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Sens. Schuler, Goodman, Hottinger

Effective date: *

ACT SUMMARY

- Establishes licensing requirements for certain persons who use ambulettes, which are vehicles specifically designed to provide transportation services to persons who require the use of wheelchairs.
- Establishes licensing requirements for persons who provide medical transportation via rotorcraft and fixed wing air ambulances.
- Requires any nonemergency medical service organization to register ambulettes in the same manner as emergency medical service organizations must register ambulances.
- Requires any nonemergency medical service organization or air medical service organization to obtain a permit for each ambulette or air ambulance it owns or leases.
- Eliminates the authority for a licensed emergency medical service organization to furnish a certificate of self-insurance in lieu of maintaining the required insurance coverage.

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Authorizes the summary license suspension of any person or entity regulated by the Ohio Medical Transportation Board and establishes the procedures for the summary license suspension.
- Charges the Ohio Ambulance Licensing Board (renamed the Ohio Medical Transportation Board) with the duty of administering and enforcing the ambulette and air ambulance licensing programs and modifies the Board's membership due to the additional duties.
- Requires an applicant for employment as an ambulette driver to be trained in first aid and cardiopulmonary resuscitation and to consent to a background investigation that includes a criminal records check and drug and alcohol testing.
- Codifies portions of the Ohio Administrative Code dealing with the treatment of certain trusts for purposes of determining an individual's eligibility for medical assistance reimbursable by the Medicaid Program.

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CONTENT AND OPERATION

I. AMBULETTE LICENSING

Under continuing law, expanded by the act, the Ohio Ambulance Licensing Board licenses emergency medical service organizations and establishes requirements for these organizations to receive permits for ambulances or nontransport vehicles.¹ Generally, unless a county, township, or special district chooses to be regulated, the requirements of the Ohio Ambulance Licensing Board do not apply to (1) a publicly owned or operated emergency medical service organization, (2) a publicly owned and operated fire department vehicle, (3) an ambulance, nontransport vehicle or other emergency medical service organization vehicle owned by a municipal corporation, (4) a volunteer rescue service organization, (5) a public emergency medical service organization, or (6) a volunteer fire department, rescue squad, or life squad. (Secs. 4766.09 and 4766.12.)

The act changes the name of the Ohio Ambulance Licensing Board to the Ohio Medical Transportation Board and expands its licensing authority to cover private entities (called "nonemergency medical service organizations") operating an ambulette service.² In addition, the act authorizes the Board to license air medical service organizations and to establish requirements for these organizations to obtain permits for rotocraft (e.g., helicopters) and fixed wing air ambulances.

¹ A nontransport vehicle is a motor vehicle used to provide services "in conjunction with" the organization's ambulances.

² An ambulette is defined as a motor vehicle specifically designed, equipped, and intended to be used to transport persons who require the use of a wheelchair. If an emergency medical service organization (i.e., ambulance service) also provides ambulette services, it must get a separate license for this function (see below).

Licensing of persons that provide ambulette services

(secs. 4766.01, 4766.02(F), 4766.04, 4766.08, 4766.11, and 4766.13)

Under the act, a person is a "nonemergency medical service organization" if the person does both of the following:

(1) Transports individuals who require the use of a wheelchair or are confined to a wheelchair to receive health care services at health care facilities or health care practitioners' offices in nonemergency circumstances.

(2) Provides the transportation for a fee, regardless of whether the fee is paid by the person being transported, a third party payer, or any other person or government entity.

The act requires nonemergency medical service organizations that provide ambulette services to obtain a license for this activity.

A health care facility that provides ambulette services only to its own patients is not a "nonemergency medical service organization" for purposes of the act and is not required to obtain a license for its ambulettes.

In conjunction with the licensing requirement, the person or entity must obtain a permit for each ambulette it owns or leases.

Licensing of persons that provide air medical services

(secs. 4766.01, 4766.02(G), 4766.04, 4766.08, and 4766.11)

Under the act, a person who provides air medical transportation to the public is an "air medical service organization" and must obtain a license as such an organization from the Ohio Medical Transportation Board. In conjunction with the licensing requirement, the person must obtain a permit for each rotorcraft or fixed wing air ambulance it owns or leases.

The act defines "air medical transportation" as the use of an air ambulance to provide transportation and advanced life support to seriously ill, injured, wounded, or otherwise incapacitated or helpless individuals who require the use of a stretcher from airport to airport or from an emergency scene to a hospital or other medical setting.

