



Sub. S.B. 86

125th General Assembly
(As Passed by the Senate)

Sens. Stivers, Miller, Goodman, Jacobson, Randy Gardner, Coughlin, Amstutz, Brady, Herington, Fedor, Wachtmann, Schuring, Mumper, Spada, Harris, Nein, Carey, Schuler, DiDonato, Prentiss, Robert Gardner, Armbruster, White

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.
- Expands the health care professionals to whom the qualified civil immunity applies by including occupational therapists, occupational therapy assistants, physical therapist assistants, respiratory care professionals, speech-language pathologists, and audiologists, licensed under Ohio law.
- 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 regardless of where the diagnosis, care, or treatment is provided.
- Replaces "nonprofit shelter or health care facility" with "health care facility or location" in the civil immunity and related provisions, and extends the qualified civil immunity to cover specified health care facilities, including any hospital, clinic, ambulatory surgical facility, health care professional's office, training institution for health care professionals, or any other place where medical, dental, or other health-related diagnosis, care, or treatment is provided, that is associated with a volunteer health care professional or worker covered by the immunity.

- Establishes qualified immunity from civil liability for nonprofit health care referral organizations and the health care facilities or locations associated with them.
- Expands the number of indigent and uninsured persons who may be served by the health care facilities or locations and health care professionals and workers acting under the civil immunity or referred by nonprofit health care referral organizations 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 and uninsured persons at any location.

TABLE OF CONTENTS

Background	2
Definitions	3
Existing law.....	3
Operation of the bill.....	4
Civil immunity of volunteer health care professionals.....	5
Civil immunity of volunteer health care workers.....	6
Civil immunity of health care facilities or locations.....	7
Civil immunity of nonprofit health care referral organizations	8
Exceptions	8
Qualifications	9
Volunteer's licenses for retired physicians and dentists	10

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)(7)(a)). (See **COMMENT 1.**)

Health care professional. The bill expands the types of professionals to whom the qualified immunity provisions apply by defining "health care professional" to additionally include physical therapist assistants, occupational

therapists, and occupational therapy assistants licensed under R.C. Chapter 4755.; respiratory care professionals licensed under R.C. Chapter 4761.; and speech-language pathologists and audiologists licensed under R.C. Chapter 4753. The bill also defines *advanced practice nurse* (a health care professional under current law unchanged by the bill) as any certified nurse practitioner, clinical nurse specialist, or certified registered nurse anesthetist, or a certified nurse-midwife certified by the Board of Nursing under R.C. 4723.41. (R.C. 2305.234(A)(5)(b), (e), (l), and (m).)

Health care facility or location. The bill replaces the term "nonprofit shelter or health care facility" with "health care facility or location" for purposes of the qualified immunity provisions described in this analysis, and defines "health care facility or location" as a hospital, clinic, ambulatory surgical facility, office of a health care professional or associated group of health care professionals, training institution for health care professionals, or any other place where medical, dental, or other health-related diagnosis, care, or treatment 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 place* where medical, dental, or other health-related diagnosis, care, or treatment is provided to a person. (R.C. 2305.234(A)(4).)

Nonprofit health care referral organization. The bill extends the applicability of the qualified immunity provisions to "nonprofit health care referral organizations" and defines that term as an entity that is not operated for profit and refers patients to, or arranges for the provision of, health-related diagnosis, care, or treatment by a health care professional or health care worker (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 location*, (d) *any nonprofit health care referral organization*, or (e) any other person or government entity (R.C. 2305.234(A)(11)).

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 2**) 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 exceptions and qualifications as in current law as modified by the bill, 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 eliminating "at a nonprofit shelter or health care facility" from the above provision in existing law. Thus, subject to the exceptions and qualifications as in existing law as modified by the bill, 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 *regardless of where* the medical, dental, or other health-related diagnosis, care, or treatment is provided (R.C. 2305.234(C)). (See **COMMENT 3.**)

Civil immunity of health care facilities or locations

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 to the extent that the requirements for registration with the Ohio Department of Health under R.C. 3701.071 apply (see following paragraph), a "health care facility or location," 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 *anywhere* to an indigent or uninsured person, or (3) a *nonprofit health care referral organization described in R.C. 2305.234(D)* (see "*Civil immunity of nonprofit health care referral organizations*," below) (added by the bill) 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 *or nonprofit health care referral organization relative to the* medical, dental, or other health-related diagnosis, care, or treatment provided to an indigent and uninsured person *on behalf of or at the health care facility or location*, unless the action or omission constitutes willful or wanton misconduct (R.C. 2305.234(E)).

