



# Ohio Legislative Service Commission

## Bill Analysis

Alan Van Dyne

### **Sub. H.B. 284**

129th General Assembly  
(As Reported by H. Health and Aging)

**Reps.** Gonzales and Letson, Stebelton, Wachtmann, Boyd, Slesnick, Gerberry, O'Brien, Murray, Reece, Mallory

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## **BILL SUMMARY**

### **Physician assistant medical services**

- Authorizes a physician assistant to perform the following medical services:
  - Fit, insert, or remove a birth control device, but only if the device is designed so that it functions solely by preventing fertilization;
  - Issue a do-not-resuscitate (DNR) order and take any other action that may be taken by an attending physician under the law governing DNR orders;
  - Determine and pronounce death in specified locations and circumstances;
  - Insert or remove chest tubes;
  - Prescribe or make referrals for physical therapy;
  - Order or make referrals for occupational therapy.

### **Authority to prescribe drugs**

- Eliminates the requirement that the State Medical Board adopt and modify through rulemaking procedures the formulary that identifies the drugs that a physician assistant may be authorized to prescribe.
- Authorizes the Board to make changes to the physician assistant formulary every six (as opposed to every 12) months.
- Generally permits a physician assistant who either practiced in another state or who was credentialed or employed by the federal government to obtain a certificate to

prescribe in Ohio without participating in a provisional period of physician-delegated prescriptive authority.

- Eliminates a prohibition on physician assistants prescribing to patients schedule II controlled substances, but limits the locations from which such substances may be prescribed without restrictions.
- Prohibits a physician assistant from prescribing any schedule II controlled substance to a patient in a convenience care clinic.

### **Emergency medical services**

- Adds physician assistants to the list of health care professionals from which emergency medical service (EMS) personnel may obtain required authorization through a direct communication device to perform certain services or to perform emergency services in a hospital.
- Extends the existing immunity from civil liability that applies with regard to a student enrolled in an EMS training program to those occasions when the student is under the direct supervision and in the immediate presence of a physician assistant.
- Specifies that nothing in the law governing EMS personnel prevents or restricts the practice, services, or activities of any physician assistant.

### **Medical care in disasters or emergencies**

- Provides that a physician assistant, including a physician assistant licensed in another state or credentialed or employed by the federal government, is not prohibited from providing medical care in response to a need for such care precipitated by a disaster or emergency.
- Specifies that, when a physician assistant is providing this care, the physician who supervises the physician assistant pursuant to a physician supervisory plan approved by the State Medical Board is not required to meet the supervision requirements of Ohio law.
- Permits the physician designated as the medical director of the disaster or emergency to supervise the medical care provided by an Ohio physician assistant.

### **Patient Centered Medical Home Education Pilot Project**

- Requires that the Patient Centered Medical Home Education Advisory Group include in its membership one individual appointed by the governing board of the Ohio Association of Physician Assistants.

- Requires the Advisory Group, when selecting physician practices to participate in the Patient Centered Medical Home Education Pilot Project, to strive to select practices that utilize physician assistants as part of the healthcare delivery system.

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## CONTENT AND OPERATION

### Physician assistant medical services

The bill grants additional authority to and modifies the existing authority of physician assistants to perform certain medical services. Under law unchanged by the bill, a physician assistant may practice under a physician supervisory plan or the policies of a health care facility. When practicing under a physician supervisory plan, a physician assistant may provide services that are listed in the Revised Code; other services may be provided, but they must be approved by the State Medical Board as special services.<sup>1</sup> When practicing under the policies of a health care facility, a physician assistant may provide the services that the facility authorizes the physician assistant to perform.<sup>2</sup>

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<sup>1</sup> R.C. 4730.09(A).

<sup>2</sup> R.C. 4730.09(B).

## Birth control devices

The bill modifies the authority of physician assistants to fit, insert, and remove birth control devices. Currently, under a physician supervisory plan, a physician assistant may fit and insert family planning devices, remove intrauterine devices, and remove Norplant capsules. Current law does not address the authority of a physician assistant to fit, insert, or remove family planning devices under the policies of a health care facility.<sup>3</sup>

The bill applies the same provisions regarding birth control devices to a physician assistant practicing under either a physician supervisory plan or the policies of a health care facility. These provisions are as follows:<sup>4</sup>

--**Permitted devices:** The bill permits a physician assistant to fit, insert, or remove a birth control device designed in such a manner that it functions solely by preventing fertilization. The bill specifies that these devices include (1) diaphragms, (2) cervical caps, and (3) intrauterine devices, subject to the prohibition described below.

