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Bill Analysis
Legislative Service Commission

H.B. 525

126th General Assembly
(As Introduced)

**Reps. R. McGregor, Widener, Chandler, C. Evans, Collier, Harwood,
DeWine, Boccieri**

BILL SUMMARY

- Creates the State Medical Communicator Board to license or register assistance operators of medical alert services.
- Prohibits any person from serving as an assistance operator in Ohio or to a person in Ohio without a current license from or registration with the State Medical Communicator Board.

CONTENT AND OPERATION

Creation of the State Medical Communicator Board

Appointment of Board members

The bill creates the State Medical Communicator Board consisting of the following nine members: the Directors of Public Safety and Aging or their designees, and seven other members appointed by the Governor with the advice and consent of the Senate. Each of the gubernatorial appointees must have had, for not less than five years, the qualifications to be licensed or registered as an assistance operator (see **'Eligibility for license or registration,'** below). (R.C. 4765.81(A).)

Within 90 days after the bill's effective date, the Governor must make initial appointments to the Board. Of those initial appointees, the Governor must appoint two to a term ending one year after the bill's effective date, two to a term ending two years after that date, two to a term ending three years after that date, and one to a term ending four years after that date. Thereafter, terms of office of the gubernatorial appointees must be for four years, with each term ending on the same day of the same month as did the term it succeeds. (R.C. 4765.81(B).)

Each Board member appointed by the Governor must hold office from the date of appointment until the end of the term for which the member was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed must hold office for the remainder of that term. And, a member must continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of 60 days has elapsed, whichever occurs first. Members may be reappointed, but may not serve more than two complete consecutive four-year terms. (R.C. 4765.81(B).)

Reimbursement of Board members' expenses

Board members cannot be compensated for their service on the Board. Each member, however, must receive a *travel reimbursement* per mile each way, at the same mileage rate allowed for the reimbursement of travel expenses of state employees as provided by rule of the Director of Budget and Management (see R.C. 126.31(B)--not in the bill). This reimbursement would be for travel incurred by a member from and to the member's place of residence by the most direct highway route of public travel to and from the place in which the Board meets, and it would be paid quarterly on the last day of March, June, September, and December of each year. (R.C. 4765.82.)

Organization and operation of the Board

The Board must organize by electing from its members a president, vice-president, and secretary. It must hold monthly meetings at least eight months each year at the times and places the Board's president designates. A majority of the members of the Board constitutes a quorum for the conduct of business. (R.C. 4765.83(A).)

The Board must employ an executive director, three processors, and three enforcement staff members. The Department of Public Safety must provide it with office space and administrative support. (R.C. 4765.83(B).)

Concurrence of a majority of the Board's members is required to grant, refuse, revoke, or refuse to renew a license or registration (see below). These actions by the Board are subject to the rules it must adopt (see below). (R.C. 4765.83(C).)

Prohibitions and key definitions

Prohibitions

The bill prohibits any person from serving as an "assistance operator" (see below) *in Ohio or to a person in Ohio* without a current license from or

registration with the State Medical Communicator Board and also prohibits any person from serving as an assistance operator after the Board revokes the person's license or registration (R.C. 4765.84). These prohibitions do not take effect until one year after the bill's effective date (Section 2).

The bill further forbids any person or governmental entity from (1) employing as an assistance operator a person who is not licensed by or registered with the Board as an assistance operator or (2) permitting an unlicensed or unregistered person to provide "medical alert services" (see below). The bill relatedly requires a medical alert service to provide medical alert services to its subscribers (see below) 24 hours a day each day of the year. (R.C. 4765.85.)

Enforcement of the prohibitions

The bill does *not impose* any criminal penalties for violations of its prohibitions or for a failure of a medical alert service to provide medical alert services to its subscribers 24 hours a day each day of the year. The Board's enforcement authority may be implied authority to commence injunction (civil) actions in the courts of common pleas to restrain violations of the law and to compel compliance with its provisions, but that authority clearly is not explicit. And, although the bill requires the licensure or registration of assistance operators serving persons in Ohio, the Board likely lacks jurisdiction to enforce the licensure or registration of assistance operators *located outside* this state.