The bill continues the requirement that a "nonprofit shelter or health care facility," as defined in current law (see "*Existing law*" under "*Definitions*," above, at paragraph (4)), be registered with the Ohio Department of Health as a condition for making the civil immunity available to the entity (R.C. 3701.071).¹ The bill

¹ *Since the bill eliminates the use of the term "nonprofit shelter or health care facility" for purposes of R.C. 2305.234 (civil immunity provisions), R.C. 3701.071(A)(2), instead of*

does not provide for the registration of the other entities to which it extends the immunity provisions (see the definition of "health care facility or location" in "Operation of the bill" under "Definitions," above). For purposes of the registration provisions, the bill defines "indigent and uninsured person" as having the same meaning as in R.C. 2305.234 (see "Operation of the bill" under "Definitions," above) (R.C. 3701.071(A)(1)).

Civil immunity of nonprofit health care referral organizations

The bill provides that subject to specified exceptions and qualifications described below under "Exceptions" and paragraph (3) under "Qualifications," a "nonprofit health care referral organization" 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 nonprofit health care referral organization in referring indigent and uninsured persons to, or arranging for the provision of, medical, dental, or other health-related diagnosis, care, or treatment by a volunteer health care professional or a volunteer health care worker covered by the civil immunity provisions, unless the action or omission constitutes willful or wanton misconduct (R.C. 2305.234(D)).

Exceptions

Generally, the above-described civil immunities in current law 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.

Under the bill, generally, the civil immunities provided in current law and the bill are not available to a *health care professional, health care worker, nonprofit health care referral organization, or health care facility or location* if, at the time of an alleged injury, death, or loss to person or property, the *health care*

referring to the definition in R.C. 2305.234, provides a new definition of "nonprofit shelter or health care facility," which is the same as the definition in existing law.

professionals or health care workers involved are providing one of the services described in (1), (2), and (3) in the preceding paragraph. These exceptions do not apply *when a health care professional or health care worker provides medical, dental, or other health-related diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency.* (R.C. 2305.234(F).)

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 provides that the qualified immunity provisions in current law and the bill do not do the following (R.C. 2305.235(G)):

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

(2) Affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a *health care professional, health care worker, nonprofit health care referral organization, or health care facility or location* may be entitled in connection with the provision of emergency or other *medical, dental, or other health-related diagnosis, care, or treatment*;

(3) Grant an immunity from tort or other civil liability to a *health care professional, health care worker, nonprofit health care referral organization, or health care facility or location* 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, health care worker, or *nonprofit health care referral organization* to comply with any applicable law of this state or rule of an agency of this state;

(5) Affect any legal responsibility of a *health care facility or location* to comply with any applicable law of this state, 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.

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. The bill also eliminates the provisions specifying that the volunteer medical or dental services may be provided only in a nonprofit shelter or health care facility. (R.C. 4715.42 and 4731.295.)

COMMENT

1. Under R.C. 3715.87 to 3715.873 (not in the bill), the State Board of Pharmacy is required to establish by April 7, 2004, a drug repository program under which prescription drugs can be donated for distribution through participating pharmacies, hospitals, and nonprofit clinics. For purposes of the program, a "nonprofit clinic" is described, in part, as a clinic that serves indigent and uninsured persons, as those persons are described in the laws providing immunity from civil liability to volunteer health providers. As a consequence, the bill's increase in the income level that identifies a person as being indigent extends to the description of nonprofit clinics that are permitted to participate in the drug repository program. In this context, the specification that a nonprofit clinic serves persons who are considered to be indigent does not limit the clinics to serving only those persons who meet the standard for being indigent. Therefore, the bill's inclusion of more persons within the meaning of being indigent appears to have no substantive effect on the drug repository program.

2. 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.

3. 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 *under the direction of a health care professional with authority to direct that health care worker's activities.* (See R.C. 2305.234(A)(6) and (C).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-13-03	p. 335
Reported, S. Health, Human Services, & Aging	06-05-03	pp. 412-413
Passed Senate (32-0)	06-10-03	pp. 437-438

S0086-PS-125.doc/jc

