



Ohio Legislative Service Commission

Bill Analysis

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

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BILL SUMMARY

IMMUNIZATIONS

Immunization by pharmacists and pharmacy interns

- Authorizes a pharmacist to administer certain immunizations to individuals who are 13 years old or older.
- Authorizes a pharmacist to administer certain immunizations to individuals between seven and 13 years old if there is a prescription for the immunization.
- Authorizes a pharmacist to administer a flu shot to an individual who is seven years old or older without a prescription.
- Authorizes a pharmacy intern working under direct supervision to administer the same immunizations as a pharmacist.

Mandatory child care immunizations

- Requires that the caretaker parent of a child enrolled in a licensed child care facility or receiving childcare from a certified in-home aide provide to the facility or aide a medical statement indicating that the child has been immunized against specified diseases.

* This analysis was prepared before the report of the Senate Medicaid, Health, and Human Services appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Provides for certain exceptions to the mandatory immunizations, including that an immunization is medically contraindicated or inappropriate for the child's age or that the child's parent or guardian objects based on reasons of conscience or religious convictions.

DENSE BREAST TISSUE

- Requires a mammography facility to include certain information in a patient's mammogram summary if the patient's mammogram demonstrates the presence of dense breast tissue.

SAFE SLEEP FOR INFANTS

Safe Sleep Education Program

- Requires the Ohio Department of Health (ODH) to establish the Safe Sleep Education Program, and specifies that it operate in a manner similar to the existing Shaken Baby Syndrome Education Program.
- Requires facilities and locations that must participate in the Safe Sleep Education Program and that have infants regularly sleeping at them to adopt an internal infant safe sleep policy.
- Requires the ODH Director to adopt a model internal infant safe sleep policy that facilities may use when implementing their own policies.

Infant safe sleep screening procedures

- Requires freestanding birthing centers and certain hospitals ("facilities") to implement an infant safe sleep screening procedure for the purpose of assessing whether an infant will have a safe crib or other suitable place to sleep in once discharged from the facility to the infant's residence following birth.
- Requires the ODH Director to develop questions that a facility may use when implementing an infant safe sleep screening procedure.
- Subject to certain exceptions, requires a facility to make a good faith effort to arrange for an infant's parent, guardian, or caregiver to obtain a safe crib or other suitable sleeping place at no charge if the facility determines through screening that the infant is unlikely to have a suitable place to sleep.
- Specifies the means by which a facility may comply with the safe crib requirement described above.



- Requires facilities to report to ODH information concerning their compliance with the safe crib requirement.
- Annually beginning July 1, 2015, requires the ODH Director to submit a report to the Governor and General Assembly summarizing the information that has been reported by facilities in the preceding 12 months.

Immunity

- Grants qualified civil immunity to an entity, person, or facility (or any facility employee, contractor, or volunteer), and specifies that any of the foregoing is not subject to criminal prosecution or professional disciplinary action, as applicable, for an act or omission associated with complying with the bill's provisions on the Safe Sleep Education Program and infant safe sleep screening procedures.
- Grants absolute immunity from civil liability, as well as immunity from criminal prosecution, to a facility and any facility employee, contractor, or volunteer for injury, death, or loss to person or property that allegedly arises from a crib or other suitable sleeping place obtained by a parent as a result of any action taken to comply with the bill.
- Associated with the absolute immunity provision described above, specifies that a provision in existing law granting only qualified immunity to agencies that distribute consumer goods does not apply.

Commission on Infant Mortality

- Creates the 15-member Commission on Infant Mortality and specifies the Commission's duties.

SHAKEN BABY SYNDROME

Shaken Baby Syndrome Education Program

- Makes technical and conforming changes to the statutes governing the Shaken Baby Syndrome Education Program, collectively known as "Claire's Law."

PHARMACY BOARD & DRUG OFFENSES

Ohio Automated Rx Reporting System

- Modifies the law governing prescriber review of patient information in the Ohio Automated Rx Reporting System.



- Specifies that an emergency facility is not required to obtain written parental consent for an opioid prescription when treating a minor.

Semiannual opioid prescription report

- Requires the State Board of Pharmacy to submit a semiannual report to the Governor, legislative leaders, and others regarding aggregated opioid prescription information submitted to the Board by pharmacies and prescribers.

