



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 284

129th General Assembly

(As Reported by S. Health, Human Services and Aging)

**Reps.** Gonzales and Letson, Stebelton, Wachtmann, Boyd, Slesnick, Gerberry, O'Brien, Murray, Reece, Mallory, Amstutz, Antonio, Boose, Carney, Celeste, Duffey, Fedor, Foley, Gardner, Garland, Hottinger, McClain, Milkovich, Newbold, Pelanda, Phillips, Pillich, Ramos, Schuring, Sears, Sprague, Terhar, Young, Yuko, Batchelder

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## BILL SUMMARY

### PHYSICIAN ASSISTANTS

#### Physician assistant medical services

- Authorizes a physician assistant to perform the following medical services:
  - Fit, insert, or remove birth control devices;
  - Issue do-not-resuscitate (DNR) orders 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.

#### Certificate to practice with qualifying military experience

- Allows an individual seeking a certificate to practice as a physician assistant from the State Medical Board to qualify for the certificate without holding the otherwise required master's or higher degree if the individual has (1) a degree from an accredited educational program for physician assistants and (2) at least three years

of active duty experience practicing as a physician assistant in the United States armed forces or the national guard of any state.

### **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.
- Allows a physician assistant to qualify for a certificate to prescribe in Ohio without participating in the otherwise required provisional period of physician-delegated prescriptive authority if the physician assistant meets either of the following requirements: (1) practiced in another state or was credentialed or employed by the federal government or (2) obtained a certificate to practice in Ohio by qualifying under the bill's provisions regarding military experience.
- 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.

## NURSES

### Determination and pronouncement of death

- Authorizes certified nurse practitioners, clinical nurse specialists, and registered nurses to determine and pronounce death if an individual's respiratory and circulatory functions are not being artificially sustained.
- Relative to certified nurse practitioners and certified nurse specialists, specifies that the authority is limited to the same circumstances under which the bill authorizes physician assistants to determine and pronounce death (*i.e.*, (1) the individual was receiving care in a specified facility, or (2) the nurse is providing or supervising the individual's care through a licensed hospice program or any other entity that provides palliative care).
- Relative to registered nurses, specifies that the authority is limited to those circumstances under which the nurse is providing or supervising the individual's care through a licensed hospice program or any other entity that provides palliative care.

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## TABLE OF CONTENTS

<b>PHYSICIAN ASSISTANTS</b> .....	4
Physician assistant medical services .....	4
Birth control devices.....	4
Do-not-resuscitate orders.....	5
Determination and pronouncement of death.....	5
Chest tubes.....	6
Orders for physical or occupational therapy .....	6
Certificate to practice obtained by military experience.....	7
Authority to prescribe drugs .....	8
Formulary.....	8
Provisional period exceptions.....	9
Experience in another state or with the federal government .....	9

Experience through the military .....	10
Schedule II controlled substances.....	10
Immunity from liability for pharmacists.....	12
Convenience care clinics.....	12
Emergency medical services (EMS) authorized by physician assistants .....	12
EMS authorized in a hospital.....	13
EMS training program students supervised by physician assistants.....	13
EMS law not applicable to physician assistants.....	13
Medical care in a disaster or emergency.....	13
<b>NURSES</b> .....	14
Determination and pronouncement of death .....	14

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## CONTENT AND OPERATION

### PHYSICIAN ASSISTANTS

#### 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>

#### Birth control devices

The bill authorizes a physician assistant to fit, insert, or remove birth control devices.<sup>3</sup> This general authority to perform activities involving birth control devices replaces existing law provisions that authorize a physician assistant to do the following: (1) fit or insert family planning devices, including diaphragms and cervical caps, (2) fit,

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

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

<sup>3</sup> R.C. 4730.09(A)(24).

insert, or remove intrauterine devices, and (3) remove Norplant capsules, which are no longer available in the United States.<sup>4</sup>

### **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.<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>

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>

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<sup>4</sup> WebMD, *Sexual Health: Your Guide to Birth Control; Norplant* (last visited December 8, 2012), available at <<http://www.webmd.com/sex/birth-control/birth-control-norplant>>.

