



Sub. S.B. 172*

123rd General Assembly

(As Reported by H. Health, Retirement & Aging)

Sens. Drake, McLin, Hagan, Prentiss, Herington, Spada

BILL SUMMARY

- Authorizes a pharmacist to enter into a consult agreement with a physician to manage the drug therapy of an individual in a hospital or long-term care facility, as long as the pharmacist is acting according to a policy developed by the hospital or facility.
- Expands the disciplinary powers of the State Board of Pharmacy by allowing the Board to impose limits on a license to practice pharmacy, modifying the reasons for which the Board may impose licensing sanctions, permitting the Board to require a pharmacist or pharmacy intern who appears to be impaired to submit to a physical or mental examination, and preventing an applicant from withdrawing, without Board approval, an application for authority to practice pharmacy as a pharmacist or pharmacy intern.
- Requires that terminal distributors of drugs provide adequate safeguards for the safe and effective practice of pharmacy.
- Authorizes the health commissioners of the health districts that constitute a combined primary registration district to jointly appoint the local registrar of vital statistics for the combined district.
- Authorizes a board of health, on a recommendation of the health commissioner, to remove from office the local registrar of vital statistics.

* *This analysis was prepared before the report of House Health, Retirement, and Aging Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Permits an optometrist who retired or relocated prior to March 9, 1999, to apply for reinstatement of the optometrist's expired license by paying one annual renewal fee and a reinstatement fee and without necessarily having to pass all or part of the optometry licensing examination.
- Permits an optometrist whose license has expired to renew the license during a four-month late renewal period by paying an additional fee of \$75.
- Requires the Ohio Department of Alcohol and Drug Addiction Services to establish and administer a process for the certification or credentialing of chemical dependency professionals for the purpose of qualifying the services they provide for Medicare or Medicaid reimbursements.

CONTENT AND OPERATION

PHARMACISTS

Pharmacist-physician consult agreements

(sec. 4729.39)

Current law permits a pharmacist to enter into a "consult agreement" with a physician under which the pharmacist is authorized to manage an individual's drug therapy, but only to the extent specified by the individual's physician in the agreement. The statutory requirements that apply to consult agreements include the following:

(1) The pharmacist's management of drug therapy may include monitoring and modifying a prescription, but cannot include dispensing a drug that has not been prescribed by a physician.

(2) Before commencing any action to manage drug therapy, the pharmacist must make reasonable attempts to contact and confer with the physician. The pharmacist must cease the action if the pharmacist has not conferred with the physician within 48 hours.

(3) A separate agreement is required for each individual whose drug therapy is to be managed. Each agreement applies only to the particular diagnosis for which a drug has been prescribed.

(4) Each agreement must be recorded in writing and signed by the pharmacist, physician, and patient before it can be implemented.

Consult agreements within hospitals or long-term care facilities

Currently, regardless of whether an individual is or is not in a hospital or long-term care facility, the standards for managing the individual's drug therapy under a consult agreement are the same. The bill creates separate requirements for consult agreements that are implemented in a hospital or long-term care facility. These requirements include the following:

(1) Before a consult agreement may be entered into and implemented, a hospital or long-term care facility must adopt a policy for consult agreements. For any period of time during which a pharmacist or physician acting under a consult agreement is not physically present and available at the hospital or facility, the policy must require that another pharmacist and physician be available at the hospital or facility.

(2) The agreement must be made in writing and comply with the hospital's or facility's policy on consult agreements.

(3) The content of the agreement must be communicated to the individual whose drug therapy will be managed in a manner consistent with the policy on consult agreements.

(4) A pharmacist acting under an agreement must maintain in the individual's medical record a record of each action taken under the agreement.

(5) Communication between the pharmacist and physician must take place at regular intervals specified by the primary physician acting under the agreement.

(6) The agreement may be terminated by the individual or person authorized to act on behalf of the individual, the primary physician acting under the agreement, or the primary pharmacist. All parties to the agreement must be notified and the termination must be recorded in the individual's medical record.

(7) As under current law, the authority of a pharmacist acting under an agreement does not permit the pharmacist to act in a hospital or facility at which the pharmacist is not authorized to practice.