Authority of the Board

The act specifies that the Ohio Medical Transportation Board is the sole supervisory body regarding the licensing of nonemergency medical service



organizations in Ohio. The procedures for issuing licenses and enforcing the act are integrated into the Board's previously existing regulatory scheme for licensing emergency medical service organizations and the requirement for these organizations to have permits for ambulances and nontransport vehicles.

Summary license suspension

(sec. 4766.11(B))

The act authorizes the Medical Transportation Board to suspend any license that it has issued (ambulance, nontransport vehicles, ambulette, air medical transportation), without a prior hearing if it determines there is clear and convincing evidence that continued operation by the license holder presents a danger of immediate and serious harm to the public. To accomplish the summary license suspension, the chairperson and executive director of the Board must make a preliminary determination and describe to the Board members the evidence on which they made their determination. Upon review of the allegations, the Board, by the affirmative vote of at least four of its members, may suspend the license without a hearing.

Immediately following its decision to summarily suspend a license, the Board must issue a written order of suspension and cause it to be delivered in accordance with the Administrative Procedure Act (generally, this must be by registered mail, return receipt requested (sec. 119.07, not in the act)). If the suspended license holder requests an adjudication hearing by the Board, it must be set within 15 days but not earlier than seven days after the request unless otherwise agreed to by the license holder and the Board.

Any summary suspension remains in effect, unless reversed by the Board, until a final adjudicative order issued by the Board becomes effective. The Board must issue its final adjudicative order not less than 90 days after completing its adjudication hearing. Failure to issue the order within 90 days causes the summary suspension order to end, but does not affect the validity of any subsequent final adjudication order.

The act authorizes the Board to designate another board member to act in place of the chairperson or another employee to act in place of the executive director if the chairperson or executive director is unavailable or unable to act. In addition, the act allows any method of communication, including a telephone conference call, to be utilized for describing the evidence to the Board members, for reviewing the allegations, and for voting on the suspension.

Prohibition

(sec. 4766.04(A))

Continuing law prohibits any person from engaging in the business or service of transporting persons who are seriously ill, injured, or otherwise incapacitated unless the person is licensed. Violation of this prohibition is a minor misdemeanor on a first offense and each subsequent offense is a fourth degree misdemeanor (sec. 4766.99, not in the act). Under the act, the prohibition against unlicensed transporting of ill or injured persons expands to include transporting persons who require the use of a wheelchair or are confined to a wheelchair.

Equipment and staffing requirements

(secs. 4766.03 and 4766.04)

The act requires the Board to adopt rules establishing requirements that must be met for a nonemergency medical service organization or air medical service organization to receive a license to provide ambulette services or air medical transportation and to receive permits for the organization's ambulettes or air ambulances. The rules must specify the level of care that a nonemergency medical service organization or air medical service organization is authorized to provide. The rules must specify the types of equipment that must be carried, the communications systems that must be maintained, the personnel who must staff the vehicle or aircraft, and application requirements. An air medical service organization that uses fixed wing air ambulances, when applying for a license to provide air medical transportation, must include a description of each aircraft used, including the make, model, year of manufacture, and aircraft Hobbs meter hour reading. If the organization uses rotorcraft air ambulances, the description also must include the aircraft identification number and the color scheme, insignia, name, monogram, or other distinguishing characteristics to be used to designate the organization's air ambulance. The act requires the rules to be adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.).

Ambulette drivers

(secs. 4766.03(A)(14) and 4766.15)

The act prohibits a licensed nonemergency medical service organization from accepting an individual for permanent employment as an ambulette driver unless the applicant holds a valid driver's license from Ohio or another state. The applicant must submit proof of, or give consent to the employer to obtain, all of the following:

(1) A certificate of completion of a course in first aid techniques offered by the American Red Cross or an equivalent organization;

(2) A certificate of completion of a course in cardiopulmonary resuscitation, or its equivalent, offered by an organization approved by the Board;

(3) A recent certified abstract of the applicant's record of convictions for violations of motor vehicle laws, provided by the Registrar of Motor Vehicles, or the equivalent of an abstract if the applicant is a resident of another state;

(4) The results of one or more chemical tests of the applicant's blood, breath, or urine, conducted at a hospital or other institution approved by the Board for the purpose of determining the specimen's drug or alcohol content;

(5) The result of a criminal records check conducted by the Bureau of Criminal Identification and Investigation.

The act specifies that the information received by the nonemergency medical service organization is to be used to determine whether an applicant is disqualified for employment. The Board is required to adopt rules establishing eligibility requirements for employment as an ambulette driver, including grounds for disqualification. The rules may require an applicant to provide a set of fingerprints to law enforcement authorities if the applicant comes under final consideration for employment.