Criminal offense – "corrupting another with drugs"

- Expands the offense of corrupting another with drugs to include within the offense a prohibition against knowingly furnishing or administering to a pregnant woman, or inducing or causing a pregnant woman to use, a controlled substance, when the offender knows that the woman is pregnant or is reckless in that regard.
- Increases the penalty for corrupting another with drugs if a person violates the prohibition when a pregnant woman is involved, as described above.

RADIOLOGIC PROFESSIONALS

Reinstatement of radiologic professional licenses

- Authorizes ODH to reinstate an individual's inactive or lapsed license to practice as a general x-ray machine operator, radiographer, radiation therapy technologist, or nuclear medicine technologist.
- Specifies that an individual may apply for license reinstatement even if the individual had applied for a new license prior to the bill's effective date under pre-existing rules and that application was denied.

LYME DISEASE

Lyme disease testing information

- Repeals provisions that require a dentist, advanced practice registered nurse, physician assistant, or physician, when ordering a test for the presence of Lyme disease in a patient, to provide the patient or patient's representative with certain information regarding Lyme disease testing.

NURSING FACILITIES

Nursing facilities' Medicaid provider agreement terms

- Allows a nursing facility to continue, on and after January 1, 2015, to exclude one or more parts from its Medicaid provider agreement if certain conditions are met.



- Allows a nursing facility to continue, on and after January 1, 2015, to refuse to admit an individual who is or may become a Medicaid recipient if at least 25% (rather than 80%) of its Medicaid-certified beds are occupied by Medicaid recipients at the time the individual would otherwise be admitted.

EFFECTIVE DATES

- Declares an emergency.
- Applies the resulting immediate effective date only to the bill's provisions on radiologic professionals and nursing facilities.
- Delays by 90 days the effective date of the bill's remaining provisions.

MOTORSPORTS PARKS

- Exempts a motorsports park that holds at least one annual event sanctioned by NASCAR or NHRA during a motor sports racing event and provides parking for recreational vehicles, dependent recreational vehicles, and portable camping units belonging to participants in the event from licensure under the Recreational Vehicle Parks, Recreation Camps, Combined-Park Camps, and Temporary Park-Camps Law.
- Specifies that the exemption applies to participant-only areas during the time of preparation for and operation of the event.
- Allows a person subject to that Law to apply to the Director of Health for a waiver or variance from it or rules adopted under it.
- Authorizes the Director to grant such a waiver or variance if the person demonstrates, to the Director's satisfaction, that the waiver or variance will not result in any adverse effect on the public health or safety.

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CONTENT AND OPERATION

IMMUNIZATION BY PHARMACISTS AND PHARMACY INTERNS

Overview

Subject to certain age restrictions, the bill permits pharmacists and pharmacy interns to administer influenza immunizations, immunizations specified in rules, and immunizations recommended by the Advisory Committee on Immunization Practices of the federal Centers for Disease Control and Prevention (CDC). The CDC publishes schedules that include recommendations for certain immunizations, the ages at which they should be administered, and when immunizations should or should not be given because of medical conditions.¹

Influenza immunization

The bill lowers the age at which a pharmacist or pharmacy intern can administer an influenza immunization, commonly known as a flu shot. Under current law, pharmacists may give flu shots to individuals 14 years old or older and pharmacy interns may give flu shots to individuals 18 years old or older. Under the bill, both pharmacists and pharmacy interns may give flu shots to individuals starting at seven years old.² Corresponding provisions of current law are adjusted to reflect the lower age, still requiring a pharmacist or pharmacy intern to obtain permission from a minor's parent or guardian.³

Immunizations recommended by the CDC and specified in rules

The bill lowers the age at which a pharmacist may administer certain immunizations, and expands immunizations a pharmacy intern may administer. Under

¹ CDC. *Immunization Schedules* (last visited December 9, 2014), available at <<http://www.cdc.gov/vaccines/schedules/easy-to-read/index.html>>.

² R.C. 4729.41(A)(1)(a).

