



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 182

125th General Assembly
(As Introduced)

Reps. Flowers, Allen, Aslanides, Collier, D. Evans, Hagan, Hollister, McGregor, Schaffer, Schmidt, Seitz, Strahorn, Wagner, White, Wolpert

BILL SUMMARY

- Modifies the qualified civil immunity of volunteer health care professionals to cover medical, dental, or other health-related diagnosis, care, or treatment provided by them to indigent and uninsured persons regardless of where the diagnosis, care, or treatment is provided.
- Modifies the qualified civil immunity of volunteer health care workers to cover medical, dental, or other health-related care or treatment provided by them to indigent and uninsured persons at a "health care facility" instead of a "nonprofit shelter or health care facility."
- Replaces "nonprofit shelter or health care facility" with "health care facility" in the civil immunity and related provisions, and extends the qualified civil immunity to cover other specified health care facilities, including any institution or facility in or at which medical care, treatment, or diagnosis is provided, that is associated with a volunteer health care professional or worker covered by the immunity and any health care facility associated with a nonprofit organization that refers patients to, or arranges for the provision of services by, volunteer health care professionals or workers covered by the immunity.
- Expands the number of indigent persons who may be served by the health care facilities, professionals, and workers acting under the civil immunity by specifying that the persons cannot have incomes exceeding 200%, rather than 150%, of the federal poverty line.
- Allows retired physicians and dentists with volunteers' licenses to provide care to the expanded number of indigent persons, but only if the care is provided in nonprofit shelters and health care facilities.

CONTENT AND OPERATION

Background

Current law establishes immunity from civil liability, except in cases of willful or wanton misconduct, for health care professionals who provide certain health services without compensation to persons who have incomes not greater than 150% of the federal poverty line, are without private health coverage, and are not eligible for assistance under a governmental health program. The immunity extends to health care workers who act under a health care professional's direction in providing the volunteer care to these indigent and uninsured persons.

For the immunity to apply, the health services must be provided at a nonprofit shelter or health care facility that is registered with the Ohio Department of Health. Expressly excluded from the immunity provisions are hospitals, nursing homes, residential care facilities, and medical facilities that are operated for profit.

Immunity similar to that which applies to health care professionals and workers is also available to the nonprofit shelters or health care facilities associated with the volunteer providers. In no case, however, is the immunity available with respect to the performance of an operation or delivery of a baby.

Definitions

Existing law

Current law defines the following terms, among others, for purposes of the qualified civil immunity of volunteer health care professionals, volunteer health care workers, and nonprofit shelters or health care facilities (R.C. 2305.234(A)(4), (5), (6), (8), and (10)):

(1) "Health care professional" means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment and are authorized to practice or are licensed or certified under the applicable chapters of the Revised Code: physicians, registered nurses, advanced practice nurses, licensed practical nurses, physician assistants, dentists, dental hygienists, physical therapists, chiropractors, optometrists, podiatrists, dietitians, pharmacists, emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic.

(2) "Health care worker" means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to

direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.

(3) "Indigent and uninsured person" means a person who meets all of the following requirements:

(a) The person's income is not greater than 150% of the current poverty line as defined by the United States Office of Management and Budget and revised in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 42 U.S.C. 9902, as amended.

(b) The person is not eligible to receive medical assistance under R.C. Chapter 5111., disability assistance medical assistance under R.C. Chapter 5115., or assistance under any other governmental health care program.

(c) Either of the following applies:

(i) The person is not a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan.

(ii) The person is a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan, but the insurer, policy, contract, or plan denies coverage or is the subject of insolvency or bankruptcy proceedings in any jurisdiction.

(4) *"Nonprofit shelter or health care facility" means a charitable nonprofit corporation organized and operated pursuant to R.C. Chapter 1702. (Nonprofit Corporation Law) or any charitable organization not organized and not operated for profit, that provides shelter, health care services, or shelter and health care services to indigent and uninsured persons, except that "shelter or health care facility" does not include a hospital as defined in R.C. 3727.01 of the Revised Code, a facility licensed under R.C. Chapter 3721. (nursing homes and residential care facilities), or a medical facility that is operated for profit.*

(5) "Volunteer" means an individual who provides any medical, dental, or other health-care related diagnosis, care, or treatment without the expectation of receiving and without receipt of any compensation or other form of remuneration from: (a) an indigent and uninsured person, (b) another person on behalf of an indigent and uninsured person, (c) any *shelter or health care facility*, or (d) any other person or government entity.



