



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 44

130th General Assembly
(As Passed by the House)

Reps. McClain, Sears, Grossman, J. Adams, Derickson, Stebelton, Terhar, Retherford, O'Brien, Bishoff, Brown, Carney, Amstutz, Anielski, Antonio, Barnes, Beck, Damschroder, Fedor, Gerberry, Hackett, Letson, McGregor, Milkovich, Patmon, Pelanda, Ramos, Rogers, Batchelder

BILL SUMMARY

- Requires the Director of Health to develop one or more protocols regarding the availability of drugs during a public health emergency that separately do the following:
 - Authorize specified licensed health professionals to administer, deliver, or distribute certain drugs;
 - Authorize employees of boards of health and registered emergency volunteers to deliver or distribute certain drugs;
 - Authorize pharmacists and pharmacy interns to dispense limited quantities of certain dangerous drugs without a prescription or record of a prescription.
- Provides that an individual who administers, delivers, distributes, or dispenses a drug or dangerous drug in accordance with one or more of those protocols is not liable for or subject to civil damages, criminal prosecution, or professional disciplinary action, unless the individual's acts or omissions constitute willful or wanton misconduct.

CONTENT AND OPERATION

Access to drugs during emergencies that affect the public health

Protocols for health professionals to administer, deliver, or distribute drugs

The bill requires the Director of Health, in consultation with the appropriate state professional regulatory boards, to develop one or more protocols that authorize the following license holders to administer, deliver, or distribute drugs (other than schedule II and III controlled substances) during an emergency that affects the public health, as declared by the Governor:

- (1) A physician authorized by the State Medical Board to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;
- (2) A physician assistant who holds a certificate to practice issued by the State Medical Board;
- (3) A dentist or dental hygienist licensed by the State Dental Board;
- (4) A registered nurse, including an advanced practice registered nurse, or licensed practical nurse licensed by the Board of Nursing;
- (5) An optometrist licensed by the State Board of Optometry;
- (6) A pharmacist or pharmacy intern licensed by the State Board of Pharmacy;
- (7) A respiratory care professional licensed by the Ohio Respiratory Care Board;
- (8) An emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic who holds a certificate to practice issued by the State Board of Emergency Medical Services;
- (9) A veterinarian licensed by the State Veterinary Medical Licensing Board.¹

Protocols for board of health employees and emergency volunteers to deliver or distribute drugs

The bill requires the Director, in consultation with the Emergency Management Agency (EMA), to develop one or more protocols that authorize the following individuals to deliver or distribute drugs (other than schedule II and III controlled

¹ R.C. 3701.048(B).



substances), during an emergency that affects the public health, as declared by the Governor:

(1) Employees of a board of health of a city or general health district or the authority having the duties of a board of health under a city charter;

(2) Individuals who are registered by EMA as volunteers.²

Under current law, EMA is required to establish and maintain a statewide system for recruiting, registering, training, and deploying the types of volunteers reasonably necessary to respond to an emergency declared by the state or a political subdivision. "Registered volunteer" is defined as any individual who is registered under the system established by EMA and serves without pay or other consideration, other than the reasonable reimbursement or allowance for expenses actually incurred or the provision of incidental benefits related to the volunteer's service, such as meals, lodging, and child care.³

Protocols for pharmacists to dispense drugs without a prescription

The bill requires the Director, in consultation with the State Board of Pharmacy, to develop one or more protocols that authorize pharmacists and pharmacy interns, during an emergency that affects the public health, as declared by the Governor, to dispense limited quantities of dangerous drugs, other than schedule II and III controlled substances without (1) a written, oral, or electronic prescription from a licensed health professional authorized to prescribe drugs or (2) a record of a prescription.⁴

Implementation of protocols

The bill provides that on the Governor's declaration of an emergency that affects the public health, the Director may issue an order to implement one or more of the protocols developed pursuant to the bill. At a minimum, the Director's order must identify the one or more protocols to be implemented and the period of time during which the one or more protocols are to be effective.⁵ The bill provides that the activities authorized by the one or more protocols are applicable notwithstanding any statute or rule that otherwise prohibits or restricts the activities.⁶

² R.C. 3701.048(C).

³ R.C. 5502.281 (not in the bill).

⁴ R.C. 3701.048(D).

⁵ R.C. 3701.048(E).

⁶ R.C. 3701.048(B), (C), and (D).



Qualified immunity

Under the bill, an individual who administers, delivers, distributes, or dispenses a drug or dangerous drug, other than a schedule II or III controlled substance, in accordance with one or more of the protocols implemented under the bill is not liable for or subject to any of the following for the individual's acts or omissions in performing those activities, unless the acts or omissions constitute willful or wanton misconduct:

(1) Damages in any civil action;

(2) Prosecution in any criminal proceeding;

(3) Professional disciplinary action by the applicable governing body under the Revised Code.⁷

Definitions

As used in the bill, "controlled substance," "drug," "dangerous drug," and "licensed health professional authorized to prescribe drugs" have the same meanings that are given to those terms in the laws governing the practice of pharmacy and distribution of drugs.⁸

"Drug" is the most inclusive term and generally means any article, other than food, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals. "Dangerous drug" is the term used in those laws to describe a drug that, in general, cannot be dispensed without a prescription.

"Controlled substances" are drugs placed on schedules included in both state and federal law according to their potential for abuse. A schedule II controlled substance has a currently accepted medical use but a high potential for abuse; the abuse may lead to severe psychological or physical dependence. Examples include hydrocodone, oxycodone, morphine, and methamphetamine. A schedule III controlled substance has lower potential for abuse than a schedule II controlled substance. Examples include benzphetamine secobarbital, and limited quantities of certain narcotic drugs such as codeine and morphine.⁹

"Licensed health professionals authorized to prescribe drugs" are physicians, including podiatrists; dentists; clinical nurse specialists, certified nurse-midwives, and

⁷ R.C. 3701.048(F).

⁸ R.C. 3701.048(A); see R.C. 3719.01 and 4729.01 (not in the bill).

⁹ 21 United States Code 812(b) and 21 Code of Federal Regulations 1308.12 and 1308.13.



certified nurse practitioners who hold certificates to prescribe; physician assistants who hold certificates to prescribe; optometrists who hold therapeutic pharmaceutical agents certificates; and veterinarians.

HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, H. Health & Aging	06-12-13
Passed House (93-1)	06-19-13

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