



Bill Analysis

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Legislative Service Commission

Sub. H.B. 71* 125th General Assembly (As Reported by H. Health)

**Reps. Peterson, Hughes, Wolpert, Kearns, Carano, G. Smith, Allen,
Aslanides, DeBose**

BILL SUMMARY

- Establishes a two-year moratorium on establishment, development, expansion, or construction of a new for-profit special hospital unless the project meets certain requirements that exempt it from the moratorium.
- Creates the Special Hospitals Study Committee.
- Requires a physician who has a financial interest in a hospital to disclose the interest to patients in writing when the physician refers to the hospital.
- During the moratorium, prohibits a physician who has a financial interest in a for-profit hospital from referring patients to the hospital for inpatient services.
- For a two-year period, prohibits a hospital governing body from discriminating against a physician for hospital staff membership or professional privileges on the basis of whether the physician has an ownership or investment interest in a special hospital.

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

CONTENT AND OPERATION

Special hospitals

(Sections 3 and 4)

The bill creates a two-year moratorium on establishment, development, expansion, or construction of a new for-profit special hospital and establishes the Special Hospitals Study Committee. "For-profit special hospital" is defined for purposes of the bill as "a hospital organized or incorporated as a for-profit entity that primarily functions to furnish the limited diagnostic and therapeutic services needed to provide care for patients who have specialized medical conditions, both surgical and nonsurgical, including a psychiatric or physical rehabilitation hospital."

Moratorium

The bill creates a two-year moratorium on the construction and expansion of for-profit special hospitals. Beginning on the bill's effective date, for two years, no person may establish, develop, expand, or construct a for-profit special hospital. The moratorium does not apply to a for-profit special hospital for which a notice of intent was filed on or before September 15, 2003, if either of the following is the case: (1) all local permits to commence construction are secured not later than one year after the bill's effective date or, if no construction is necessary, all financing is obtained not later than 120 days after the bill's effective date or (2) the hospital holds or seeks designation by the federal centers for Medicare and Medicaid (CMS) as a long-term care hospital and meets CMS criteria. In any cases of doubt, the Department of Health must determine whether a hospital is subject to the moratorium. The determination of whether financing for a project has been obtained is to be made pursuant to rules that are to be adopted by the Department of Development.

If any person violates or proposes to violate the moratorium, the Director of Health may ask the Attorney General to seek an injunction to stop or prevent the violation. At the Director's request, the Attorney General must commence necessary legal proceedings in the Franklin County Court of Common Pleas. The Court has jurisdiction to grant, and on a showing of a violation, is required to grant, appropriate injunctive relief.

The moratorium established by the bill does not apply to a for-profit special hospital in existence on September 15, 2003, that meets all of the following criteria:

(1) The hospital is in compliance with all applicable rules of the Ohio Department of Health.

(2) The hospital operates an emergency department that accepts patients for treatment and is staffed by one or more physicians on site 24 hours a day every day.

(3) The hospital offers staff privileges to any physician who meets the hospital's clinical and quality criteria, without regard to whether the physician has an investment interest in the hospital.

(4) The hospital maintains a compliance program consistent with the criteria set forth in the United States Department of Health and Human Services Office of the Inspector General Compliance Program Guidelines for Hospitals.

(5) If the hospital has physician investors, the hospital discloses those investment interests to each patient referred by each such physician, and requires that the physicians maintain staff privileges at the hospital.

(6) Each physician who has an investment interest in the hospital discloses the interest to each patient the physician refers to the hospital.

(7) The hospital complies with the federal Emergency Medical Treatment and Labor Act.

(8) The hospital is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

(9) The hospital has a written policy concerning the provision of care to patients who have an inability to pay for services due to documented financial hardship.

Special Hospitals Study Committee

The bill establishes the Special Hospitals Study Committee to examine for-profit special hospitals and their effects, both actual and potential, on Ohio's health care system. The Committee's examination is to include investigation of all of the following issues:

(1) The possible effects on Ohio's health care system, particularly on the delivery of inpatient hospital services, of physician ownership and investment interests in for-profit special hospitals;

(2) The feasibility of requiring physicians planning to establish a for-profit special hospital to do so in collaboration with a general hospital,¹ including consideration of how the hospital and physicians might share ownership and investment interests in a for-profit special hospital;

(3) The feasibility of creating a fund to subsidize high cost emergency and trauma care for uninsured persons who are treated at hospitals other than special hospitals and of requiring special hospitals to contribute to the fund;

(4)(a) Establishing a certificate of need process;

(b) Establishing a process to license institutions classified under section 3701.07 of the Revised Code as hospitals;

(c) Modifying the licensure process for institutions classified under section 3702.30 of the Revised Code as health care facilities, including ambulatory surgical facilities, freestanding dialysis centers, freestanding inpatient rehabilitation facilities, freestanding birthing centers, freestanding radiation therapy centers, and freestanding or mobile diagnostic imaging centers.

The Study Committee shall evaluate each of these issues and formulate recommendations regarding their implementation.

(5) The feasibility of requiring for-profit special hospitals to provide a certain amount of indigent care;

(6) Any other issue the Committee considers appropriate.

The Committee is to consist of the following members:

(1) The Director of Health or the Director's designee;

(2) Two members of the Senate appointed by the Senate President, each of whom is a member of a different political party;

(3) Two members of the House of Representatives appointed by the Speaker of the House, each of whom is a member of a different political party;

¹ Current law requires the Public Health Council in the Department of Health to adopt rules defining and classifying hospitals (R.C. 3701.07). Under these rules "general hospital" is defined as "a hospital which primarily functions to furnish the array of diagnostic and therapeutic services needed to provide care for a variety of medical conditions, including diagnostic x-ray, clinical laboratory, and operating room services (Ohio Administrative Code 3701-59-01).