Pending completion of all the requirements for employment as an ambulette driver, the act permits a nonemergency medical service organization to employ an applicant on a temporary basis. The length of the provisional employment period is to be determined by the Board.

Inspections

(secs. 4766.07 and 5503.12)

Before a permit may be issued for an ambulette or rotocraft or fixed wing air ambulance, the act requires that the Board conduct an inspection of the vehicle or aircraft.

The Board is required to conduct a physical inspection of each ambulette to determine its roadworthiness and compliance with standard motor vehicle requirements. The Board inspection must include examination of the equipment, communication system, and interior of the vehicle to determine the operational condition and safety of the equipment and the vehicle's interior. The Board's inspection must include a determination of whether the vehicle is in compliance with state requirements for ambulette construction. The act authorizes the Board

to determine, by rule, requirements for the equipment, communication system, interior, and construction of an ambulette.

The act similarly requires the Board to conduct a physical inspection of the medical equipment, communications system, and interior of an air ambulance to determine the operational condition and safety of the equipment and the aircraft's interior.

Under prior law, the State Highway Patrol conducted roadworthiness inspections of ambulances and nontransport vehicles licensed by the Board. The act eliminates the role of the Patrol in any inspections.

Insurance coverage

(sec. 4766.06)

As a condition of being licensed, the act requires a nonemergency medical service organization to maintain specified types of insurance. A nonemergency medical service organization must have liability insurance coverage in an amount of not less than \$500,000 per occurrence and not less than \$500,000 in the aggregate, for any cause for which the organization would be liable. These amounts are identical to those in continuing law that are required for an emergency medical service organization. An air medical service organization must carry liability insurance coverage of at least \$20 million per occurrence and at least \$20 million in the aggregate for any cause for which the organization would be liable. Bodily injury and property damage insurance must be carried for each ambulette and air ambulance, as follows: (1) no less than \$100,000 for bodily injury to or death of any one person from any one accident, (2) not less than \$300,000 for bodily injury to or death of more than one person in any one accident, and (3) \$50,000 for damage from any one accident. Again, these amounts are the same that continuing law requires for ambulances and nontransport vehicles.

Under prior law, every emergency medical service organization that was licensed to provide ambulance service could have furnished a certificate of self-insurance evidencing the establishment of a self-insurance plan, approved by the Superintendent of Insurance, that is equivalent or greater than the required insurance coverage. The act eliminates the authority to self-insure.

Fees

(sec. 4766.05)

The act requires the Board to adopt rules establishing a fee for receipt and renewal of a license to operate as a nonemergency medical service organization or

air medical service organization, taking into account the actual costs the Board incurs in carrying out its duties. The fee for an initial license or renewal, however, cannot exceed \$100.

The fee for receipt of a permit for each ambulette is fixed at \$25 for the first year after the act's effective date. Thereafter, the fee for issuance and renewal of a permit are to be established by rule of the Board, taking into account the actual costs the Board incurs in carrying out its duties, but neither fee can exceed \$50.

The fee for issuance and renewal of an air ambulance permit cannot exceed \$100.

Ambulette license plates

(secs. 4503.49 and 4766.07(B)(2))

Under continuing law, each entity licensed as a private emergency medical services organization is required to apply to the Registrar of Motor Vehicles for the registration of each ambulance and nontransport vehicle it owns or leases. On receipt of a complete application, which includes payment of fees, the Registrar is required to issue a set of license plates and a set of validation stickers to be attached to the plates as an identification of the vehicle's classification. The act requires ambulettes to be similarly registered by each private nonemergency medical service organization.

Air ambulance and ambulette decals

(sec. 4766.07(B)(3))

Continuing law requires the Board to furnish a rear window decal for each ambulance or nontransport vehicle that is issued a permit. The act requires these decals for ambulettes. In addition, when the Board issues an aircraft permit for an air ambulance, it also must issue a decal, in a form prescribed by rule, to be displayed on the left fuselage aircraft window in a manner that complies with all applicable federal aviation regulations. The Board cannot issue a decal until all the requirements for licensure and permit issuance have been met.

Emergency medical service organizations that use ambulettes

(sec. 4766.04(H))

If an emergency medical service organization wishes to provide ambulette services to the public, the act requires the organization to apply for a separate license as a nonemergency medical service organization. An emergency medical

service organization is any organization that uses emergency medical technicians, and includes commercial ambulance services, hospitals, and funeral homes.

Inapplicability of the emergency medical services chapter

(sec. 4766.09)

Continuing law provides that the licensing of emergency medical service organizations (under R.C. Chapter 4766.) does not apply to certain persons and vehicles, including those owned by local governments and volunteer organizations. It also does not apply to any person operating an ambulance outside Ohio unless it is receiving a person within Ohio for transport to an Ohio location or to an ambulance or nontransport vehicle owned or leased by the federal government.

