



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 149

129th General Assembly  
(As Introduced)

**Reps.** Letson, Yuko, R. Hagan, Antonio

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## BILL SUMMARY

- Requires hospitals and ambulatory surgical facilities to assign a circulating nurse to each procedure performed in an operating room or invasive procedure room and to meet additional requirements regarding the role of the circulating nurse in the operating or invasive procedure room.
- Provides exceptions to the requirement to use circulating nurses for (1) procedures that do not use sedation or general anesthesia, (2) certain specialized procedures such as LASIK and endoscopy, and (3) periods of declared natural disasters or emergencies affecting the public health.
- Permits the Director of Health to grant a hospital or ambulatory surgical facility an opportunity to correct violations of the bill's provisions.
- Permits the Director to seek an injunction against a hospital or ambulatory surgical facility for violating the bill's provisions, and, in the case of an ambulatory surgical facility, to issue an order requiring the facility to cease operation or prohibiting the facility from performing services in violation of the bill.
- Requires the Director to deposit fees collected from hospitals into the Hospital Circulating Nurse Requirement Fund and any money collected regarding ambulatory surgical facilities into the Quality Monitoring and Inspection Fund.
- Requires the Director to adopt rules regarding administrative orders, civil penalties, and the collection of fees.

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## CONTENT AND OPERATION

### Circulating nurses

The bill establishes requirements for the use of circulating nurses by hospitals and ambulatory surgical facilities in operating rooms and invasive procedure rooms. A "circulating nurse" is defined by the bill as a registered nurse who is educated, trained, or experienced in perioperative nursing and who is responsible for coordinating the nursing care and safety needs of a patient in an operating room or invasive procedure room.

With some exceptions (see "**Exceptions**" below), the bill requires a hospital or ambulatory surgical facility to do all of the following:

(1) Assign a circulating nurse to each procedure performed in an operating room or invasive procedure room of the hospital or ambulatory surgical facility;

(2) Ensure that the circulating nurse is present in the operating room or invasive procedure 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 the circulating nurse 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;

(4) Prohibit a circulating nurse from administering general anesthesia, deep sedation, moderate sedation, or minimal sedation and from monitoring a patient who has been placed under such anesthesia or sedation.<sup>1</sup>

### Exceptions

The bill exempts a hospital or ambulatory surgical facility from the bill's requirements regarding circulating nurses if any of the following is the case:

(1) The patient is not placed under general anesthesia, deep sedation, moderate sedation, or minimal sedation.

(2) The procedure involves the use of endoscopy.

(3) The procedure is performed for the primary purpose of relieving pain.

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<sup>1</sup> R.C. 3702.40(A) and (B) and 3727.60(A) and (B).

(4) The procedure is the surgery known as LASIK (laser-assisted in situ keratomileusis).

(5) The procedure uses extracorporeal shock wave therapy.

(6) The Director of Health or Governor has declared a natural disaster or emergency that affects the public health.<sup>2</sup>

## **Opportunity for correction of violations**

If the Director of Health determines that a hospital or ambulatory surgical facility has violated the bill's requirements for use of circulating nurses, the bill permits the Director to provide the hospital or facility with an opportunity to correct the violation. The bill provides for the Director to specify the period of time within which the violation must be corrected.<sup>3</sup>

## **Enforcement**

### **Hospitals**

The bill permits the Director of Health to seek a court order enjoining a hospital from continuing to operate or perform services in violation of the bill if the hospital fails to correct the violation within the period of time specified by the Director when granting the hospital an opportunity to correct the violation. Upon a showing that the hospital is continuing to operate or perform the services, the court must grant the injunction.<sup>4</sup>

### **Ambulatory surgical facilities**

With regard to an ambulatory surgical facility, the bill permits the Director to take an additional course of action against the facility, before seeking an injunction. Prior to or during the pendency of an adjudication under the Administrative Procedure Act (R.C. Chapter 119.), the Director may issue an order that requires the facility to cease operation or prohibits the facility from performing services in violation of the bill. Ambulatory surgical facilities are licensed by the Director, thereby granting the Director powers in governing their operation that are not available to the Director relative to hospitals. Hospitals are not licensed in Ohio.

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<sup>2</sup> R.C. 3702.40(C) and 3727.60(C).

<sup>3</sup> R.C. 3702.40(D)(1) and 3727.60(D).

<sup>4</sup> R.C. 3727.60(E).

After the Director issues an order, the Director may seek a court order enjoining the facility from continuing to operate or perform the services if the facility fails to comply with the Director's order. Upon a showing that the facility is continuing to operate or perform the services, the court must grant the injunction.<sup>5</sup>

### **Fees; depositing money collected**

The bill requires hospitals to pay a fee to the Director of Health to cover the costs of administering and enforcing the bill's provisions regarding hospitals. Ambulatory surgical facilities pay licensing and inspection fees under current law.<sup>6</sup>

The bill requires the Director to deposit the fees collected from hospitals into the Hospital Circulating Nurse Requirement Fund created by the bill. The money in the fund must be used to administer and enforce the bill's provisions regarding hospitals. Any investment earnings on the fund must be credited to the fund.<sup>7</sup>

The bill requires the Director to deposit any money collected pursuant to the provisions of the bill regarding ambulatory surgical facilities into the existing Quality Monitoring and Inspection Fund. The money in the fund must also be used to administer and enforce the bill's provisions regarding ambulatory surgical facilities.<sup>8</sup>

### **Rules**

The bill requires the Director of Health to adopt rules regarding the following:

- The orders that the Director can issue against an ambulatory surgical facility that require the facility to cease operation or prohibit the facility from performing services in violation of the bill;
- The imposition of civil penalties on an ambulatory surgical facility for violating the bill's provisions;
- The establishment and collection of fees from hospitals to cover the costs of administering and enforcing the bill's requirements.<sup>9</sup>

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<sup>5</sup> R.C. 3702.40(D)(2) and (E).

<sup>6</sup> R.C. 3702.31(B) and 3727.60(F).

<sup>7</sup> R.C. 3727.601.

<sup>8</sup> R.C. 3702.31(A).

<sup>9</sup> R.C. 3702.30(F) and 3727.60(F).

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## HISTORY

ACTION

DATE

Introduced

03-10-11

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