(4) Two doctors of medicine or osteopathic medicine, one appointed by the Senate President and one by the Speaker of the House, one of which has an ownership investment in a for-profit special hospital;

(5) Two officials of a general hospital (see **COMMENT**), one appointed by the Senate President and one by the Speaker of the House;

(6) Two representatives of the health insurance industry, one appointed by the Senate President and one by the Speaker of the House;

(7) Two individuals representing consumer interests, one appointed by the Senate President and one by the Speaker of the House.

All appointments and designations to the Committee are to be made not later than 30 days after the bill's effective date. Vacancies are to be filled in the manner prescribed for original appointments. Members will not be compensated.

The bill requires that the initial meeting of the Committee be held not later than 60 days after the bill's effective date. Thereafter it is to meet at least quarterly. The Committee chair is to be appointed jointly from among the Committee's members by the Senate President and the Speaker of the House.

The Department of Health is required by the bill to provide meeting facilities and other support as necessary for the Committee.

The Committee is required to publish its findings and recommendations in a written report, which is to be submitted not later than 18 months after the bill's effective date to the Governor, the Speaker and Minority Leader of the House and the President and Minority Leader of the Senate. The Committee ceases to exist on submission of the report.

Disclosure

(sec. 4731.661)

Under the bill, a physician (doctor of medicine, osteopathic medicine, or podiatric medicine) who refers a patient for "inpatient hospital services" to a hospital in which the physician or an immediate family member holds an ownership or investment interest must give written notice of the ownership or investment interest to the patient before hospital admission. Emergency situations are exempted from this requirement. "Inpatient hospital services" is defined as the use of facilities, personnel, and supplies in the admission, diagnosis, prevention, or treatment of a patient's medical condition, disease, or impairment, or for the assessment of health of a patient during a hospital inpatient admission. This definition excludes professional services performed by a health care practitioner if

a third-party payer or governmental health care program reimburses the services independently and not as part of the inpatient hospital services.

The form for the written notice is prescribed in the bill. It must be on a separate page and provide space for the signature of the patient, the patient's family member, or the patient's guardian to acknowledge receipt of the notice. Once signed, the physician must maintain the disclosure notice in the patient's medical file.

Physician referrals

(sec. 4731.65)

During the period of the moratorium, the bill prohibits a physician from referring a patient for inpatient hospital services provided in a for-profit special hospital if the physician or an immediate family member has an ownership or investment interest in the hospital or a compensation arranged with it. For the purpose of this provision "for-profit special hospital" does not include a hospital that is in operation on the bill's effective date or on that date is planned and meets the following requirements: (1) a certificate of intent was filed with the Department of Health not later than September 15, 2003 and (2) all local permits necessary to commence construction are secured not later than one year after the bill's effective date or, if no construction is necessary, all financing is obtained not later than 120 days after the bill's effective date.

"Inpatient hospital services" has the same meaning for the purposes of this provision as for the bill's disclosure requirement (see "Disclosure," above).

Economic credentialing

(sec. 3701.353; Sections 2 and 3)

The bill prohibits a hospital governing body from discriminating against a physician who applies for hospital staff membership or professional privileges on the basis of whether the physician holds an ownership or investment interest in a special hospital. A "special hospital" is defined as a hospital that primarily functions to furnish the limited diagnostic and therapeutic services needed to provide care for patients who have specialized medical conditions, both surgical and nonsurgical, including a psychiatric or physical rehabilitation hospital.

The bill provides that any person may apply to a court of common pleas for a temporary or permanent injunction restraining a violation of this prohibition and that an injunction is an additional remedy that does not depend on the adequacy of the remedy at law.

The bill further provides that the prohibition against discriminating against a physician who applies for hospital staff membership or professional privileges on the basis of whether the physician holds an ownership or investment interest in a special hospital terminates two years from the effective date of the act.

COMMENT

Notice of intent

Under R.C. section 3701.581, repealed by Am. Sub. H.B. 95 of the 125th General Assembly, any person or government entity proposing to engage in certain high-cost and high-technology health activities was required to file a "notice of intent" at least 60 days before commencing the activity.² If a private entity failed to provide the notice, the Director could impose a civil money penalty in an amount equal to 10% of the gross revenue of the health activity for the period beginning with initial operation of the activity and ending with the Director's discovery of the violation. H.B. 95 eliminated the requirement that a notice of intent to engage in the affected activities be filed, as well as the penalty for failing to provide the notice.

The following activities were subject to the notice of intent requirement: (1) the obligation by or on behalf of a health care facility of a capital expenditure associated with the provision of a health service, other than to acquire an existing health care facility, in an amount of \$2 million or more, (2) the addition of a health service with an average annual operating cost of \$750,000 or more for the first three full years of operation that was not offered by or on behalf of a health care facility within the preceding 12 months, (3) the addition of a megavoltage radiation therapy service operated by or on behalf of a health care facility, (4) the addition of an extracorporeal shockwave lithotripsy service, (5) the acquisition of medical equipment with a cost of \$1 million or more, (6) the establishment, development, or construction of a new health care facility or change from one category of health care facility to another, other than a situation that remained subject to CON review, (7) a change in bed capacity of a health care facility other than a change in long-term care, perinatal, or pediatric intensive care bed capacity, and (8) the acquisition, regardless of cost, of a magnetic resonance imaging unit, a cobalt radiation therapy unit, a linear accelerator, extracorporeal shockwave lithotripsy equipment, cardiac catheterization equipment or a cardiac catheterization laboratory, or a gamma knife.

² *The notice was to be filed with the Director of Health and the health service agency for the area where the project was to be located.*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-18-03	p. 161
Reported, H. Health	---	---

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