Operation of the bill

Poverty level. The bill modifies the income requirement in the above definition of "indigent and uninsured person" to require that the person's income be not greater than 200% (instead of 150%) of the current poverty line as defined by the United States Office of Management and Budget and revised in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 42 U.S.C. 9902, as amended (R.C. 2305.234(A)(6)(a)).

Health care facility. The bill replaces the term "nonprofit shelter or health care facility" with "health care facility" for purposes of the qualified immunity provisions described in this analysis, and defines "health care facility" as a hospital, clinic, ambulatory surgical treatment center, other center, medical school, office of a health care professional or associated group of health care professionals, infirmary, dispensary, medical training institution, shelter, or other institution or location in or at which medical care, treatment, or diagnosis is provided to a person. In effect, the bill expands the types of facilities in regard to which the qualified immunity provisions apply and includes *any institution or location* in or at which medical care, treatment, or diagnosis is provided to a person. (R.C. 2305.234(A)(8).)

Volunteer. The bill modifies the definition of "volunteer" to mean an individual who provides any medical, dental, or other health-care related diagnosis, care, or treatment without the expectation of receiving and without receipt of any compensation or other form of remuneration from: (a) an indigent and uninsured person, (b) another person on behalf of an indigent and uninsured person, (c) any *health care facility*, or (d) any other person or government entity (R.C. 2305.234(A)(10)).

Civil immunity of volunteer health care professionals

Under current law, subject to specified exceptions and qualifications described below under "**Exceptions**" and paragraph (3) under "**Qualifications**," a "health care professional" who is a "volunteer" and complies with certain conditions (see **COMMENT 1**) is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer in the provision *at a "nonprofit shelter or health care facility"* to an "indigent and uninsured person" of medical, dental, or other health-related diagnosis, care, or treatment, including the provision of samples of medicine and other medical products, unless the action or omission constitutes willful or wanton misconduct (R.C. 2305.234(B)(1)). (See "**Existing law**" under "**Definitions**," above.)

The bill modifies the qualified civil immunity of volunteer health care professionals by eliminating "at a nonprofit shelter or health care facility" from the above provision in existing law. Thus, subject to the same exceptions and qualifications as in current law, if the other elements of the qualified civil immunity of volunteer health care professionals as described in the preceding paragraph are present, the immunity would apply *regardless of where* the medical, dental, or other health-related diagnosis, care, or treatment, including the provision of medicine samples and other medical products, to an indigent and uninsured person, occurs (R.C. 2305.234(B)(1)).

Civil immunity of volunteer health care workers

Under existing law, subject to specified exceptions and qualifications described below under "**Exceptions**" and paragraph (3) under "**Qualifications**," "health care workers" who are volunteers are not liable in damages to any person or government entity in a tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care worker in the provision at a *nonprofit shelter or health care facility* to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct (R.C. 2305.234(C)).

The bill modifies the qualified civil immunity of health care workers by substituting "health care facility" for "nonprofit shelter or health care facility" in the above provision. Thus, subject to the same exceptions and qualifications as in existing law, if the other elements of the qualified civil immunity of volunteer health care workers as described in the preceding paragraph are present, the immunity would apply if the medical, dental, or other health-related diagnosis, care, or treatment is provided at a "health care facility" as defined in the bill (see "**Operation of the bill**" under "**Definitions**," above) (R.C. 2305.234(C)). (See COMMENT 2.)

Civil immunity of health care facilities

Current law provides that subject to specified exceptions described below under "**Exceptions**" and paragraph (3) under "**Qualifications**," and subject to registration with the Ohio Department of Health under R.C. 3701.071, a *nonprofit shelter or health care facility* associated with a volunteer health care professional or volunteer health care worker who provides health-related diagnosis, care, or treatment at a nonprofit shelter or health care facility to an indigent or uninsured person is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or

property that allegedly arises from an action or omission of the health care professional or worker in providing *for the shelter or facility* medical, dental, or other health-related diagnosis, care, or treatment to an indigent and uninsured person, unless the action or omission constitutes willful or wanton misconduct (R.C. 2305.234(D)).

