standards for training, and competence of dialysis technicians, and all other matters

related to dialysis technicians. Meetings of the group are to be chaired by a Board representative.

The Board appoints the members of the advisory group. Representatives of certain interested parties must be appointed, while other persons may be appointed at the recommendation of the mandatory members. The mandatory membership includes the following:

(1) Four dialysis technicians who, except for initial appointments, hold certificates to practice issued by the Board;

(2) A registered nurse who regularly performs dialysis and cares for patients who receive dialysis;

(3) A physician specializing in nephrology;

(4) A dialysis center administrator;

(5) A dialysis patient;

(6) A representative of the End-Stage Renal Disease Network, which consists of all Medicare-approved end-stage renal disease facilities in a particular geographic area designated by the federal Health Care Financing Administration.

After staggered initial terms, the mandatory members are to serve for three-year terms, with each term ending on the same day of the month as did the term it succeeds. Any additional members are to serve for terms specified by the Board. All members are to serve at the Board's discretion and will be reimbursed for actual and necessary expenses.

The bill specifies that the creation of the advisory group is not subject to the existing statute that requires boards and commissions to be examined every four years for renewal or abolishment.

Administrative procedures

The bill extends many of the Board of Nursing's existing administrative powers and duties pertaining to its regulation of nurses to the bill's requirement that the Board regulate dialysis technicians. These powers and duties include the following:

(1) The duty to approve peer support programs for dialysis technicians and to maintain a list of approved programs (secs. 4723.06 and 4723.07(I));

(2) The authority to abstain from taking disciplinary action against a dialysis technician for chemical dependency if the Board believes the person can be monitored through its alternative program for chemical dependency (sec. 4723.34);

(3) The authority to hold closed meetings when considering the summary suspension of a dialysis technician's certificate to practice (sec. 121.22(D));

(4) The authority to adopt rules on the use of "universal precautions" when performing an exposure-prone invasive procedure (sec. 4723.07(M));

(5) The duty to adopt rules establishing requirements for restoring an inactive or lapsed certificate and for reinstating a suspended certificate (sec. 4723.07(G) and (H));

(6) The duty to provide a replacement copy of a certificate and to verify a person's certification to another jurisdiction (sec. 4723.271);

(7) The authority to impose fees on dialysis technicians (sec. 4723.08);

(8) The general duty to assume and exercise all powers and duties conferred on the Board with regard to dialysis technicians (sec. 4723.04).

COMMENT

The bill includes the certification of dialysis technicians within the Board of Nursing's existing laws, Chapter 4723. of the Revised Code. The term "certificate" is included in several laws that pertain to both nurses and dialysis technicians. In some cases, it is not apparent whether the addition of the term has an unintended affect on a nurse who holds a certificate to practice as a certified nurse-midwife, certified registered nurse anesthetist, certified nurse practitioner, or clinical nurse specialist. A clarifying amendment may be necessary.

HISTORY

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