The act retains the current exceptions, but extends them to ambulettes and air ambulances; i.e., those provisions do not apply to any person operating an *ambulette or air ambulance* outside Ohio unless it is receiving a person within Ohio for transport to an Ohio location or to an *ambulette or air ambulance* owned or leased by the federal government.

The act also exempts from regulation by the Ohio Medical Transportation Board, emergency medical service personnel who are regulated by the State Board of Emergency Medical Services. The State Board of Emergency Medical Services certifies first responders and the various types of emergency medical technicians.

The act specifies that a *public* nonemergency medical service organization is not subject to regulation by the Ohio Medical Transportation Board.

Certain mandatory provisions for air medical service organizations

(sec. 4766.17)

An air medical service organization licensed under the act must do both of the following:

(1) Use at a minimum both of the following to provide advanced life support to seriously ill, injured, wounded, or otherwise incapacitated or helpless individuals who require use of a stretcher:

--A paramedic or registered nurse;

--One other person, designated by the medical director of the air medical service organization, who holds a current, valid certificate or license to practice a health care profession in this state.



(2) Employ as a medical director an individual who holds a current, valid Ohio certificate authorizing the practice of medicine and surgery or osteopathic medicine and surgery. This medical director is ultimately responsible for the medical care provided to each patient by the organization.

Modification of the definitions of "ambulance," "mobile intensive care unit," and "patient"

(sec. 4766.01(D))

For purposes of R.C. Chapter 4766., "ambulance" is defined by law generally unchanged by the act as any motor vehicle that is specifically designed, constructed, or modified and equipped and is intended to be used for the transportation of persons who are seriously ill, injured, wounded, or otherwise incapacitated or helpless. It does not include a vehicle designed and used solely for the transportation of nonstretcher-bound persons. The act adds that an "ambulance" is intended to be used to provide basic, intermediate, or advanced life support or mobile intensive care unit services.³ The act also specifically excludes air medical transportation from the definition of an "ambulance."

Provisions relating to mobile intensive care units

(secs. 4766.03 and 4766.04)

Continuing law gives the Board rulemaking authority and requires it to adopt rules necessary to enable it to carry out its duties. For example, it must adopt rules establishing requirements for ambulances and nontransport vehicles used by licensed emergency medical service organizations that specify for each type of vehicle certain things such as the types of equipment that must be carried. The Board may establish requirements that vary according to whether the organization is licensed as a basic, intermediate, or advanced life-support organization. A mobile intensive care unit that meets the rules is not required to carry immobilization equipment such as backboards and cervical collars.

Under the act, the Board may also specifically establish such requirements for mobile intensive care unit organizations. The act retains the provision that a mobile intensive care unit is not required to carry immobilization equipment, but specifies that this exception applies only to a mobile intensive care unit that is not dually certified to provide advanced life-support. A mobile intensive care unit that

³ *The act provides that a mobile intensive care unit is an ambulance used only for maintaining specialized or intensive care treatment and used primarily for interhospital transports of patients whose conditions require care beyond the scope of a paramedic.*

also is certified to provide advanced life-support is apparently required to carry immobilization equipment.

Board membership

(sec. 4766.02; Section 6)

Under prior law, the Ohio Ambulance Licensing Board consisted of five voting members and one nonvoting member. Of the voting members, one had to be a member of the Ohio Ambulance Association; two had to be owners or operators of private emergency medical service organizations, with one being a licensed funeral director; one had to be an official with a public emergency medical service organization; and one had to be a consumer with no association with any public or private emergency medical service organization. The nonvoting member had to be a physician member of the American College of Emergency Physicians.

The act increases the renamed Ohio Medical Transportation Board's membership to nine voting members and one nonvoting member and also increases the quorum from three voting members to five voting members. Two additional voting members must be owners or operators of medical service organizations that provide only ambulance services and the other two additional voting members must be members of the Ohio Association of Critical Care Transport, one of whom represents air-based services with the other representing a ground-based mobile intensive care unit organization. The additional members must be appointed by the Governor within 60 days after the act's effective date. The terms of the first two new members end July 5, 2004 and the terms of the second new members end July 5, 2005; thereafter, the positions are to be filled for terms of two years.

Ohio Medical Transportation Board review committees

(sec. 4766.20)

Under the act, the renamed Ohio Medical Transportation Board may create committees to review and make recommendations regarding medical transportation services provided in Ohio. Such a committee may receive information about medical transportation services provided in this state from emergency medical service organizations, nonemergency medical service organizations, air medical service organizations, experts in the field of medical transportation, and other entities or individuals the Board designates.