The bill provides that subject to specified exceptions described below under "**Exceptions**" and paragraph (3) under "**Qualifications**," and subject to registration with the Ohio Department of Health under R.C. 3701.071 (see **COMMENT 3**), a "health care facility," as defined in the bill, that is associated with: (1) a volunteer health care professional who provides health-related diagnosis, care, or treatment *anywhere* to an indigent and uninsured person, (2) a volunteer health care worker who provides health-related diagnosis, care, or treatment *at a health care facility* to an indigent or uninsured person, and (3) *a nonprofit organization that refers patients to, or arranges for the provision of services by, a volunteer health care professional or a volunteer health care worker as described in this paragraph* (added by the bill) are [sic] not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care professional or worker in providing for the *health care facility* medical, dental, or other health-related diagnosis, care, or treatment to an indigent and uninsured person, unless the action or omission constitutes willful or wanton misconduct (R.C. 2305.234(D)).

Exceptions

Under current law, generally, the above-described civil immunities are not available to an individual or to a *nonprofit shelter or health care facility* if, at the time of an alleged injury, death, or loss to person or property, the individuals involved are providing one of the following: (1) any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court as a condition of probation or other suspension of a term of imprisonment or imposed by a court as a community control sanction, (2) performance of an operation, or (3) delivery of a baby. These exceptions do not apply to an individual who provides, or a *nonprofit shelter or health care facility* at which the individual provides, diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency. (R.C. 2305.234(E).)

The bill replaces "nonprofit shelter or health care facility" with "health care facility," in the above exceptions and nonapplicability of the exceptions (R.C. 2305.234(E)).

Qualifications

The qualified immunity provisions of current law do not do the following (R.C. 2305.234(F)):

(1) Create a new cause of action or substantive legal right against a health care professional, health care worker, or *nonprofit* shelter or health care facility;

(2) Affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which an individual or a *nonprofit shelter or health care facility* may be entitled in connection with the provision of emergency or other diagnosis, care, or treatment;

(3) Grant an immunity from tort or other civil liability to an individual or a *nonprofit shelter or health care facility* for actions that are outside the scope of authority of health care professionals or health care workers;

(4) Affect any legal responsibility of a health care professional or health care worker to comply with any applicable law of this state or rule of an agency of this state;

(5) Affect any legal responsibility of a *nonprofit shelter or health care facility* to comply with any applicable Ohio law, rule of an agency of this state, or local code, ordinance, or regulation that pertains to or regulates building, housing, air pollution, water pollution, sanitation, health, fire, zoning, or safety.

The bill makes the above qualifications apply only in regard to the civil immunity of a *health care facility* (instead of a *nonprofit shelter or health care facility*) (R.C. 2305.234(F)(1), (2), (3), and (5).)

Volunteer's licenses for retired physicians and dentists

Current law provides for the issuance of "volunteer's certificates" to retired physicians and dentists so that they may provide their services to indigent and uninsured persons at nonprofit shelters or health care facilities. The bill expands the number of persons who may be served by including persons with incomes not greater than 200% of the federal poverty line. However, the bill continues the requirement that the services be provided only on the premises of a "nonprofit shelter or health care facility," as that term is currently defined (see "Existing law" under "Definitions," above). (R.C. 4715.42(A)(1) and 4731.295(A)(1).)

COMMENT

1. To qualify for the immunity, a health care professional must do all of the following prior to providing diagnosis, care, or treatment (R.C. 2305.234(B)(2)):

(a) Determine, in good faith, that the indigent and uninsured person is mentally capable of giving informed consent to the provision of the diagnosis, care, or treatment and is not subject to duress or under undue influence;

(b) Inform the person of the provisions of this section;

(c) Obtain the informed consent of the person and a written waiver, signed by the person or by another individual on behalf of and in the presence of the person, that states that the person is mentally competent to give informed consent and, without being subject to duress or under undue influence, gives informed consent to the provision of the diagnosis, care, or treatment subject to the provisions of this section.

2. Under the bill, the qualified civil immunity of a health care worker applies only if the health care worker is a volunteer and provides the medical, dental, or other health-related diagnosis, care, or treatment to an indigent or uninsured person at a *health care facility under the direction of a health care professional with authority to direct that health care worker's activities*. (See R.C. 2305.234(A)(5) and (C).)

3. The bill continues the requirement that a "nonprofit shelter or health care facility," as defined in current law (see "Existing law" under "Definitions," above), be registered with the Ohio Department of Health as a condition of making the civil immunity available to the entity (R.C. 3701.071). The bill does not provide for the registration of the other entities to which it extends the immunity provisions (see the definition of "health care facility" in "Operation of the bill" under "Definitions," above).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-13-03	p. 473

h0182-i-125.doc/kl