--**Prohibited devices:** The bill prohibits a physician assistant from fitting, inserting, or removing a birth control device, including an intrauterine device, that is designed in such a manner that it functions either solely or in combination with other functions by preventing or hindering an embryo from implanting within the uterus or from growing if implantation occurs.

## Do-not-resuscitate orders

The bill authorizes a physician assistant to issue a do-not-resuscitate (DNR) order and take any other action that may be taken by an attending physician under the law governing DNR orders. The physician assistant's action may be performed pursuant to either (1) a physician supervisory plan (without the need for the Board's approval as a special service) or (2) the policies of a health care facility in which the physician assistant is practicing.<sup>5</sup> A DNR order is a directive that identifies a person and specifies that CPR (cardiopulmonary resuscitation) should not be administered to that person. Currently, DNR orders may be issued only by a physician, certified nurse practitioner, or clinical nurse specialist. The nurse's action must be performed pursuant to a standard care arrangement with a collaborating physician.<sup>6</sup>

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<sup>3</sup> R.C. 4730.09.

<sup>4</sup> R.C. 4730.09 and 4730.093.

<sup>5</sup> R.C. 2133.211 and 4730.09(A)(40).

<sup>6</sup> R.C. 2133.211, 2133.22 (not in the bill), and 2133.25 (not in the bill).

The bill extends to physician assistants immunity from criminal prosecution, civil liability, or professional disciplinary action arising out of, or relating to, the withholding or withdrawal of CPR from a person pursuant to a DNR order. The immunity also applies when CPR is provided to a person who requests to receive CPR even though the person earlier had executed a DNR order. Presently, these immunities apply to (1) physicians, (2) persons under the direction, or operating with the authorization, of a physician, (3) emergency medical services personnel, (4) certain health care facilities, health care facility administrators, or other persons at the facility working under the direction of a physician, and (5) certified nurse practitioners and clinical nurse specialists.<sup>7</sup>

### **Determination and pronouncement of death**

The bill permits a physician assistant to determine and pronounce death if an individual's respiratory and circulatory functions are not being artificially sustained and, at the time of the determination and pronouncement, either or both of the following conditions are met:<sup>8</sup>

(1) The individual was receiving care at a nursing home, residential care facility, home for the aging, a county home or district home, or a residential facility licensed by the Department of Developmental Disabilities;

(2) The physician assistant is providing or supervising the individual's care through a licensed hospice care program or any other entity that provides palliative care.

If a physician assistant determines and pronounces an individual's death, the bill requires the assistant to notify the individual's attending physician of the determination and pronouncement in order for the physician to complete and sign the individual's medical certificate of death within 48 hours in accordance with current law. The notification must occur within a reasonable time period but not later than 24 hours following the determination and pronouncement of the individual's death.<sup>9</sup>

The bill specifies that a physician assistant is not permitted to complete any portion of an individual's death certificate.<sup>10</sup>

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<sup>7</sup> R.C. 2133.211 and 2133.22 (not in the bill).

<sup>8</sup> R.C. 4730.09(A)(40) and 4730.092.

<sup>9</sup> R.C. 4730.092(B)(2).

<sup>10</sup> R.C. 4730.092(B)(1).

## **Chest tubes**

The bill authorizes a physician assistant to insert or remove chest tubes.<sup>11</sup>

## **Orders for physical or occupational therapy**

The bill authorizes a physician assistant to prescribe physical therapy or refer a patient to a physical therapist for the purpose of receiving physical therapy. In conjunction, the bill permits a physical therapist to practice physical therapy pursuant to a physician assistant's prescription or referral.<sup>12</sup>

The bill authorizes a physician assistant to order occupational therapy or refer a patient to an occupational therapist for the purpose of receiving occupational therapy.<sup>13</sup>

