



**Sub. S.B. 86**

125th General Assembly

(As Reported by H. Civil & Commercial Law)

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**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 requirements that a health care professional must comply with prior to providing diagnosis, care, or treatment in order for the qualified immunity to apply to include notice to an indigent and uninsured person that by giving informed consent the person cannot hold the health care professional liable for damages unless the professional's action or omission constitutes willful or wanton misconduct.
- 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.
- Specifies the types of nurses in specialty practice who may refer to themselves as advanced practice nurses and who may use the initials A.P.N.
- Requires the current Ohio Medical Malpractice Commission to perform additional duties pertaining to medical malpractice insurance and related matters applicable to volunteer health care professionals or workers and nonprofit health care referral organizations under the Good Samaritan Law.

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## 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, certified registered nurse anesthetist, or certified nurse-midwife. (R.C. 2305.234(A)(5)(b), (e), (l), and (m) and 4723.01(O).)

**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**

#### **Existing law**

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 described in the following paragraph 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.)

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)):

(1) 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;

(2) Inform the person of the provisions of existing law regarding the health care professional's qualified immunity;

(3) 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 existing law regarding the immunity.

### **Operation of the bill**

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 two preceding paragraphs 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).)

The bill expands the conditions described in paragraphs (2) and (3) under "**Existing law**," above, that a health care professional must comply with prior to providing diagnosis, care, or treatment in order for the immunity to apply. Under the bill, a health care professional must inform the indigent and uninsured person of the provisions of existing law (see paragraph (2) under "**Existing law**," above), as modified by the bill, including notifying the person that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot hold the health care professional liable for damages in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, unless the action or omission of the health care professional constitutes willful or wanton misconduct. Regarding the written waiver described in paragraph (3) under "**Existing law**," above, the bill requires that the waiver state clearly and in conspicuous type that the person or other individual who signs the waiver is signing it with full knowledge that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot bring a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, against the health care professional

unless the action or omission of the health care professional constitutes willful or wanton misconduct. (R.C. 2305.234(B)(2).)

### **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 2.)

### **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).<sup>1</sup> 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 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

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<sup>1</sup> *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 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.*

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 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.)

### **Advanced practice nurses**

#### **Background**

R.C. 4723.52 to 4723.60 set forth pilot programs to provide access to health care in underserved areas through the use of advanced practice nurses. The advisory committee of each pilot program is required to develop a standard care arrangement to establish conditions under which an advanced practice nurse must refer a patient to a physician and procedures for quality assurance review of advanced practice nurses by the advisory committee. For purposes of the pilot programs, the Board of Nursing may approve certain registered nurses who meet specific criteria as advanced practice nurses.<sup>2</sup> The Board also may approve an advanced practice nurse to prescribe drugs and therapeutic devices subject to specified requirements. (R.C. 4723.52, 4723.55, and 4723.56--not in the bill.) Effective January 17, 2004, R.C. 4723.52 to 4723.60 are to be repealed as provided in Section 3 of Am. Sub. H.B. 241 of the 123rd General Assembly.

R.C. 4723.41 to 4723.50 authorize the Board of Nursing to issue certificates of authority for registered nurses to practice nursing as certified registered nurse anesthetists, clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners (generally referred to in this part of the analysis as "nurses in specialty practice"). R.C. 4723.48 requires the Board of Nursing to issue certificates to prescribe drugs and therapeutic devices to clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners who meet certain specified requirements.

#### **Overview of the bill**

In view of the impending repeal of the pilot programs dealing with advanced practice nurses, the bill specifies the nurses who may refer to themselves as advanced practice nurses. It generally makes the following changes in

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<sup>2</sup> *In addition to other criteria, the applicant must be either: (1) a nurse-midwife holding a current, valid certificate issued under R.C. 4723.42 and is certified by the American College of Nurse-Midwives or (2) a registered nurse certified as a clinical nurse specialist or nurse practitioner by a national certifying organization recognized by the Board (R.C. 4723.55(B)).*

permanent law: (1) it redefines "advanced practice nurse" in the Nurses Law to mean any of specified nurses in specialty practice, (2) it authorizes those covered nurses to use the title "advanced practice nurse" or the initials "A.P.N.," and (3) it makes conforming changes in laws that refer to advanced practice nurses and other laws.

### **Nurses Law**

The existing Nurses Law defines "advanced practice nurse" as, until three years and eight months after May 17, 2000, a registered nurse who is approved by the Board of Nursing under R.C. 4723.55 to practice as an advanced practice nurse (R.C. 4723.01(O)).

The bill modifies the definition of "advanced practice nurse" to mean *a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner* (see **COMMENT 3**). It specifically authorizes any of the above nurses in specialty practice to use the title "advanced practice nurse," the initials "A.P.N.," and any other title or initials approved by the Board of Nursing. (R.C. 4723.01(O) and 4723.03(C)(7).)