³ R.C. 4729.41(C)(3).



current law, pharmacy interns may administer only influenza immunizations to individuals 18 years old or older, while pharmacists may administer immunizations for influenza to individuals 14 years old or older, as well as pneumonia, tetanus, hepatitis A, hepatitis B, meningitis, diphtheria, and pertussis and any other immunization approved by rule of the State Board of Pharmacy to individuals 18 years old or older. Under law unchanged by the bill, the Board may adopt rules, in consultation with the State Medical Board, to permit administration of any immunization, not just those included in the CDC's recommended immunization schedules.⁴ At present, the zoster vaccine, which is for shingles, and the measles, mumps, and rubella (MMR) vaccine are the only immunizations that have been approved by rule.⁵

Under the bill, both pharmacists and pharmacy interns may administer the following immunizations to individuals between the ages of seven and 13 if there is a prescription for the immunization:

- Any immunization that on the bill's effective date is included on specified immunization schedules for children and adults recommended by the CDC;
- Any immunization specified in rules adopted by the Pharmacy Board.⁶

For individuals 13 years old or older, pharmacists and pharmacy interns may administer those immunizations without a prescription.⁷

Immunization updating procedure

The immunizations that may be administered by pharmacists and pharmacy interns when the bill takes effect are limited to those that on its effective date are included in the CDC's recommended immunization schedules. However, the CDC periodically revises those recommendations. The bill permits the State Board of Pharmacy to adopt rules that change the immunizations authorized by the bill on its

⁴ R.C. 4729.41(A) and (E).

⁵ Ohio Administrative Code (O.A.C.) 4729-5-38; CDC. *Shingles Vaccination: What You Need to Know* (last visited December 9, 2014), available at <<http://www.cdc.gov/vaccines/vpd-vac/shingles/vacc-need-know.htm>>.

⁶ R.C. 4729.41(A)(1)(b) and (2).

⁷ R.C. 4729.41(A)(1)(c).



effective date to reflect changes in the CDC's recommendations.⁸ The bill does not require the Board to consult with the State Medical Board before adopting the changes.

Report of immunization administration information

The bill gives the Department of Health two years after the bill's effective date to prepare a report detailing the feasibility of requiring all individuals who administer vaccines in Ohio to submit immunization administration information to the Department's statewide immunization registry. The report must be submitted to the Governor and the General Assembly.⁹

MANDATORY CHILD CARE IMMUNIZATIONS

Medical statement of immunizations

The bill requires that the caretaker parent of a child enrolled in a child day-care center, type A family day-care home, or licensed type B family day-care home or receiving child care from a certified in-home aide provide to the center, home, or aide a medical statement indicating that the child has been immunized against or is in the process of being immunized against certain diseases (see "**Definitions**" and "**Diseases**," below).¹⁰ In the case of a child enrolled in a center or home, the medical statement must be provided not later than 30 days after enrollment in the center or home and every 13 months thereafter while enrolled. In the case of a child receiving child care from an in-home aide, the statement must be provided not later than 30 days after beginning to receive care from the aide and every 13 months thereafter while continuing to receive child care from the aide.

Current law requires that the Ohio Department of Job and Family Services (ODJFS) adopt rules regarding procedures for screening children, including procedures that may include necessary immunizations; it does not expressly require immunizations. Similarly, while ODJFS rules require that a licensed child care facility have a completed medical statement on file that includes a record of immunizations and statement of any immunization exemptions, the rules do not expressly mandate

⁸ R.C. 4729.41(F).

⁹ Section 6 of the bill.

¹⁰ R.C. 5104.014(B).



immunizations.¹¹ The bill requires that these screening procedures include the required immunizations.¹²

Medical statement contents

The bill requires that a medical statement include the dates that a child received immunizations against each of the diseases specified in the bill and whether a child is subject to any exceptions. The medical statement also must include a component where a parent or guardian may indicate that the parent or guardian has declined to have the child immunized.¹³

Exceptions to immunizations

Under the bill, a child enrolled in a licensed child care facility or receiving child care from a certified in-home aide is not required to be immunized against a specified disease if any of the following is the case:

(1) Immunization is medically contraindicated for the child;

(2) The child's parent or guardian has declined to have the child immunized for reasons of conscience, including religious convictions. The bill does not define "reasons of conscience."

(3) Immunization against the disease is not medically appropriate for the child's age.