Definitions

The bill defines the following key terms mentioned above (R.C. 4765.80):

- "Assistance operator"--any compensated or uncompensated person whose primary responsibility as an employee or volunteer is to respond to subscribers of a medical alert service. It does not include a person in the employ of an "emergency service provider" as defined in the Uniform Emergency Telephone Number System Law (the State Highway Patrol, an emergency service department or unit of a subdivision, or an emergency service department or unit that provides emergency services to a subdivision under a contract).
- "Medical alert service"--an entity that provides a medical alert device (see below) and access to an assistance operator who is authorized to contract family or emergency assistance on the subscriber's behalf.
- "Subscriber"--any person with a subscription, whether paid or free, to a service offered by a medical alert service.

- "Medical alert device"--an electronic device that allows or causes a subscriber to send a signal to or communicate with an assistance operator.

Eligibility for licensure or registration

Licensure

Under the bill, each person who seeks to be licensed as an assistance operator must file a written application for the license with the State Medical Communicator Board's secretary. The application must be on the form the Board prescribes and be verified by oath. The applicant must furnish satisfactory proof to the Board that the bill's requirements and those the Board imposes are met. The bill's requirements in this regard are that the applicant (R.C. 4765.86(A)):

- Be of good moral character.
- Be at least 21 years of age.
- Have a high school diploma or general education diploma equivalent.
- Be proficient in oral English.
- Have (1) satisfied *any of* the requirements specified in the State Nurse Aide Registry Law in order to be listed in that Registry established by the Director of Health, excluding the requirement relating to being enrolled in a prelicensure program of nursing education approved by the Board of Nursing or by a comparable agency of another state (see **COMMENT**), or (2) satisfied comparable requirements of a law of another state as determined in the rules the Board is required to adopt, or (3) satisfied medical training requirements the Board must establish in the rules it is required to adopt.

An applicant who successfully meets the bill's and the Board's requirements must receive a license from the Board that is signed by its president, vice-president, and secretary. It is conclusive evidence of the applicant's right to serve as an assistance operator in Ohio or to a person in Ohio. The Board must issue a duplicate license if the loss of a license is satisfactorily shown. (R.C. 4765.86(A).)

Registration

Each person who seeks to be registered as an assistance operator must file for registration, on a Board-prescribed form, with the Board's secretary. The form

must be verified by oath, and the applicant must provide satisfactory proof to the Board that the *applicant was serving as an assistance operator before the bill's effective date*. The Board must register an applicant who meets this requirement as an assistance operator, and that registration is conclusive evidence of the applicant's right to serve as an assistance operator in Ohio or to a person in Ohio. (R.C. 4765.86(B).)

Renewal of license or registration

An assistance operator must renew the operator's license or registration annually. And, each licensed or registered assistance operator annually must complete not less than 15 hours of continuing education that meets the requirements the State Medical Communicator Board establishes in the rules it is required to adopt. Failure to meet these continuing education requirements constitutes a failure to renew a license or registration. (R.C. 4765.87.)

Fees for licensure or registration

The State Medical Communicator Board must establish in the rules it is required to adopt fees for license applications, renewals, and duplicates and for registration and registration renewal (R.C. 4765.86(C)).

Investigation of a subscriber's death

Under the bill, the State Medical Communicator Board must cause its staff to investigate the death of a subscriber if that death occurs (1) from *nonnatural causes*, as the Board defines that term in the rules it is required to adopt, and (2) within 24 hours after the subscriber contacts an assistance operator. The investigation must seek to determine whether the negligence or recklessness of the assistance operator contributed to the cause of death, and it must include a review of any recording made by means of the medical alert device and any other information the Board considers relevant to the circumstances of the subscriber's death. (R.C. 4765.88(A).)