Consult agreements outside hospitals or long-term care facilities

Under the bill, the requirements that currently apply to all consult agreements continue to apply to an agreement implemented for individuals who are not hospital patients or residents of long-term care facilities. The bill modifies the requirements, however, to provide for alternate physicians and pharmacists. Under the bill, a physician entering into a consult agreement is authorized to specify one other physician who has agreed to serve as an alternate physician in the event that the

primary physician is unavailable to consult directly with the pharmacist. The pharmacist is authorized to specify one other pharmacist.

Privileged communications

(sec. 2317.02)

With a limited exception, current law prohibits a physician from testifying in court proceedings regarding communications made to the physician by a patient in that relation or the physician's advice to a patient. The bill provides that this privilege against testifying is not waived when a communication is made by a physician to a pharmacist or when there is communication between a patient and a pharmacist in furtherance of the physician-patient relation (see **COMMENT**).

Licensing sanctions

(sec. 4729.16)

Under current law, the State Board of Pharmacy is authorized to take disciplinary actions against pharmacists and pharmacy interns if the Board finds the individual to be guilty of certain actions. The sanctions that may be imposed include revocation, suspension, placement on probation, or refusal to issue or renew the identification card issued by the Board that authorizes an individual to practice pharmacy. Under the bill, the Board is also permitted to limit an identification card.

One of the existing reasons for which a licensing sanction may be imposed is being found guilty by the Board of willfully violating, conspiring to violate, or aiding and abetting the violation of any of the state's laws regarding drugs or the practice of pharmacy. The bill expands this reason for imposing sanctions by allowing the Board to impose sanctions if it finds an individual guilty of violating any of the Board's rules adopted under those laws.

Another existing reason for imposing sanctions is being found guilty of unprofessional conduct in the practice of pharmacy, which includes willfully and knowingly filling false or forged prescriptions and willfully and knowingly failing to maintain records of controlled substances. The bill eliminates the standard of "willfulness" and specifies that the following are unprofessional acts: (1) knowingly dispensing medication pursuant to false or forged prescriptions and (2) knowingly failing to maintain complete and accurate records of all dangerous drugs received or dispensed. Dangerous drugs are generally those drugs that require a prescription to be dispensed, while controlled substances are limited to drugs that are subject to further restrictions because they have the potential of being abused.

Unprofessional conduct in the practice of pharmacy also includes obtaining or attempting to obtain a license from the Board by fraud, misrepresentation, or deception. The bill removes these acts from the meaning of unprofessional conduct and, instead, expresses them as separate reasons for the Board to impose sanctions. As opposed to current law, the bill specifies that the acts of fraud may occur when applying for or securing a license as a manufacturer or wholesaler of controlled substances.

Orders for physical or mental examinations

(sec. 4729.16(E))

The bill authorizes the State Board of Pharmacy to require a person who is a pharmacist or pharmacy intern to submit to a physical or mental examination, or both, if the Board has reasonable cause to believe that the person is physically or mentally impaired. The Board must act pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (Chapter 119.).

Conference calls on summary suspensions

(secs. 121.22, 3719.121, and 4729.16)

Current law permits the State Board of Pharmacy to suspend the license of a person who is a pharmacist or pharmacy intern without a hearing if the Board determines that there is clear and convincing evidence that continuation of the person's practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others. The bill provides that a telephone conference call may be used to review the allegations and take a vote on suspension. When this occurs, the Board is exempt from the general law that requires public officials to act in open meetings.

Cooperation with government investigations

(sec. 4729.19)

The bill requires a pharmacist to cooperate with federal, state, and local government investigations and to divulge all relevant information when requested by a government agency. The bill does not specify a penalty for violating this requirement. However, the Board has the authority to take disciplinary action against a pharmacist who violates any provision of the law governing the practice of pharmacy (Revised Code section 4729.16). This authority allows the Board to take action against a pharmacist who violates this requirement.

Withdrawing applications

(secs. 4729.07, 4729.11, and 4729.12)

The bill provides that an application for a license to practice as a pharmacist or pharmacy intern cannot be withdrawn without the approval of the State Board of Pharmacy. The inability to withdraw an application extends to an application for annual renewal of a pharmacist's or pharmacy intern's identification card. One result of these provisions is that an applicant is prevented from unilaterally disrupting or eliminating the Board's jurisdiction to conduct an investigation.

