



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 320

130th General Assembly
(As Passed by the House)

Reps. Young, Amstutz, Becker, Boose, Brenner, Buchy, Burkley, Derickson, Hood, Roegner, Thompson, Antonio, Bishoff, Brown, R. Hagan, Hill, Johnson, Lynch, Maag, Wachtmann, Schuring, Sears, Smith, Sprague, Barnes, R. Adams, Anielski, Beck, Blair, Blessing, Celebrezze, Conditt, Damschroder, DeVitis, Green, Grossman, Hackett, Hall, Henne, Letson, Mallory, McClain, Milkovich, Retherford, Romanchuk, Sheehy, Strahorn, Terhar

BILL SUMMARY

- Grants, until June 30, 2019, a qualified immunity from civil liability to volunteer health care professionals providing services without compensation in free clinics and any other location to individuals eligible for or receiving Medicaid.
- Designates December as "Free Clinic Appreciation Month."
- Requires the Ohio Department of Health (ODH) to promote the designation each year and to select annually a "free clinic of the year" and "free clinic volunteer of the year."
- Requires ODH to maintain on its website a directory of and other information about free clinics in Ohio.
- Permits participants in ODH's Physician and Dentist Loan Repayment programs to fulfill their service obligations by providing health care services in free clinics for a minimum of 21 hours per week (rather than 40 hours per week).
- Requires that each free clinic be designated as a health or dental resource shortage area under the loan repayment programs, regardless of whether the clinic is located in a geographic area that is designated as such an area.
- Specifies that a retired health care professional holding a volunteer's certificate may provide certain health care services without compensation to indigent and uninsured persons at any location, including a free clinic.

- Authorizes the Board of Nursing to issue a volunteer's certificate to a retired registered nurse or licensed practical nurse under specified conditions.

CONTENT AND OPERATION

Qualified immunity for volunteer health care professionals

Under existing law, a health care professional who provides health care services as a volunteer to a person who is indigent and uninsured and a health care facility or location associated with such a health care professional are not liable in damages for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer, unless the action or omission constitutes willful or wanton misconduct.¹ The services must be provided without receiving or expecting to receive any compensation. The services cannot include operations that involve deep sedation or general anesthesia or cannot typically be performed in an office. The delivery of babies is also excluded.²

"Health care professional" is defined for purposes of the immunity provision as any of the following: a physician, registered nurse, licensed practical nurse, physician assistant, dentist, dental hygienist, physical therapist, physical therapist assistant, occupational therapist, occupational therapist assistant, chiropractor, optometrist, podiatrist, dietitian, pharmacist, emergency medical technician, respiratory care professional, speech-language pathologist, audiologist, counselor, social worker, marriage and family therapist, psychologist, or chemical dependency counselor.³ "Health care facility or location" is defined as a hospital clinic, ambulatory surgical facility, office of a health care professional or associated group of health care professionals, training institution for health care professionals, or any other place where health-related diagnosis, care, or treatment is provided.⁴ The bill expressly includes free clinics and other nonprofit shelters or health care facilities in the definition of "health care facility or location."

Volunteer services provided to Medicaid patients

Until June 30, 2019, the bill extends the qualified immunity described above to volunteer health care professionals and the facilities or locations associated with those

¹ R.C. 2305.234(B).

² R.C. 2305.234(A)(11), (13), and (14) and (F).

³ R.C. 2305.234(A).

⁴ R.C. 2305.234(A)(4).

professionals for services provided to persons who are eligible for the Medicaid program or Medicaid recipients. As under current law, the services must be provided without compensation and cannot include certain operations or the delivery of babies.

The bill specifies that the otherwise applicable income limit of 200% of the federal poverty line does not apply to cases in which a Medicaid patient might have a higher income.⁵ For example, the Medicaid spenddown program allows an aged, blind, or disabled person to become eligible for Medicaid if monthly medical expenses reduce the person's income to an amount that is low enough to qualify for Medicaid.

As under current law, persons eligible for other governmental health care programs, such as Medicare and Workers' Compensation, are excluded from the qualified immunity provision. The bill, however, expressly excludes not only a person who is *eligible* for any other governmental health care program, but also a *recipient, enrollee, or beneficiary* of any other governmental health care program.⁶

Free clinics

Registration and monitoring

The bill defines "free clinic" as a tax-exempt nonprofit organization, or its program component, whose primary mission is to provide health care services for free or for a minimal administrative fee to individuals with limited resources and that facilitates the delivery of health care services through the use of volunteer health care professionals and voluntary care networks.⁷ The bill expressly requires each free clinic to register annually with the Ohio Department of Health (ODH) under the existing law that requires annual registration of each nonprofit shelter or health care facility in Ohio. ODH is then expressly required to monitor the quality of care provided to patients at free clinics.⁸

Information on ODH website

The bill requires the ODH to maintain the following information regarding free clinics on its website:⁹

⁵ R.C. 2305.234(A)(7) and (11).

⁶ R.C. 2305.234(A)(7)(b)(iv).

⁷ R.C. 3701.071(A)(1) and (3).

⁸ R.C. 3701.071(B) and (C).

⁹ R.C. 3701.072(B).



- (1) A description of what constitutes a free clinic;
- (2) The benefits and services provided by free clinics;
- (3) A directory of free clinics, including address, contact information, and hours of operation;
- (4) A notice each time that a new free clinic is opened.

Appreciation month and promotion activities

The bill designates December as "Free Clinic Appreciation Month" and requires ODH to promote the month.¹⁰ As part of its promotion activities, ODH must select a free clinic to be named "free clinic of the year" and a physician, nurse, and dentist to be named "free clinic volunteer of the year" in each of the respective professions. To conduct its promotion activities, ODH may consult with entities that have an interest in the services provided by and the benefits of free clinics, including the Ohio Association of Free Clinics.