Influenza

In the case of influenza, a child is not required to be immunized against the disease if the seasonal vaccine is not available.¹⁴

Diseases

The following table lists the diseases for which immunization is required under the bill. The table also lists the diseases for which a school-age child must be immunized against under current Ohio law.¹⁵

¹¹ O.A.C. 5101: 2-12-37, 5101:2-13-37, and 5101:2-14-15.

¹² R.C. 5104.015(J), 5104.017(J), and 5104.018(J).

¹³ R.C. 5104.014(D).

¹⁴ R.C. 5104.014(C).

¹⁵ R.C. 5104.014(B) and R.C. 3313.671, not in the bill.



Disease	Child enrolled in licensed child care facility	School-age child
Chicken pox	Yes	Yes
Diphtheria	Yes	Yes
Haemophilus influenzae type b (Hib)	Yes	No
Hepatitis A	Yes	No
Hepatitis B	Yes	No
Influenza	Yes	No
Measles	Yes	Yes
Mumps	Yes	Yes
Pertussis	Yes	Yes
Pneumococcal disease	Yes	No
Poliomyelitis	Yes	Yes
Rotavirus	Yes	No
Rubella	Yes	Yes
Tetanus	Yes	Yes

Definitions

In the process of being immunized

Under the bill, "in the process of being immunized" means having received at least the first dose of an immunization sequence and complying with the immunization intervals or catch-up schedule prescribed by the Director of the Ohio Department of Health.¹⁶

Child

For the purposes of the bill, a child includes both of the following:

(1) An infant, toddler, or preschool age child;

(2) A school-age child who is not enrolled in a public or nonpublic school but is enrolled in a child day-care center, type A home, or licensed type B home or receives child care from a certified in-home aide.¹⁷

¹⁶ R.C. 5104.014(A)(2).

¹⁷ R.C. 5104.014(A)(1).



Current law defines an infant as a child who is less than 18 months of age, while a toddler is defined as a child who is at least 18 months old but less than 3 years of age. In addition, a preschool age child is a child who is 3 years of age or older but is not a school age child. A school-age child is a child who is enrolled in or eligible to be enrolled in a grade of kindergarten or above but is less than 15 years of age.¹⁸

Caretaker parent

Under current law, a caretaker parent means any of the following persons whose presence in the home is needed as the caretaker of the child:

- (1) The father or mother of the child;
- (2) A person who has legal custody of the child;
- (3) A guardian of the child;
- (4) Any other person who stands in loco parentis with respect to the child.¹⁹

Child care provides background

Child care can be provided in a facility, the home of the provider, or the child's home. Not all child care providers are subject to regulation, but a provider must be licensed or certified to be eligible to provide publicly funded child care. The distinctions among the types of providers are described in the table below.

Child Care Providers		
Type	Description/Number of children served	Regulatory system
Child day-care center	Any place in which child care is provided as follows: --For 13 or more children at one time; or --For 7-12 children at one time if the place is not the permanent residence of the licensee or administrator (which is, instead, a type A home).	A child day-care center must be licensed by ODJFS, regardless of whether it provides publicly funded child care.
Family day-care home	Type A home – a permanent residence of an administrator in which child care is provided as follows: --For 7-12 children at one time; or --For 4-12 children at one time if 4 or	A type A home must be licensed by ODJFS, regardless of whether it provides publicly funded child care.

¹⁸ R.C. 5104.01.

¹⁹ R.C. 5104.01(E).



Child Care Providers		
Type	Description/Number of children served	Regulatory system
	<p>more are under age 2.</p> <p>Type B home – a permanent residence of the provider in which child care is provided as follows:</p> <ul style="list-style-type: none"> --For 1-6 children at one time; and --No more than 3 children at one time under age 2. 	To be eligible to provide publicly funded child care, a type B home must be licensed by ODJFS.
In-home aide	A person who provides child care in a child's home but does not reside with the child.	To be eligible to provide publicly funded child care, an in-home aide must be certified by a county department of job and family services.