Safe and effective practice

(sec. 4729.55)

As a condition of receiving a license to engage in business as a terminal distributor of dangerous drugs, the bill requires that an applicant furnish satisfactory proof to the State Board of Pharmacy that adequate safeguards are assured that the applicant will carry on business in a manner that allows pharmacists and pharmacy interns employed by the terminal distributor to practice pharmacy in a safe and effective manner. Otherwise, the Board is prohibited from issuing the license.

LOCAL REGISTRARS OF VITAL STATISTICS

Appointment and removal of local registrars of vital statistics

(secs. 3705.05 and 3705.25; 3705.04, not in the bill)

Background

Current law provides for a statewide system for the registration of births, deaths, fetal deaths, and other vital statistics that consists of the Office of Vital Statistics in the Department of Health and primary registration districts. Each city or general health district of the state constitutes a primary registration district. The Director of Health has the authority to combine two or more primary registration districts.

Appointments

Under current law, in each primary registration district, the board of health of the health district, on a recommendation of the health commissioner, is required to appoint a local registrar of vital statistics. When two or more primary registration districts have been combined into one primary registration district, the Director of Health designates the local registrar who is to act as the local registrar for the combined primary registration district.

Under the bill, in the case of two or more primary registration districts that have been combined into one primary registration district, the health commissioners of the health districts that constitute the combined primary registration district are required to jointly appoint the local registrar for the combined district. If the health commissioners fail to appoint the local registrar for the combined district, the Director of Health must appoint the local registrar.

Removal from office

Current law provides that a local registrar of vital statistics, deputy registrar, or sub-registrar who fails to discharge the registrar's official duties must forthwith be removed from office by the Director of Health. Under the bill, on a recommendation of the health commissioner, the board of health of the health district that constitutes the primary registration district is required to remove a registrar from office for failing to perform the registrar's official duties. In the case of a local registrar serving a combined primary registration district, the registrar may be removed by joint action of the boards of health of the health districts that constitute the combined district.

OPTOMETRISTS

Reinstatement of inactive and expired licenses

(secs. 4725.17, 4725.171 and 4725.34(A)(10))

Current law allows an optometrist who intends to retire or relocate to apply to the State Board of Optometry to have the optometrist's one or more certificates to practice (hereafter, "license") placed on inactive status. An application to have a license placed on inactive status must be made before the license expires. To later reinstate the license, the optometrist must pay one annual renewal fee, a \$75 reinstatement fee, and pass all or part of a licensing examination as the Board considers appropriate. If the optometrist has been practicing in another state or country, the optometrist must submit evidence of being in active practice and that the optometrist's license to practice there is in good standing. Once the license is reinstated, the optometrist must complete the continuing education requirements for the year in which reinstatement occurs.

The bill establishes an identical license reinstatement process for optometrists who retired or relocated and let their licenses expire before the process of placing licenses on inactive status became available as a result of Am. Sub. H.B. 553 of the 122nd General Assembly, which became effective March 9, 1999.

With respect to the condition on reinstatement that pertains to passage of all or part of the optometry licensing examination, current law provides that the examination is required as the Board considers appropriate to determine whether to reinstate the license. The bill provides that the examination is required as the Board considers appropriate, if the Board considers examination necessary to determine whether to reinstate the license. The bill includes the same stipulation in its provisions allowing for reinstatement of licenses that expired before H.B. 553 took effect.

Late license renewal

(secs. 4725.16 and 4725.34(A)(7))

Current law requires an optometrist to apply for license renewal and pay the annual renewal fee before December 31. If this deadline is not met, the optometrist's license is classified as delinquent and the optometrist is no longer permitted to practice in Ohio.

The bill establishes a late renewal period from January 1 to April 30. The prohibition against practicing after December 31 applies during the late renewal period, but the optometrist's license is not classified as delinquent until the late renewal period has ended. The bill requires an optometrist who applies during the late renewal period to pay an additional \$75 fee.