## **Authority to prescribe drugs**

### **Formulary**

Under current law, the State Medical Board must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) governing physician-delegated prescriptive authority for a physician assistant who holds a certificate to prescribe. The rules must establish, among other things, a formulary listing drugs and therapeutic devices by class and specific generic nomenclature that a physician may include in the physician-delegated prescriptive authority granted to the physician assistant.<sup>14</sup> The Board must review the formulary and make any necessary modifications to it through administrative rulemaking.<sup>15</sup> Before doing so, the Board must consider recommendations made by the Board's Physician Assistant Policy Committee, which is required to submit recommendations regarding the formulary to the Board on an annual basis.<sup>16</sup>

The bill eliminates the requirement that the Board adopt and modify the physician assistant formulary through administrative rulemaking.<sup>17</sup> This means that the Board may add or remove drugs and therapeutic devices from the formulary without

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<sup>11</sup> R.C. 4730.09(A)(36).

<sup>12</sup> R.C. 4730.09(A)(37), 4755.48, and 4755.481 (conforming changes).

<sup>13</sup> R.C. 4730.09(A)(38).

<sup>14</sup> R.C. 4730.39(A)(1).

<sup>15</sup> R.C. 4730.39(B).

<sup>16</sup> R.C. 4730.38(B) and 4730.39(C).

<sup>17</sup> R.C. 4730.39(A)(1).

giving public notice of its intention to make changes and without convening a public hearing.

The bill permits the Board to consider modifications to the formulary every six (as opposed to every 12) months. Pursuant to law unchanged by the bill, the Board must approve or disapprove a recommendation made by the Physician Assistant Policy Committee not later than 90 days after receiving it.<sup>18</sup> The bill requires the Committee to review the formulary not less than every six months beginning on the first day of June following the bill's effective date (as opposed to annually) and, to the extent it determines to be necessary, submit recommendations to the Board proposing changes to the formulary.<sup>19</sup>

The bill repeals an obsolete provision requiring the Board, if it has adopted all rules necessary to issue certificates to prescribe to physician assistants other than the formulary, to begin issuing the certificates to prescribe. It also repeals a related provision specifying that the formulary established by the Board of Nursing for advanced practice nurses would constitute, with the exclusion of schedule II controlled substances, the formulary for physician assistants.<sup>20</sup> These provisions are no longer needed because the physician assistant formulary has been established.<sup>21</sup>

The bill repeals obsolete laws regarding the adoption of the initial formulary. Under those laws, with the exception of schedule II controlled substances, the initial formulary had to include all drugs and therapeutic devices that could be prescribed by advanced practice nurses.<sup>22</sup>

### **Out-of-state and federal government physician assistants**

The bill permits certain individuals to obtain a certificate to prescribe without participating in the provisional period of physician-delegated prescriptive authority that is normally required before a physician assistant attains the regular certificate to prescribe. The provisional period generally lasts not longer than one year, and must be

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<sup>18</sup> R.C. 4730.06(C).

<sup>19</sup> R.C. 4730.06(A)(3) and 4730.38(B).

<sup>20</sup> R.C. 4730.401.

<sup>21</sup> See Ohio Administrative Code 4730-2-6.

<sup>22</sup> R.C. 4730.40(C).

conducted by one or more supervising physicians in accordance with rules the State Medical Board is required to adopt.<sup>23</sup>

Under the bill, an individual is exempt from the provisional period requirement if the individual (1) practiced in another state as a physician assistant or was credentialed or employed as a physician assistant by the federal government, (2) held a master's degree or higher that was obtained from a program accredited by the Accreditation Review Commission on Education for the Physician Assistant or a predecessor or successor organization recognized by the State Medical Board, and (3) held valid authority issued by the other state or the federal government to prescribe therapeutic devices and drugs, including at least some controlled substances. The individual must produce an affidavit from the appropriate agency or office of the other state or the federal government attesting to the fact that the individual held the prescriptive authority issued by the other jurisdiction.<sup>24</sup>

Related to this exemption, the bill specifies that the initial certificate to prescribe issued to the individuals who are exempt is a regular "certificate to prescribe." This is in contrast to the initial certificate issued to an individual seeking to participate in a provisional period, which is issued as a "provisional certificate to prescribe."<sup>25</sup>

### **Schedule II controlled substances**

The bill eliminates a prohibition on physician assistants prescribing to patients schedule II controlled substances.<sup>26</sup> Related to this change, the bill permits the Board to include schedule II controlled substances on the physician assistant formulary.<sup>27</sup>

A schedule II controlled substance is a drug or other substance that (1) has a high potential for abuse, (2) has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions, and (3) may lead to severe psychological or physical dependence if abused. Examples include hydrocodone, oxycodone, morphine, and methamphetamine.<sup>28</sup>

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<sup>23</sup> R.C. 4730.45.

