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Bill Analysis
Legislative Service Commission

Sub. S.B. 124
125th General Assembly
(As Reported by S. Civil Justice)

Sens. Amstutz, Nein, Randy Gardner, Carey, Jacobson, Spada, Blessing, Stivers

BILL SUMMARY

- Modifies the "performance of an operation" and the "delivery of a baby" exceptions to the civil immunity provided to volunteer health care professionals, volunteer health care workers, nonprofit shelter care or health care facilities, nonprofit health care referral organizations, and health care facilities and locations associated with such volunteers or organizations in relation to medical, dental, or health care related services provided by volunteers to indigent and uninsured persons.
- Modifies in a manner consistent with the definition that takes effect on July 12, 2004, the definition of "indigent and uninsured person" that applies to the civil immunity described in the prior dot point by increasing the income threshold included within the definition to an amount not greater than 200% of the current poverty line.

CONTENT AND OPERATION

Civil immunity for volunteer health care professionals, volunteer health care workers, nonprofit shelters or health care facilities, and nonprofit health care referral organizations

General civil immunity--prior to July 12, 2004

Generally, a "health care professional" who is a "volunteer" (see **COMMENT**) and who complies with the requirements listed below 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" (see **COMMENT**) to an "indigent and uninsured person"

(see "*Indigent and uninsured persons*," below) of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct. The covered diagnosis, care, and treatment includes the health care professional providing samples of medicine and other medical products to the indigent and uninsured person. (R.C. 2305.234(B)(1).)

In order for the health care professional to qualify for the immunity described above, the 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 R.C. 2305.234, and (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 R.C. 2305.234.

Generally, "health care workers" (see **COMMENT**) 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).) In addition, a nonprofit shelter or health care facility associated with a health care professional or a health care worker described in either of the immunity provisions summarized above generally 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).)

General civil immunity--July 12, 2004 and thereafter

Under the law that is effective on July 12, 2004, subject to the same exceptions and qualifications as in current law that were in effect prior to July 12, 2004, if the other elements of the qualified civil immunity of volunteer health care

professionals as described in "General civil immunity--prior to July 12, 2004," above, are present, the immunity applies regardless of where the medical, dental, chiropractic, optometric, or other health-related diagnosis, care, or treatment, including the provision of medicine, samples, and other medical products, is provided to an indigent and uninsured person. As under the law in effect prior to July 12, 2004, the immunity does not apply if the action or omission constitutes willful or wanton misconduct. (R.C. 2305.234(B)(1).)

Under the law that is effective on July 12, 2004, in order for a volunteer health care professional to qualify for the above-described immunity, the health care professional must do all of the following prior to providing the diagnosis, care, or treatment (R.C. 2305.234(B)(2)): (1) determine in good faith that the indigent and uninsured person is capable of giving consent and is not subject to duress or under undue influence (same as pre-July 12, 2004, law), (2) inform the indigent and uninsured person of the provisions of the law (see (2) under "General civil immunity--prior to July 12, 2004," above, *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* (law after July 12, 2004), and (3) obtain the informed consent and written waiver described in (3) under "General civil immunity--prior to July 12, 2004," above (*under the law that is effective on July 12, 2004, the written waiver must 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. 2305.235(B)(2).)

Similarly, subject to the exceptions and qualifications, if the other elements of the qualified civil immunity of volunteer health care workers as described in "General civil immunity--prior to July 12, 2004," above, 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)).

Under the law that is effective on July 12, 2004, the term "nonprofit shelter or health care facility" is eliminated, because the immunity is no longer contingent on the location at which the health care professional provides the diagnosis, care, or treatment. That law also provides that the immunity described in "General civil immunity--prior to July 12, 2004," above, for a nonprofit shelter or health care

facility associated with a health care professional or health care worker applies to a "nonprofit health care referral organization."¹

Exceptions to the civil immunity

Existing law--prior to July 12, 2004. Generally, the above-described 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 (R.C. 2305.234(E)(1)):

(1) Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court under R.C. 2951.02(F) as a condition of probation or other suspension of a term of imprisonment or imposed by a court as a community control sanction pursuant to R.C. 2929.15 and 2929.17;

(2) Performance of an operation;

(3) Delivery of a baby.