<sup>5</sup> R.C. 2133.211 and 4730.09(A)(39).

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

<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.

(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>

Currently, the Revised Code does not address the issue of who is authorized to pronounce death. The State Medical Board, however, has adopted rules specifying that only a physician may pronounce a person to be dead.<sup>11</sup>

### **Chest tubes**

The bill authorizes a physician assistant to insert or remove chest tubes.<sup>12</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

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

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

<sup>11</sup> Ohio Administrative Code (O.A.C.) 4731-14-01. As used in these rules, "physician" means an individual holding (1) a current certificate to practice medicine and surgery or osteopathic medicine and surgery, (2) a physician training certificate issued to participate in an internship, residency, or clinical fellowship program, (3) a visiting medical faculty certificate, or (4) a physician's special activities certificate issued in conjunction with a special activity, program, or event taking place in Ohio (O.A.C. 4731-14-01(A) and (B)).

<sup>12</sup> R.C. 4730.09(A)(36).

conjunction, the bill permits a physical therapist to practice physical therapy pursuant to a physician assistant's prescription or referral.<sup>13</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>14</sup>

### **Certificate to practice obtained by military experience**

Since 2008, an individual seeking a certificate to practice as a physician assistant issued by the State Medical Board must hold a master's or higher degree. The requirement can be met in either of two ways: (1) holding a master's or higher degree from a program accredited by the Accreditation Review Commission on Education for the Physician Assistant or (2) holding a different degree accredited by that organization, as well as a master's or higher degree in a course of study with clinical relevance to the practice of physician assistants. The degree in such a course of study must be obtained from a program accredited by a regional or specialized and professional accrediting agency recognized by the Council for Higher Education Accreditation.<sup>15</sup>

The bill allows an individual to obtain a certificate to practice without meeting the master's or higher degree requirement described above if the individual has specified experience practicing as a physician assistant in the military. To qualify, the physician assistant must meet both of the following requirements:<sup>16</sup>

(1) Hold a degree obtained from a program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

(2) Have experience practicing as a physician assistant for at least three consecutive years while on active duty in any of the United States armed forces or the national guard of any state.

The bill provides that the individual must have evidence of military service under honorable conditions. It specifies that the military experience may be attained while practicing as a physician assistant at a health care facility or clinic operated by the United States Department of Veterans Affairs.<sup>17</sup>

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<sup>13</sup> R.C. 4730.09(A)(37), 4755.48, and 4755.481 (conforming changes).

<sup>14</sup> R.C. 4730.09(A)(38).

<sup>15</sup> R.C. 4730.10 and 4730.11.

<sup>16</sup> R.C. 4730.11(C).

<sup>17</sup> R.C. 4730.11(B)(3)(b).

## 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>18</sup> The Board must review the formulary and make any necessary modifications to it through administrative rulemaking.<sup>19</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>20</sup>

The bill eliminates the requirement that the Board adopt and modify the physician assistant formulary through administrative rulemaking.<sup>21</sup> This means that the Board may add or remove drugs and therapeutic devices from the formulary without 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>22</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>23</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

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<sup>18</sup> R.C. 4730.39(A)(1).

<sup>19</sup> R.C. 4730.39(B).

<sup>20</sup> R.C. 4730.38(B) and 4730.39(C).

<sup>21</sup> R.C. 4730.39(A)(1).

<sup>22</sup> R.C. 4730.06(C).

<sup>23</sup> R.C. 4730.06(A)(3) and 4730.38(B).

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>24</sup> These provisions are no longer needed because the physician assistant formulary has been established.<sup>25</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>26</sup>

### **Provisional period exceptions**

The bill permits certain individuals to obtain an initial certificate to prescribe without having to complete the provisional period of physician-delegated prescriptive authority that is otherwise required. The provisional period generally lasts not longer than one year, cannot exceed 1,800 hours, and must be conducted by one or more supervising physicians in accordance with State Medical Board rules.<sup>27</sup>

Related to its exceptions to the provisional period requirement, 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>28</sup>

### **Experience in another state or with the federal government**

Under the bill, an individual is not required to complete 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

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<sup>24</sup> R.C. 4730.401.

