



Bill Analysis

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Legislative Service Commission

H.B. 522

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(As Introduced)

Reps. Peterson, Schaffer, Chandler

BILL SUMMARY

- Requires hospitals and ambulatory surgical facilities to assign a circulating nurse to each surgical procedure performed in an operating room of the hospital or facility.
- Requires private physician offices to assign a circulating nurse to each surgical procedure performed in the office in which general anesthesia is administered.
- Permits the Director of Health to impose penalties on ambulatory surgical facilities and hospitals for violation of the circulating nurse requirements.
- Permits the State Medical Board to discipline a physician for violation of the circulating nurse requirements.

CONTENT AND OPERATION

Overview--circulating nurses

The bill requires the presence of a circulating nurse at each surgical procedure performed in any operating room of a hospital or ambulatory surgical facility. The bill also requires the presence of a circulating nurse at each surgical procedure performed in a private physician office in which general anesthesia is administered to a patient. The bill defines "circulating nurse" as a registered nurse¹ who coordinates the nursing care and safety needs of a patient while the

¹ The bill defines "registered nurse" consistent with current law to mean a person who is licensed as a registered nurse under R.C. Chapter 4723., the chapter that governs the licensure and practice of nurses.

patient undergoes a surgical procedure, but who does not directly assist the physician performing the surgical procedure.

Ambulatory surgical facilities

In general, current law (R.C. 3702.30(A)(1)) defines an "ambulatory surgical facility" as a facility, whether or not part of the same organization as a hospital, that is located in a building distinct from another in which inpatient care is provided, and to which at least one of several criteria apply (see **COMMENT**).

Requirements

(R.C. 3702.33(B))

The bill requires ambulatory surgical facilities to do all of the following:

(1) Assign a circulating nurse to each surgical procedure performed in an operating room of the facility.

(2) Ensure that the circulating nurse assigned to a procedure is present in the operating room for the entire duration of the procedure unless it becomes necessary for the nurse to leave the room as required by the procedure or the nurse is relieved by another circulating nurse.

(3) Ensure that a circulating nurse assigned to a procedure is not assigned to another procedure that is scheduled to occur concurrently or that may overlap in time with the procedure to which the nurse was originally assigned.

Penalties

(R.C. 3702.33(C))

The bill permits the Director of Health, if the Director determines that an ambulatory surgical facility has violated any requirement, described above, to do any or all of the following:

(1) Provide an opportunity for the ambulatory surgical facility to correct the violation within a specified period of time.

(2) Revoke, suspend, or refuse to renew the ambulatory surgical facility's license.

(3) Prior to or during the pendency of an administrative hearing conducted in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.), issue an order that prohibits the ambulatory surgical facility from performing certain types of services.

(4) Impose a civil penalty of not less than \$1,000 and not more than \$10,000 for each day that the ambulatory surgical facility fails to correct the violation.

Authority to seek injunctions

(R.C. 3702.30(D))

The bill permits the Director of Health, if an ambulatory surgical facility subject to an order described above continues to provide the types of services prohibited by the order, to file a petition in the court of common pleas of the county in which the facility is located for an injunction enjoining the facility from performing those types of services. The court must grant an injunction on a showing that the respondent named in the petition is providing the types of services prohibited by the Director's order.

Rules

Under current law (R.C. 3702.30(B)), the Director of Health must, by rule, establish quality standards for health care facilities. The bill requires that these rules include provisions governing the orders issued for an ambulatory surgical facility to cease its operations or to prohibit certain types of services provided by the facility.

Deposit of civil penalties

(R.C. 3702.30(E))

The bill requires the Director of Health to deposit all moneys collected as civil penalties (as described in "**Penalties**," above) in the Quality Monitoring and Inspection Fund, a fund that exists under current law. The Director must use money in the Quality Monitoring and Inspection Fund for, among other things, administration and enforcement of the circulating nurse requirements.

Hospitals

Under existing law (R.C. 3727.01), a hospital is, in general, either (1) an institution classified as a hospital by rule of the Public Health Council in which inpatient diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care for a continuous period longer than twenty-four hours is provided to patients, or (2) a hospital operated by a health maintenance organization.