<sup>24</sup> R.C. 4730.44(A)(3)(c).

<sup>25</sup> R.C. 4730.44(C) and 4730.45(A).

<sup>26</sup> R.C. 3719.06(A)(3).

<sup>27</sup> R.C. 4730.40(A)(1).

<sup>28</sup> 21 United States Code 812(b) and 21 Code of Federal Regulations (1308.12).

The bill imposes three restrictions that generally apply to a physician assistant's authority to prescribe schedule II controlled substances. When prescribing from a location that is not one of those specified in the bill, these restrictions are that (1) the patient must have a terminal condition, (2) the physician assistant's supervising physician initially prescribed the substance for the patient, and (3) the prescription must be for an amount that does not exceed the amount necessary for the patient's use in a single, 24-hour period.<sup>29</sup> The locations from which the bill authorizes a physician assistant to prescribe a schedule II controlled substance without being subject to the three restrictions described above are the following:<sup>30</sup>

- (1) A hospital registered with the Department of Health;
- (2) An entity owned or controlled, in whole or in part, by a hospital or by an entity that owns or controls, in whole or in part, one or more hospitals;
- (3) A health care facility operated by the Department of Mental Health or the Department of Developmental Disabilities;
- (4) A nursing home licensed by the Department of Health or a political subdivision;
- (5) A county home or district home that is certified under Medicare or Medicaid;
- (6) A hospice care program;
- (7) A community mental health agency;
- (8) An ambulatory surgical facility;
- (9) A freestanding birthing center;
- (10) A federally qualified health care center;
- (11) A federally qualified health center look-alike;
- (12) A health care office or facility operated by a board of health of a city or general health district or an authority having those duties;
- (13) A site where a medical practice is operated, but only if the practice is comprised of one or more physicians who also are owners of the practice, the practice is

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<sup>29</sup> R.C. 4730.411(A).

<sup>30</sup> R.C. 4730.411(B).

organized to provide direct patient care, and the physician assistant has entered into a supervisory agreement with at least one of the physician owners who practices primarily at that site. (Entering into a supervisory agreement with one or more physicians is a requirement of current law governing the practice of physician assistants.)

### **Immunity from liability for pharmacists**

The bill provides that a pharmacist who acts in good faith reliance on a prescription issued by a physician assistant at a location specified above is not liable for or subject to any of the following for relying on the prescription: (1) damages in any civil action, (2) prosecution in any criminal proceeding, or (3) professional disciplinary action by the State Board of Pharmacy.<sup>31</sup>

### **Convenience care clinics**

The bill prohibits a physician assistant from prescribing any schedule II controlled substance to a patient in a convenience care clinic. The bill specifies that this prohibition applies even if the convenience care clinic is owned or operated by an entity that is one of the locations from which a physician, under the bill, may prescribe schedule II controlled substances without being subject to the three restrictions that otherwise apply when a physician assistant prescribes a schedule II controlled substance.<sup>32</sup>

### **Emergency medical services (EMS) authorized by physician assistants**

The bill adds physician assistants to the list of health care professionals from which emergency medical service (EMS) personnel may obtain required authorization through a direct communication device to perform certain services. However, the physician assistant must be designated by a physician. Currently, EMS personnel may obtain prior authorization through a direct communication device from either a physician or physician-designated registered nurse.<sup>33</sup>

The bill extends to physician assistants the existing immunity from civil liability that applies when physicians and physician-designated registered nurses advise or assist in the provision of emergency medical services by means of any communication device or telemetering system. As under the existing immunity provisions, the immunity extends to physician assistants from states that border Ohio when the

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<sup>31</sup> R.C. 4730.411(D).

<sup>32</sup> R.C. 4730.411(C).