<sup>25</sup> See Ohio Administrative Code (O.A.C.) 4730-2-6.

<sup>26</sup> R.C. 4730.40(C) and 4730.46.

<sup>27</sup> R.C. 4730.45 (not in the bill).

<sup>28</sup> R.C. 4730.44(D).

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>29</sup>

### **Experience through the military**

The bill provides that an individual is not required to complete the provisional period requirement if the individual obtained a certificate to practice as a physician assistant under the bill's provisions regarding military experience (see "**Certificate to practice obtained by military experience**," above). To qualify, the individual must have had authority to prescribe drugs and therapeutic devices while practicing as a physician assistant in the military.<sup>30</sup>

### **Schedule II controlled substances**

The bill eliminates a prohibition on physician assistants prescribing to patients schedule II controlled substances.<sup>31</sup> Related to this change, the bill permits the Board to include schedule II controlled substances on the physician assistant formulary.<sup>32</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>33</sup>

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>34</sup> The locations from which the bill authorizes a physician

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<sup>29</sup> R.C. 4730.44(B)(4).

<sup>30</sup> R.C. 4730.44(B)(3).

<sup>31</sup> R.C. 3719.06(A)(3).

<sup>32</sup> R.C. 4730.40(A)(1).

<sup>33</sup> 21 United States Code 812(b) and 21 Code of Federal Regulations (1308.12).

<sup>34</sup> R.C. 4730.411(A).

assistant to prescribe a schedule II controlled substance without being subject to the three restrictions described above are the following:<sup>35</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 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.)

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<sup>35</sup> R.C. 4730.411(B).

### **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>36</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>37</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>38</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 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>39</sup>

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<sup>36</sup> R.C. 4730.411(D).

<sup>37</sup> R.C. 4730.411(C).

<sup>38</sup> R.C. 4765.35, 4765.37, 4765.38, and 4765.39.

<sup>39</sup> R.C. 4765.49(A) and (F).

## **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>40</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>41</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 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>42</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

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<sup>40</sup> R.C. 4765.36.

<sup>41</sup> R.C. 4765.49(C)(1).

<sup>42</sup> R.C. 4765.51.

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>43</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>44</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>45</sup>

## NURSES

### Determination and pronouncement of death

The bill authorizes certified nurse practitioners, clinical nurse specialists, and registered nurses to determine and pronounce death under certain circumstances.<sup>46</sup> The circumstances under which the bill authorizes certified nurse practitioners and clinical nurse specialists to determine and pronounce death are the same as those the bill applies to physician assistants who determine and pronounce death.<sup>47</sup> As mentioned above, the Revised Code does not currently address the issue of who is authorized to pronounce death, although the State Medical Board has adopted rules specifying that only a physician may pronounce a person to be dead.<sup>48</sup>

A certified nurse practitioner, clinical nurse specialist, or registered nurse may determine and pronounce death only if both of the following are true:<sup>49</sup>

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<sup>43</sup> R.C. 4730.04(B).

<sup>44</sup> R.C. 4730.04(A).

<sup>45</sup> R.C. 4730.04(C).

<sup>46</sup> R.C. 4723.36.

<sup>47</sup> See R.C. 4730.092.

<sup>48</sup> O.A.C. 4731-14-01.

<sup>49</sup> R.C. 4723.36(A) and (B).

(1) An individual's respiratory and circulatory functions are not being artificially sustained.

(2) The following, as applicable, is the case:

--Relative to certified nurse practitioners and clinical nurse specialists, either or both of the following apply:

(a) 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;

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

--Relative to registered nurses, the nurse is providing or supervising the individual's care through a hospice program or any other entity that provides palliative care.

If a nurse determines and pronounces an individual's death, the bill requires the nurse 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>50</sup>

The bill specifies that a nurse is not permitted to complete any portion of an individual's death certificate.<sup>51</sup>

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## HISTORY

ACTION	DATE
Introduced	06-28-11
Reported, H. Health & Aging	02-15-12
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<sup>50</sup> R.C. 4723.36(C)(2).

<sup>51</sup> R.C. 4723.36(C)(1).