DENSE BREAST TISSUE

Mammogram results

Dense breast tissue notice to patients

Federal law requires a mammography facility to send to each patient who has a mammogram performed there a summary of the written report of the results of the patient's mammogram (see "**Written report to health care providers**," below).²⁰ The summary must be written in lay terms and sent to the patient not later than 30 days after the mammogram was performed. If the written report's overall final assessment of findings is "suspicious" or "highly suggestive of malignancy," as defined by federal law, the facility must make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.²¹

In general, the bill codifies federal law concerning summaries of written mammography reports. In addition, the bill requires a summary to include the

²⁰ Public Law 102-539. The Mammography Quality Standards Act of 1992 was reauthorized by Congress in 1998 and 2004, with some changes to the law. See U.S. Food and Drug Administration, *Radiation-Emitting Products: About Mammography Quality Standards Act (MQSA)* (last updated November 6, 2012), available at <<http://www.fda.gov/Radiation-EmittingProducts/MammographyQualityStandardsActandProgram/AbouttheMammographyProgram/default.htm>>.

²¹ 21 Code of Federal Regulations (C.F.R.) 900.12(c)(2).



following notice if a patient's mammogram demonstrates, based on American College of Radiology Standards, that the patient has dense breast tissue:²²

Your mammogram demonstrates that you have dense breast tissue, which could hide abnormalities. Dense breast tissue, in and of itself, is a relatively common condition. Therefore, this information is not provided to cause undue concern; rather, it is to raise your awareness and promote discussion with your health care provider regarding the presence of dense breast tissue in addition to other risk factors.

Written report to health care providers

Federal law requires a mammography facility to (1) prepare a written report of the results of each mammogram performed there and (2) send the report to a patient's health care provider. In general, the report must contain the following information:²³

- (1) The name of the patient and an additional patient identifier;
- (2) The date of examination;
- (3) The name of the physician who interpreted the mammogram;
- (4) An overall final assessment of findings, classified in one of five categories: negative, benign, probably benign, suspicious, or highly suggestive of malignancy;
- (5) Recommendations to the health care provider about what additional actions, if any, should be taken.

When a patient has a referring health care provider or the patient has named a health care provider, the facility must send the report to that provider as soon as possible, but not later than 30 days after the mammogram was performed. If an assessment is "suspicious" or "highly suggestive of malignancy," as defined by federal law, the facility must make reasonable attempts to communicate with the health care provider as soon as possible or, if the health care provider is unavailable, to a responsible designee of the health care provider.²⁴

²² R.C. 3702.40(B).

²³ 21 C.F.R. 900.12(c)(1).

²⁴ 21 C.F.R. 900.12(c)(3).



The bill largely codifies federal law concerning written mammography reports, by requiring a facility to send to the patient's health care provider, if known, a copy of the written report containing the results of the patient's mammogram. The report must be sent not later than 30 days after the mammogram was performed.²⁵

Scope of the bill

The bill specifies that its provisions do not create either of the following:²⁶

--A new cause of action or substantive legal right against a person, facility, or other entity; or

--A standard of care, obligation, or duty for a person, facility, or other entity that would provide the basis for a cause of action or substantive legal right, other than the duty to send the summary and written report described above.

Definitions

The bill specifies that the terms, "mammogram" and "facility," have the same meanings as in federal law,²⁷ which are:

"Mammogram" – A radiographic image produced through mammography. ("Mammography" is radiography of the breast.)²⁸

"Facility" – Any of the following that conducts breast cancer screening or diagnosis through mammography activities: a hospital, outpatient department, clinic, radiology practice, or mobile unit; an office of a physician; or another facility determined by the U.S. Secretary of Health and Human Services. The term does not, however, include a facility of the U.S. Department of Veterans Affairs. ("Mammography activities" include the operation of equipment to produce the mammogram, the processing of the film, the initial interpretation of the mammogram, and the viewing conditions for that interpretation.)²⁹

²⁵ R.C. 3702.40(B).

²⁶ R.C. 3702.40(C).

²⁷ R.C. 3702.40(A).

²⁸ 42 United States Code (U.S.C.) 263b(a)(5) and (6).

²⁹ 42 U.S.C. 263b(a)(3).



SAFE SLEEP FOR INFANTS

Safe Sleep Education Program

Administration

The bill requires the Ohio Department of Health (ODH) to establish the Safe Sleep Education Program.³⁰ The Program is to operate in a manner similar to the Shaken Baby Syndrome Education Program that ODH administers under current law with the modifications the bill makes to that Program.³¹

Under the Safe Sleep Education Program, ODH must do all of the following:³²

--By not later than 60 days after this provision's effective date, develop educational materials that present readily comprehensible information on safe sleeping practices for infants and possible causes of sudden unexpected infant death;

--Make the educational materials available on ODH's website in an easily accessible format;

--Beginning in 2015, assess the effectiveness of the Program by evaluating reports submitted to ODH by child fatality review boards as required under current law.