Requirements

(R.C. 3727.30(B))

The bill requires hospitals to do all of the following:

(1) Assign a circulating nurse to each surgical procedure performed in an operating room of the hospital.

(2) Ensure that the circulating nurse assigned to a procedure is present in the operating room for the entire duration of the procedure unless it becomes necessary for the nurse to leave the room as required by the procedure or the nurse is relieved by another circulating nurse.

(3) Ensure that a circulating nurse assigned to a procedure is not assigned to another procedure that is scheduled to occur concurrently or that may overlap in time with the procedure to which the nurse was originally assigned.

Penalties

(R.C. 3727.30(C))

The bill permits the Director of Health, if the Director determines that a hospital has violated any requirement described above, to do either or both of the following:

(1) Provide an opportunity for the hospital to correct the violation within a specified period of time.

(2) Impose a civil penalty of not less than \$1,000 and not more than \$10,000 for each day that the hospital fails to correct the violation.

Rules

(R.C. 3727.32)

The Director of Health is required under the bill to adopt rules governing the imposition of civil penalties described above, including a scale for determining the amount of the penalties.

Deposit of civil penalties

(R.C. 3727.31)

The bill creates the Hospital Operating Room Monitoring and Inspection Fund and requires the Director of Health to deposit any civil penalties (described

in "Penalties," above) in the Fund and to use the Fund to enforce the circulating nurse requirements.

Private physician offices

The bill defines "physician" consistent with current law to mean a person who holds a valid certificate issued under R.C. Chapter 4731. (the chapter governing the licensure and practice of physicians) authorizing the person to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

Requirements

(R.C. 4731.82(B))

The bill requires physicians to do all of the following:

(1) Assign a circulating nurse to each surgical procedure performed in the physician's private office in which general anesthesia² is administered to the patient undergoing the procedure.

(2) Ensure that the circulating nurse assigned to a procedure is present in the room where the procedure occurs for the entire duration of the procedure unless it becomes necessary for the nurse to leave the room as required by the procedure or the nurse is relieved by another circulating nurse.

(3) Ensure that a circulating nurse assigned to a procedure is not assigned to another procedure that is scheduled to occur concurrently or that may overlap in time with the procedure to which the nurse was originally assigned.

² *The bill defines "general anesthesia" consistent with the definition of this term in Ohio's Good Samaritan Law (R.C. 2305.234) and in a rule adopted by the State Medical Board for office-based surgeries (Ohio Administrative Code § 4731-25-01): 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.*

Penalties

(R.C. 4731.22(B)(38))

The bill permits the State Medical Board, to the extent permitted by law, to limit, revoke, or suspend a physician's certificate to practice, refuse to register a physician, refuse to reinstate a physician's certificate to practice, or reprimand or place a physician on probation for violating the circulating nurse requirements.

COMMENT

Current law (R.C. 3702.30(A)(1)) provides that at least one of the following must apply for a facility to be an ambulatory surgical facility:

(1) Outpatient surgery is routinely performed in the facility, and the facility functions separately from a hospital's inpatient surgical service and from the offices of private physicians, podiatrists, and dentists.

(2) Anesthesia is administered in the facility by an anesthesiologist or certified registered nurse anesthetist, and the facility functions separately from a hospital's inpatient surgical service and from the offices of private physicians, podiatrists, and dentists.

(3) The facility applies to be certified by the United States Health Care Financing Administration as an ambulatory surgical center for the purposes of reimbursement under Part B of the Medicare Program, Part B of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

(4) The facility applies to be certified by a national accrediting body approved by the Health Care Financing Administration for the purposes of deemed compliance with the conditions for participating in the Medicare Program as an ambulatory surgical center.

(5) The facility bills or receives from any third-party payer, government health care program, or other person or government entity any ambulatory surgical facility fee that is billed or paid in addition to any fee for professional services.

(6) The facility is held out to any person or government entity as an ambulatory surgical facility or similar facility by means or signage, advertising, or other promotional efforts.

In addition, the definition of "ambulatory surgical facility" specifically excludes a hospital emergency department.

HISTORY

ACTION

DATE

Introduced

02-23-06

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