A committee must meet all of the following requirements:

- (1) Be composed of at least one member of the Board and any experts in the field of medical transportation the Board designates;
- (2) Not exceed a total of six members;
- (3) Cease to exist at the pleasure of the Board;
- (4) Meet any other requirements the Board establishes.

Technical changes

(secs. 307.051, 307.055, 505.37, 505.375, 505.72, 4513.263, and 4766.10)

The act amends several sections of existing law solely for the purpose of changing references to the renamed Ohio Medical Transportation Board.

II. MEDICAID TRUSTS

Treatment of trusts in Medicaid eligibility determinations

(sec. 5111.151)

Background

The county department of job and family services (CDJFS) of the county in which an individual resides is responsible for determining the individual's eligibility for medical assistance reimbursed by Medicaid.⁴ In making an eligibility determination, a CDJFS must decide which of the individual's assets and income is a "countable resource," "countable income," both countable income and a countable resource, or not countable as income or a resource. "Countable income" includes the Medicaid applicant's income from any source, regardless of whether it is taxable or nontaxable. A "countable resource" is cash or anything of value that is capable of being converted to cash that an applicant could use to pay for support and maintenance.

Prior law--regulation by administrative rule

Previously, whether, and to what extent, a CDJFS must count a trust as income, a countable resource, or both income and a countable resource was governed by administrative rule.⁵ The administrative rule provided that a trust fell into one of five categories: (i) self-settled trusts established before August 11,

⁴ R.C. 5111.012; O.A.C. 5101:1-38-01(F).

⁵ O.A.C. § 5101:1-39-271

1993 (also referred to as "Medicaid qualifying trusts"), (ii) self-settled trusts established on or after August 11, 1993, (iii) exempt trusts, (iv) trusts established by someone else for the benefit of a Medicaid applicant or recipient, and (v) trusts established by will for the benefit of a surviving spouse.

Self-settled trusts are trusts not established by will. Besides the dates they were created, the primary differences between the two types are who creates them (pre-August 1993: Medicaid applicant or recipient only; post-August 1993: applicant or recipient, spouse, court, or administrative body); whose assets form the corpus of the trust (pre-August 1993: no restrictions; post-August 1993: assets of applicant or recipient used to form all or part); and who may be a beneficiary of the trust (pre-August 1993: applicant or recipient must be able to become a beneficiary of all or part; post-August 1993: no restrictions). In general, a pre-August 1993 self-settled trust will be income or a countable resource to the extent payments from the trust could be made to or for the benefit of the applicant or recipient, regardless of whether the trust is revocable or irrevocable. In contrast, a post-August 1993 trust will be countable as income or a countable resource depending on whether the trust is revocable or irrevocable and to what extent payments from the trust could be made to or for the benefit of the applicant or recipient.

Exempt trusts are trusts in which the principal or income is not counted as a countable resource. A distinguishing characteristic of exempt trusts is that all or a portion of the assets remaining in an exempt trust at a recipient's death must be paid to the state to the extent the recipient received Medicaid benefits. These trusts include special needs trusts for disabled persons under age 65; "qualifying income trusts" (QIT) that consist only of a Medicaid applicant or recipient's pension, Social Security, or other income sources, and any interest gained on these assets; "pooled trusts" that contain only the assets of a disabled individual and are established and managed by nonprofit associations; and "supplemental services trusts" established under a will for the benefit of certain disabled persons, regardless of age.

A trust established by someone else for the benefit of a Medicaid applicant or recipient is, as the name implies, established by someone other than the applicant or recipient, names the applicant or recipient as a beneficiary, and is funded with assets or property for which the applicant or recipient never held an ownership interest. Any portion of this type of trust is a countable resource only if the trust permits the trustee to expend principal or corpus or assets of the trust for the applicant or recipient's medical care, care, comfort, maintenance, health, welfare, general well-being, or a combination of those purposes.

A trust established by will for the benefit of a surviving spouse is a countable resource to the extent that payments from the trust could be made to or



for the benefit of the applicant or recipient's surviving spouse. Any payment actually made to or for the benefit of the surviving spouse from either the corpus or income is considered income.

The act--partial codification of administrative rule

The act enacts in the Revised Code (codifies) those portions of the administrative rule dealing with the treatment of a medicaid qualifying trust established on or prior to August 10, 1993, a self-settled trust established after August 11, 1993, exempt trusts, and trusts established by someone else for the benefit of a Medicaid applicant or recipient (types (i), (ii), (iii), and (iv), above).

HISTORY

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