The above-described 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)(2)).

Existing law--July 12, 2004 and thereafter. Under the law that takes effect on July 12, 2004, the exceptions described in **'Existing law--prior to July 12, 2004'** apply to *a nonprofit health care referral organization or a health care facility or location*, rather than a nonprofit shelter or health care facility.

Operation of the bill. The bill modifies the exceptions to the civil immunities described in (2) and (3) above by providing that, under those exceptions, the immunities are not available to an individual, a nonprofit shelter or health care facility, or a nonprofit health care referral organization or health care facility or location, effective July 12, 2004, if, at the time of an alleged injury, death, or loss to person or property, the individuals involved are providing delivery of a baby *or any other purposeful termination of a human pregnancy* (R.C. 2305.234(F)(1)(c)) or are providing the performance of an operation to which any one of the following applies (R.C. 2305.234(E)(1)(b)):

¹ "Nonprofit health care referral organization" means 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)).

(1) The operation requires the administration of deep sedation or general anesthesia.

(2) The operation is a procedure that is not typically performed in an office.

(3) The individual involved is a health care professional, and the operation is beyond the education, training, and competence of the health care professional.

Indigent and uninsured persons

Existing law

Existing law that is effective until July 12, 2004, defines "indigent and uninsured person," for purposes of the above-described civil immunity provisions, as a person who meets all of the following requirements (R.C. 2305.234(A)(6)):

(1) 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." Under the definition that applies on or after July 12, 2004, the person's income must not be greater than 200% of the current poverty line.

(2) 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.

(3) Either of the following applies: (a) 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, or (b) 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.

Operation of the bill

The bill modifies the definition of "indigent and uninsured person" by increasing the income threshold specified in the first qualifying requirement, set forth in (1), above, to an amount not greater than 200% of the current poverty line (R.C. 2305.234(A)(6)). As of July 12, 2004, this change will be unnecessary since the income threshold specified is not greater than 200% under the law effective on that date.

Definitions

The bill includes definitions for the following terms:

(1) "Deep sedation" means a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation, a patient's ability to independently maintain ventilatory function may be impaired, a patient may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate, and cardiovascular function is usually maintained.

(2) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation, the ability to independently maintain ventilatory function is often impaired, a patient often requires assistance in maintaining a patent airway, positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function, and cardiovascular function may be impaired.

COMMENT

The following terms used in the bill are defined in existing R.C. 2305.234(A), unchanged by the bill:

(1) "Health care professional" means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment: (a) physicians authorized under R.C. Chapter 4731. to practice medicine and surgery or osteopathic medicine and surgery, (b) registered nurses, advanced practice nurses, and licensed practical nurses licensed under R.C. Chapter 4723., (c) physician assistants authorized to practice under R.C. Chapter 4730., (d) dentists and dental hygienists licensed under R.C. Chapter 4715., (e) physical therapists licensed under R.C. Chapter 4755., (f) chiropractors licensed under R.C. Chapter 4734., (g) optometrists licensed under R.C. Chapter 4725., (h) podiatrists authorized to practice under R.C. Chapter 4731., (i) dietitians licensed under R.C. Chapter 4759., (j) pharmacists licensed under R.C. Chapter 4729., or (k) emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic, certified under R.C. Chapter 4765.

(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) "Nonprofit shelter or health care facility" means a charitable nonprofit corporation organized and operated pursuant to R.C. Chapter 1702., 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, a facility licensed under R.C. Chapter 3721., or a medical facility that is operated for profit. This definition will be removed from R.C. 2305.234 effective July 12, 2004.

(4) "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 an indigent and uninsured person, another person on behalf of an indigent and uninsured person, any shelter or health care facility, or any other person or governmental entity.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|----------------------------|----------|---------------|
| Introduced | 09-02-03 | p. 1008 |
| Reported, S. Civil Justice | 04-01-04 | pp. 1701-1702 |

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