Physician and Dentist Loan Repayment programs

The bill revises the requirements regarding location and the minimum number of hours to be completed under the Physician and Dentist Loan Repayment programs operated by ODH. The programs offer funds to repay some or all of the educational loans of physicians or dentists who agree to provide primary care or dental services in a health resource shortage area.

The bill requires the ODH Director to designate each free clinic as a health or dental resource shortage area, regardless of whether the clinic is located in a geographic area that is designated as a health resource shortage area.¹¹ Under current law, the designation of a resource shortage area is left to the Director's discretion.

The bill permits a participating physician or dentist who provides the required primary care or dental services solely in a free clinic to provide those services for a minimum of 21 hours per week.¹² Under current law, all participating physicians or dentists must provide primary care or dental services in a health resource shortage area for a minimum of 40 hours per week. The bill does not change this requirement for

¹⁰ R.C. 5.2290 and 3701.072(C).

¹¹ R.C. 3702.76(B) and 3702.87(B).

¹² R.C. 3702.74(B)(2)(a)(ii) and 3702.91(B)(2)(a)(ii).



participating physicians and dentists who provide the required services in a resource shortage area that is not a free clinic.

Retired health care volunteers

The bill extends the existing retired health care professional volunteer's certificate to registered nurses (RNs) and licensed practical nurses (LPNs). The certificate is currently available to physicians, dentists, and dental hygienists. The bill specifies that a health care professional who holds a volunteer's certificate may provide certain health care services to indigent and uninsured persons at any location, including a free clinic.¹³

The bill establishes procedures to be followed by the Board of Nursing in issuing volunteer's certificates to retired RNs and LPNs. These are substantially the same as those to be followed by the State Medical Board and State Dental Board in issuing volunteer's certificates to retired physicians, dentists, and dental hygienists.

Retired nurses

An RN or LPN is considered retired from practice under the bill if the nurse's license has been surrendered or allowed to expire with the intention of ceasing to practice.¹⁴ A retired nurse who chooses to provide nursing services without compensation may apply to the Board of Nursing for a volunteer's certificate.

Application for volunteer's certificate

An application for a volunteer's certificate must include all of the following:¹⁵

(1) A copy of the applicant's degree from a school of registered nursing or practical nursing;

(2) A copy of the applicant's most recent license to practice issued by a jurisdiction in the United States or most recent license equivalent issued by the U.S. government to practice in one or more branches of the U.S. armed services;

(3) Evidence that the applicant has maintained for at least ten years prior to retirement full licensure in good standing in any U.S. jurisdiction or has practiced in

¹³ R.C. 4715.42, 4723.26, and 4731.295.

¹⁴ R.C. 4723.26(A)(2).

¹⁵ R.C. 4723.26(C).



good standing for at least ten years prior to retirement in one or more branches of the U.S. armed services.

If the applicant has been retired from practice for ten or more years, then the applicant must also do the following:¹⁶

(1) Certify to the Board completion of the same continuing education as other nurses seeking a renewal of their nursing license or certificate;

(2) Submit a request for a criminal records check and a check of FBI records.

Certificate issuance and renewal

Within 30 days after receiving an application that includes all of the required information and evidence, the Board must issue a volunteer's certificate without examination to a nurse who has retired from practice.¹⁷ The certificate holder may provide nursing services to indigent and uninsured persons at any location, including a free clinic. A certificate holder cannot accept any form of remuneration for providing nursing services while in possession of the certificate.¹⁸

The Board may suspend or revoke a volunteer's certificate on receiving satisfactory proof that the certificate holder has engaged in practice outside the scope of the certificate or that there are the same grounds for discipline that apply to current license holders. The bill authorizes the Board to specify that the revocation is permanent.¹⁹

A volunteer's certificate is to be valid for a three-year period and may be renewed upon the holder's application, unless the certificate was previously revoked. To be eligible for renewal, the certificate holder must certify to the Board completion of the same continuing education as other nurses: 24 hours in a two-year period. Any entity for which the holder provides nursing services may pay for or reimburse the certificate holder for any costs incurred in obtaining the required continuing education.²⁰

¹⁶ R.C. 4723.26(D).

¹⁷ R.C. 4723.26(B).

¹⁸ R.C. 4723.26(E).

¹⁹ R.C. 4723.26(E) and 4723.28, not in the bill.

²⁰ R.C. 4723.26(F)(1) and (2).



The Board may not charge a fee for issuing or renewing a volunteer's certificate.²¹

The bill specifies that a retired nurse who holds a volunteer's certificate is subject to the existing qualified immunity provisions for health care professionals who provide volunteer services for persons who are indigent and uninsured (see "**Qualified immunity**," above).²²

Register of certificate holders and types of certificates issued

The Board must maintain a register of all nurses holding volunteer's certificates.²³ On request of a certificate holder, the Board must provide a replacement copy of a wall certificate.²⁴ Also, on request of a certificate holder, the Board must verify to an agency of another jurisdiction or foreign country that the nurse holds a volunteer's certificate issued by the Board.²⁵

Rulemaking authority

The Board must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to administer and enforce the bill's requirements regarding volunteer certificates for nurses.²⁶

HISTORY

ACTION	DATE
Introduced	10-29-13
Reported, H. Health & Aging	01-29-14
Passed House (94-1)	02-12-14

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²¹ R.C. 4723.26(F)(1).

²² R.C. 4723.26(F)(3).

²³ R.C. 4723.26(F)(1).

²⁴ This version of the bill does not provide for issuance of wall certificates to retired nurses. A clarifying amendment may be necessary.

²⁵ R.C. 4723.271.

²⁶ R.C. 4723.26(G).