The bill also prohibits any person from doing either of the following unless the person holds a current, valid certificate of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner issued by the Board of Nursing under the Nurses Law: (1) represent the person as being an advanced practice nurse or (2) use any title or initials implying that the person is an advanced practice nurse (R.C. 4723.44(A)(4) and (5)).

### **Other changes**

The bill revises the definitions of "advanced practice nurse" in other laws to have the same meaning as the bill's definition of "advanced practice nurse" in the Nurses Law, as described in the second preceding paragraph, above. (R.C. 2305.113(E)(16) (actions upon a medical, dental, optometric, or chiropractic claim), 2305.234(A)(5)(b) (qualified civil immunity of health care professionals), and 2711.22(B)(3) (binding arbitration between a patient and a health care provider).) It modifies the definition of "standard care arrangement" in the Nurses Law as (the bill eliminates ", except as it pertains to an advanced practice nurse,") a written, formal guide for planning and evaluating a patient's health care that is developed by one or more collaborating physicians or podiatrists and a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner and meets the requirements of R.C. 4723.431 (R.C. 4723.01(N)).

The bill removes the references to "advanced practice nurse" from existing provisions that specify any of the types of nurses in specialty practice that are included in the bill's definition of "advanced practice nurse." (R.C. 3719.81(B)(2) (furnishing drug samples), 4713.02(A)(7) (composition of State Board of Cosmetology), 4723.28(B)(24) (grounds for disciplinary actions taken by the Board of Nursing regarding licensees or certificate holders), and 4729.01(I)(2) (definition of "licensed health professional authorized to prescribe drugs" or "prescriber" in the Pharmacists and Dangerous Drug Laws).) The bill eliminates the provision in R.C. 4731.22(B)(30), which currently requires the State Medical Board to impose certain sanctions for the failure of a collaborating physician to fulfill the responsibilities agreed to by the physician and an advanced practice nurse participating in a pilot program under R.C. 4723.52.

In existing laws referring to an advanced practice nurse approved under R.C. 4723.56 to prescribe drugs and therapeutic devices, the bill substitutes the term "applicant" or "recipient" for "advanced practice nurse" in R.C. 4723.48(B) (application for a certificate to prescribe drugs or therapeutic devices) and substitutes "person" for "advanced practice nurse" in R.C. 4723.482(A)(1) (contents of application for a certificate to prescribe drugs or therapeutic devices).

### **Uncodified law**

The bill provides in uncodified law that this act's amendment of 4713.02(A)(7) (see second preceding paragraph, above) does not affect the term of office of any person serving as a member of the State Board of Cosmetology on the effective date of the act. It also provides that the act's amendment of R.C. 4723.28(B)(24) (see second preceding paragraph, above) does not remove the authority of the Board of Nursing to conduct investigations and take disciplinary actions regarding a person who engaged in the activities specified in that provision while participating in one of the advanced practice nurse pilot programs operated pursuant to R.C. 4723.52 to 4723.60 prior to the January 17, 2004, effective date of the repeal of those sections, as provided in Section 3 of Am. Sub. H.B. 241 of the 123rd General Assembly. The bill further provides that the act's amendment of R.C. 4731.22(B)(30) (see second preceding paragraph, above) does not remove the State Medical Board's authority to conduct investigations and take disciplinary actions regarding the failure of a collaborating physician to fulfill the responsibilities agreed to by the physician and an advanced practice nurse participating in one of the pilot programs operated pursuant to R.C. 4723.52 to 4723.60 prior to the January 17, 2004, effective date of the repeal of those sections. (Sections 4, 5, and 6.)

## *Additional duties of Medical Malpractice Commission*

### *Existing law*

Section 4 of Am. Sub. S.B. 281 of the 124th General Assembly created the Ohio Medical Malpractice Commission consisting of nine members appointed as follows: (1) three appointed by the President of the Senate, (2) three appointed by the Speaker of the House of Representatives, (3) one appointed by the minority leader of the Senate and one appointed by the minority leader of the House of Representatives, and (4) one who is the Director of the Department of Insurance or the Director's designee. Of the six members appointed by the Senate President and the House Speaker, one represents the Ohio State Bar Association, one represents the Ohio State Medical Association, and one represents the insurance companies in Ohio, and all of them are required to have expertise in medical malpractice insurance issues. The existing duties of the Commission are the following: (1) to study the effects of Am. Sub. S.B. 281, (2) to investigate the problems posed by, and the issues surrounding, medical malpractice, and (3) to submit a report of its findings to the General Assembly not later than two years after that act's effective date.

Any vacancy in the membership of the Commission must be filled in the same manner in which the original appointment was made. The members of the Commission, by majority vote, are required to elect a chairperson from among themselves. The Department of Insurance provides any technical, professional, and clerical employees that are necessary for the Commission to perform its duties.