CHEMICAL DEPENDENCY PROFESSIONALS

Ohio Credentialing Board

(sec. 3793.07)

Current law provides that the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) may accept the certification or credentials of an individual who is a member of the profession of alcoholism counseling, drug abuse counseling, or chemical dependency counseling, or who is an alcoholism or drug abuse prevention consultant or specialist only if the individual is certified by or holds credentials from the Ohio Credentialing Board for Chemical Dependency Professionals. ODADAS, in consultation with the Department of Job and Family Services and the Board, is required to submit to the federal agency that administers the Medicare and Medicaid programs a request that the agency accept the Board's certifications and credentials for the purpose of Medicare and Medicaid reimbursement.

ODADAS

The bill eliminates these provisions of current law and instead requires that ODADAS establish and administer a process for the certification or credentialing of chemical dependency professionals for the purpose of qualifying the services they provide for Medicare or Medicaid reimbursements. The process is to be made available to any individual who is a member of the profession of alcoholism counseling, drug abuse counseling, or chemical dependency counseling, or who is an alcoholism or drug abuse prevention consultant or specialist.

The bill requires ODADAS to adopt rules in accordance with Revised Code Chapter 119. establishing standards and procedures for the certification or credentialing process. The rules must include the following:

- (1) Eligibility requirements;
- (2) Application procedures;
- (3) Minimum educational and clinical training requirements that must be met for initial certification or credentialing;
- (4) Continuing education and training requirements for certified or credentialed individuals;
- (5) Application and renewal fees that do not exceed the cost incurred in implementing and administering the process;
- (6) Administration or approval of examinations;
- (7) Investigation of complaints and alleged violations of the bill;
- (8) Maintenance of the confidentiality of investigative records;
- (9) Disciplinary actions, including application denial and suspension or revocation of certification or credentials;
- (10) Any other rules ODADAS considers necessary to establish or administer the certification or credentialing process.

ODADAS is to investigate alleged violations of the bill or the rules adopted under it. As part of its investigation, ODADAS may issue subpoenas, examine witnesses, and administer oaths. It must ensure that all records it holds pertaining to an investigation remain confidential.

With respect to hearings conducted by ODADAS as part of the certification or credentialing process, both of the following apply:

(1) An individual whose application for certification or credentials has been denied by the department may request a hearing in accordance with Revised Code Chapter 119. and the rules adopted under the bill.

(2) ODADAS may appoint a referee or hearing examiner to conduct the proceedings and make recommendations as appropriate.

ODADAS is required by the bill to maintain a record of the fees it collects for certification or credentialing, which are to be paid into the state treasury to the credit of the credentialing fund created by the bill. Money credited to the fund may be used solely to pay the costs of establishing and administering the process for certification or credentialing of chemical dependency professionals.

Certifications made and credentials issued by the Ohio Credentialing Board for Chemical Dependency Professionals prior to the date ODADAS establishes its certification or credentialing process under the bill are to continue to be accepted by ODADAS until, with respect to any particular individual, one of the following occurs:

(1) The individual's certification or credentials from the board have expired.

(2) The individual's certification or credentials from the board would be suspended or revoked by ODADAS if the certification or credentials had been issued by ODADAS under the bill.

COMMENT

Because the bill refers to waiver of the physician-patient privilege, the effect of the bill is to clarify when a physician may testify, not when a pharmacist may testify. The amendment makes it clear that when, for example, a patient discusses the patient's prescription with a pharmacist, that communication does not lift the privilege so that the physician can then testify regarding the physician's treatment of the patient. It does not affect the pharmacist's status. Although some Ohio courts have interpreted the physician-patient privilege to encompass a patient's communications with nurses or other medical personnel when those persons are performing duties that assist the physician in the diagnosis or treatment of the patient, no Ohio court has concluded that communications with pharmacists are encompassed by the physician-patient privilege.

HISTORY



ACTION	DATE	JOURNAL ENTRY
Introduced	07-22-99	p. 910
Reported, S. Health, Human Services & Aging	05-16-00	p. 1697
Passed Senate (33-0)	05-16-00	p. 1704
Reported, H. Health, Retirement & Aging	---	p. ---

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