



Alan Van Dyne

Bill Analysis
Legislative Service Commission

Sub. S.B. 86

125th General Assembly

(As Reported by S. Health, Human Services, & Aging)

Sens. Stivers, Miller, Goodman, Jacobson, Randy Gardner, Coughlin, Amstutz, Brady, Herington, Fedor, Wachtmann

BILL SUMMARY

- Modifies the immunity from civil liability that applies to volunteer health care professionals and workers who provide services to indigent and uninsured persons in nonprofit shelters and health care facilities.
- Expands the number of indigent and uninsured persons who may be served by volunteer health care professionals and workers with immunity from civil liability by specifying that the persons being served cannot have incomes exceeding 200%, rather than 150%, of the federal poverty line.
- Eliminates provisions that specify the places where health services must be provided for the immunity from civil liability to apply to volunteer health professionals and workers.
- Extends immunity from civil liability to any health care facility or location associated with the volunteer health care professionals and workers, including such facilities and locations as hospitals, clinics, offices of health professionals, training institutions, and other places where health services are provided.
- Establishes immunity from civil liability for nonprofit health care referral organizations and the health care facilities or locations associated with them.
- Expands the health care professionals to whom the immunity from civil liability applies by including occupational therapists, occupational therapy assistants, physical therapist assistants, respiratory care professionals, speech-language pathologists, and audiologists.

- Allows retired physicians and dentists practicing under volunteers' licenses to provide care to the expanded number of indigent persons at any location.

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 health services without compensation to indigent and uninsured persons, which in this case includes 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 Medicaid, Medicare, or any other governmental health care program.¹ The immunity is available to the following health care professionals: physicians, registered nurses, advanced practice nurses, licensed practical nurses, physician assistants, dentists, dental hygienists, physical therapists, chiropractors, optometrists, podiatrists, dietitians, pharmacists, and emergency medical technicians. It also extends to health care workers who act under a health care professional's direction.

For the immunity to apply, the health services must be provided at a nonprofit shelter or health care facility that annually registers 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 volunteer health care professionals and workers is also available to the nonprofit shelters or health care facilities associated with the volunteer providers. In no event, however, is the immunity available for the performance of an operation, delivery of a baby, or provision of health services pursuant to a community service work order entered or imposed by a court.

Existing law provides that the immunity from civil liability applicable to volunteer health services does not create a new cause of action or substantive legal right against the individuals and entities subject to the immunity, nor does it affect other immunities or defenses established under other state laws or available at common law. The immunity does not extend to actions that are outside the scope of authority of health care professionals or workers. It does not affect any legal

¹ *Current law specifies that the immunity*

responsibility to comply with any applicable state law or administrative rule or with any applicable local code, ordinance, or regulation.

Modification of civil immunity for volunteer health providers

(R.C. 2305.234 and 3701.071; Section 3)

The bill modifies the existing immunity from civil liability that applies when health care professionals and workers provide health services to indigent and uninsured persons. Specifically, the bill makes the following changes:

(1) The bill expands the number of indigent and uninsured persons who can be served under the immunity provisions by raising the income limit that must be met to be considered indigent. Under the bill, a person is considered indigent if the person's income is not greater than 200% of the federal poverty line, rather than 150% of the federal poverty line.

(2) The bill eliminates the specification of where health services must be provided for the immunity to apply to a volunteer health care professional or worker.

(3) In place of the immunity that applies to nonprofit shelters and health care facilities, the bill establishes immunity for any health care facility or location associated with a volunteer health care professional or worker. The bill describes a "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. For the immunity to apply in the case of a nonprofit shelter or health care facility, as those terms are currently defined, the bill continues the requirement that the shelter or facility annually register with the Ohio Department of Health.

(4) The bill establishes immunity from civil liability for nonprofit health care referral organizations. Under the bill, an entity is considered to be a nonprofit health care organization if it 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 worker. The provisions establishing the immunity specify that 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 worker serving indigent and uninsured persons. The immunity does not apply if an action or omission constitutes willful or wanton misconduct.

(5) The bill extends the immunity that applies to health care facilities or locations to cases in which they are associated with nonprofit health care referral organizations.

(6) The bill extends the immunity that applies to health care professionals to the following additional licensed persons who volunteer their services for indigent and uninsured persons: occupational therapists, occupational therapy assistants, physical therapist assistants, respiratory care professionals, speech-language pathologists, and audiologists.

(7) The bill clarifies that the advanced practice nurses currently included in the immunity provisions are persons who are certified by the Board of Nursing to practice as certified nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, or certified nurse-midwives.

Volunteer's licenses for retired physicians and dentists

(R.C. 4715.42 and 4731.295)

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 and eliminates the provisions specifying that the volunteer medical and dental services may be provided only in nonprofit shelters and health care facilities.

COMMENT

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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-13-03	p. 335
Reported, S. Health, Human Services, & Aging	06-05-03	pp. 412-413

S0086-RS-125.doc/jc