### *Operation of the bill*

The bill requires the Ohio Medical Malpractice Commission created by Section 4 of Am. Sub. S.B. 281 of the 124th General Assembly to have the following duties, in addition to the other duties provided by law for the Commission (Section 3(B)):

(1) To study the affordability and availability of medical malpractice insurance for health care professionals and health care workers who are volunteers and for nonprofit health care referral organizations;

(2) To study the feasibility of whether the state of Ohio should provide catastrophic claims coverage, or an insurance pool of any kind, for health care professionals and health care workers to utilize as volunteers in providing medical, dental, or other health-related diagnosis, care, or treatment to indigent and uninsured persons;



(3) To study the feasibility of whether the state of Ohio should create a fund to provide compensation to indigent and uninsured persons who receive medical, dental, or other health-related diagnosis, care, or treatment from health care professionals or health care workers who are volunteers, for any injury, death, or loss to person or property as a result of the negligence or other misconduct by those health care professionals or workers;

(4) To study whether the Good Samaritan laws of other states offer approaches that are materially different from the Ohio Good Samaritan Law as amended by this act, as contained in R.C. 2305.234.

The Commission must submit a report of its findings regarding all of the matters described in clauses (1) to (4), above, to the members of the General Assembly not later than two years after the effective date of this act. The Department of Insurance must provide any technical, professional, and clerical employees that are necessary for the Commission to perform its duties under the bill. (Section 3(C) and (D).)

For purposes of the above provisions regarding the Ohio Medical Malpractice Commission, the bill defines "health care professional," "health care worker," "indigent and uninsured person," "nonprofit health care referral organization," and "volunteer" as having the same meanings as in R.C. 2305.234, as amended by this act (see "Definitions," above) (Section 3(A)).

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## 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. 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).)

3. "Certified registered nurse anesthetist," "clinical nurse specialist," "certified nurse-midwife," and "certified nurse practitioner" means a registered nurse who holds a valid certificate of authority issued under the Nurses Law that authorizes the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, respectively, in accordance with R.C. 4723.43 and rules adopted by the Board of Nursing (R.C. 4723.01(G), (H), (I), and (J)).

R.C. 4723.43 provides as follows:

A certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may provide to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education and clinical experience.

(A) A nurse authorized to practice as a certified nurse-midwife, in collaboration with one or more physicians, may provide the management of preventive services and those primary care services necessary to provide health care to women antepartally, intrapartally, postpartally, and gynecologically, consistent with the nurse's education and certification, and in accordance with rules adopted by the board.

No certified nurse-midwife may perform version, deliver breech or face presentation, use forceps, do any obstetric operation, or treat any other abnormal condition, except in emergencies. Division (A) of this section does not prohibit a certified nurse-midwife from performing episiotomies or normal vaginal deliveries, or repairing vaginal tears. A certified nurse-midwife who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

(B) A nurse authorized to practice as a certified registered nurse anesthetist, with the supervision and in the immediate presence of a physician, podiatrist, or dentist, may administer anesthesia and perform anesthesia induction, maintenance, and emergence, and may perform with supervision preanesthetic preparation and evaluation, postanesthesia care, and clinical support functions, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. A certified registered nurse anesthetist is not required to obtain a certificate to prescribe in order to provide the anesthesia care described in this division.

The physician, podiatrist, or dentist supervising a certified registered nurse anesthetist must be actively engaged in practice in this state. When a certified registered nurse anesthetist is supervised by a podiatrist, the nurse's scope of practice is limited to the anesthesia procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform. A certified registered nurse anesthetist may not administer general anesthesia under the supervision of a podiatrist in a podiatrist's office. When a certified registered nurse anesthetist is supervised by a dentist, the nurse's scope of practice is limited to the anesthesia procedures that the dentist has the authority under Chapter 4715. of the Revised Code to perform.

(C) A nurse authorized to practice as a certified nurse practitioner, in collaboration with one or more physicians or podiatrists, may provide preventive and primary care services and evaluate and promote patient wellness within the nurse's nursing specialty, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. A certified nurse practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with 4723.481.

When a certified nurse practitioner is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform.

(D) A nurse authorized to practice as a clinical nurse specialist, in collaboration with one or more physicians or podiatrists, may provide and manage the care of individuals and groups with complex health problems and provide health care services that promote, improve, and manage health care within the nurse's nursing specialty, consistent with the nurse's education and in accordance with rules adopted by the board. A clinical nurse specialist who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

When a clinical nurse specialist is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, S. Health, Human Services, & Aging	05-13-03	p. 335
Passed Senate (32-0) Reported, H. Civil & Commercial Law	06-05-03	pp. 412-413
	06-10-03	pp. 437-438
	11-06-03	p. 1055

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