<sup>33</sup> R.C. 4765.35, 4765.37, 4765.38, and 4765.39.

physician assistants advise or assist EMS personnel from those states who are providing services in Ohio. The bill retains the qualification specifying that the immunity does not apply if the communication or assistance is provided in a manner that constitutes willful or wanton misconduct.<sup>34</sup>

### **EMS authorized in a hospital**

The bill adds physician-designated physician assistants to the list of health care professionals from which direction and supervision must be obtained in order for EMS personnel to be authorized to perform emergency medical services in a hospital emergency department or while moving a patient from the emergency department to another part of the hospital. Currently, EMS personnel may do so under the direction and supervision of either a physician or physician-designated registered nurse.<sup>35</sup>

Each of these EMS personnel provisions applies in the case of first responders and the three types of emergency medical technicians (EMTs) – basic, intermediate, and paramedic.

### **EMS training program students supervised by physician assistants**

The bill extends the existing immunity from civil liability that applies with regard to a student enrolled in an emergency medical services training program accredited by the State Board of Emergency Medical Services, or a Board-accredited continuing education program, to those occasions when the student is under the direct supervision and in the immediate presence of a physician assistant. Currently, the immunity applies when the student is under the direct supervision and in the immediate presence of an EMT-basic, EMT-intermediate, EMT-paramedic, registered nurse, or physician. The bill retains the qualification specifying that the immunity does not apply if the services, care, or treatment is provided in a manner that constitutes willful or wanton misconduct.<sup>36</sup>

### **EMS law not applicable to physician assistants**

The bill specifies that nothing in the law governing EMS personnel prevents or restricts the practice, services, or activities of any physician assistant practicing within

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<sup>34</sup> R.C. 4765.49(A) and (F).

<sup>35</sup> R.C. 4765.36.

<sup>36</sup> R.C. 4765.49(C)(1).

the scope of the physician assistant's physician supervisory plan or the policies of the health care facility in which the physician assistant is practicing.<sup>37</sup>

### **Medical care in a disaster or emergency**

The bill provides that a physician assistant is not prohibited from providing medical care, to the extent the individual is able, in response to a need for medical care precipitated by a disaster or emergency, as long as the physician assistant (1) holds a certificate to practice in Ohio, (2) is licensed or authorized to practice in another state, or (3) is credentialed or employed as a physician assistant by an agency, office, or other instrumentality of the federal government.<sup>38</sup> For purposes of this provision, a disaster is any imminent threat or actual occurrence of widespread or severe damage to or loss of property, personal hardship or injury, or loss of life that results from any natural phenomenon or act of a human. An emergency is an occurrence or event that poses an imminent threat to the health or life of a human.<sup>39</sup>

The bill specifies that, for purposes of the medical care provided in such a situation, the physician who supervises the physician assistant pursuant to a physician supervisory plan approved by the State Medical Board is not required to meet the supervision requirements of Ohio law. Additionally, the bill permits the physician designated as the medical director of the disaster or emergency to supervise the medical care provided by an Ohio physician assistant.<sup>40</sup>

### **Patient Centered Medical Home Education Pilot Project**

The bill makes changes relative to the inclusion of physician assistants in the Patient Centered Medical Home Education Pilot Project, which has since been modified by Am. Sub. H.B. 487 of the 129th General Assembly (the general mid-biennium budget review). The bill's changes, which will have to be modified and coordinated with H.B. 487's changes, are as follows:

(1) Includes in the membership of the Patient Centered Medical Home Education Advisory Group one individual appointed by the governing board of the Ohio Association of Physician Assistants;<sup>41</sup>

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<sup>37</sup> R.C. 4765.51.

<sup>38</sup> R.C. 4730.04(B).

<sup>39</sup> R.C. 4730.04(A).

<sup>40</sup> R.C. 4730.04(C).

<sup>41</sup> R.C. 185.01 and 185.03.

(2) Requires the Advisory Group, when selecting physician practices with educational affiliations to participate in the Pilot Project, to strive to select practices that utilize physician assistants as part of the healthcare delivery system.<sup>42</sup>

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## HISTORY

ACTION	DATE
Introduced	06-28-11
Reported, H. Health & Aging	02-15-12

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<sup>42</sup> R.C. 185.05.