Board staff must begin an investigation not later than 90 days after the date of a subscriber's death and complete the investigation and file a report with the Board not later than 90 days after commencing the investigation (R.C. 4765.88(A)). Each Board member must receive a written copy of the report, and the Board must review the report at its first meeting after the report's filing. The report is a public record under the Public Records Law. (R.C. 4765.88(B).)

If the Board determines on the basis of such a report that there are reasonable grounds to believe that negligence or recklessness on the part of an assistance operator contributed to the cause of a subscriber's death, the Board must

conduct a hearing under the Administrative Procedure Act for purposes of determining whether the assistance operator's license or registration should be revoked. If, on the basis of the hearing, the Board determines by a preponderance of the evidence that the assistance operator's negligence or recklessness contributed to the cause of death, the Board must permanently revoke the assistance operator's license or registration. (R.C. 4765.88(C).)

The Board cannot terminate any investigation or proceeding except by a majority vote of its members (R.C. 4765.88(C)).

Board rules

The bill requires the State Medical Communicator Board to adopt rules in accordance with the Administrative Procedure Act to implement its provisions. The rules must provide all of the following (R.C. 4765.89):

- Standards and procedures for granting, refusing, revoking, or refusing to renew a license or registration.
- Medical training requirements that applicants for a license may comply with to be issued a license.
- Comparable requirements of a law of another state that applicants for a license may comply with to be issued a license.
- The amounts of the fees to be charged to applicants, licensees, and registrants, so that the total fees collected are sufficient to pay the Board's actual and necessary costs incurred in fulfilling its duties.
- Standards and successful completion requirements for continuing education.
- Circumstances under which the death of a subscriber is considered nonnatural.
- Methods and procedures for conducting investigations.

Popular title

The bill specifies that, when enacted, it will be known as "Janice's Law" (Section 3).

COMMENT

The State Nurse Aide Registry that the Director of Health must establish under R.C. 3721.32 (not in the bill) must list all individuals who have done any of the following:

(A) They were used by a long-term care facility as nurse aides on a full-time, temporary, per diem, or other basis at any time between July 1, 1989, and January 1, 1990, and successfully completed, not later than October 1, 1990, a competency evaluation program approved or conducted by the Director under specified law.¹

(B) They successfully completed a training and competency evaluation program approved by the Director under specified law² or met the conditions in specified law,³ and, if the training and competency evaluation program or the training, instruction, or education the individual completed in meeting those conditions was conducted in or by a long-term care facility, or if the Director so required under specified law,⁴ has successfully completed a competency evaluation program conducted by the Director.

(C) They successfully completed a training and competency evaluation program conducted by the Director under specified law.⁵

(D) They successfully completed, before July 1, 1989, a program that the Director has determined under specified law⁶ included a competency evaluation component no less stringent than the competency evaluation programs approved or conducted by the Director under specified law (see Footnote 1), and was otherwise comparable to the training and competency evaluation program being approved by the Director under that law.

(E) They are listed in a nurse aide registry maintained by another state that certifies that its program for training and evaluation of competency of nurse aides

¹ R.C. 3721.31(A) and (C).

² R.C. 3721.31(A).

³ R.C. 3721.28(F).

⁴ R.C. 3721.31(E).

⁵ R.C. 3721.31(C).

⁶ R.C. 3721.28(B)(3).

complies with Titles XVIII and XIX of the Social Security Act or regulations adopted under that Act.

(F) They were found competent pursuant to specified law⁷ before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

(G) They are enrolled in a prelicensure program of nursing education approved by the Board of Nursing or by an agency of another state that regulates nursing education, etc. [not applicable under the bill].

(H) They have the equivalent of 12 months or more of full-time employment in the five years preceding listing in the Registry as a hospital aide or orderly and have successfully completed a competency evaluation program conducted by the Director under specified law (see Footnote 5).

HISTORY

ACTION	DATE
Introduced	03-02-06

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⁷ R.C. 3721.28(B)(5).