Under the bill, the educational materials that ODH develops must minimize, to the extent possible, administrative or financial burdens on any of the entities or persons that are required to distribute the materials.³³ The materials must be distributed by entities and persons with and in the same manner as the Shaken Baby Syndrome materials are distributed under current law slightly modified by the bill. Specifically, the distribution must be made as follows:³⁴

--By child birth educators and the staff of obstetricians' offices, to an expectant parent who uses their services;

--By the staff of pediatric physicians' offices, to an infant's parent, guardian, or other person responsible for the infant, any of whom uses their services;

³⁰ R.C. 3701.66(B).

³¹ R.C. 3701.66(C) and (D).

³² R.C. 3701.66(B).

³³ R.C. 3701.66(C).

³⁴ R.C. 3701.66(D).



--By the staff of freestanding birthing centers and certain hospitals, to the infant's parent, guardian, or other person responsible for the infant, before the infant is discharged from the facility;

--By the staff of the existing Help Me Grow program, to an infant's parent, guardian, or other person responsible for the infant during home-visiting services;³⁵

--By each child care facility operating in Ohio, to each of its employees;

--By a public children services agency (PCSA), when the PCSA has initial contact with an infant's parent, guardian, or other person responsible for the infant.

The bill specifies that the hospitals subject to the educational material distribution requirement are general or children's hospitals that (1) have a maternity unit or (2) receive for care infants who (a) have been transferred to them from other facilities and (b) have never been discharged to their residences following birth.³⁶

The bill also specifies that "other person responsible for the infant" includes a foster caregiver.³⁷

Internal infant safe sleep policy

The bill requires each entity or person that must distribute the educational materials and has infants regularly sleeping at a facility or location under the entity's or person's control to adopt an internal infant safe sleep policy. The policy must specify when and to whom the educational materials are to be delivered to individuals working or volunteering at the facility or location and be consistent with the model internal infant safe sleep policy adopted by the ODH Director.³⁸

Model policy

The bill requires the ODH Director to adopt a model internal infant safe sleep policy for use by entities and persons that must adopt an internal infant safe sleep

³⁵ The Help Me Grow program is designed to ensure that Ohio's children receive a healthy birth and the resources to warrant a healthy and productive start in life. The program consists of three components: home visiting, early intervention, and infant hearing. (Ohio Department of Health, *Ohio Help Me Grow* (last visited December 3, 2014), available at <<http://www.helpmegrow.ohio.gov/aboutus/abouthelpmegrow.aspx>>.)

³⁶ R.C. 3701.63(A)(5).

³⁷ R.C. 3701.63(A)(8).

³⁸ R.C. 3701.66(E).



policy. The policy must specify infant safe sleep practices, include images depicting safe infant sleep practices, and specify sample content for an infant safe sleep education program that entities and persons may use when conducting new staff orientations.³⁹

Infant safe sleep screening procedure

Implementation

The bill requires freestanding birthing centers and certain hospitals to implement an infant safe sleep screening procedure. The purpose of the procedure is to determine whether there will be a safe crib for an infant to sleep in once the infant is discharged from the facility to the infant's residence following birth. The procedure must consist of questions that the facility's staff or volunteers must ask the infant's parent, guardian, or other person responsible for the infant regarding the infant's intended sleeping place and environment. The bill specifies that the hospitals subject to the infant safe sleep screening procedure requirement are the same ones subject to the educational material distribution requirement previously discussed. These are general or children's hospitals that (1) have a maternity unit or (2) receive for care infants who (a) have been transferred to them from other facilities and who (b) have never been discharged to their residences following birth.⁴⁰

The bill specifies that "crib" includes a portable play yard or other suitable sleeping place. It also specifies that "other person responsible for the infant" includes a foster caregiver.⁴¹

Model questions developed by ODH Director

The bill requires the ODH Director to develop questions that hospitals and freestanding birthing centers may use when implementing their infant safe sleep screening procedures. When developing the questions, the Director may consult with persons and government entities that have expertise in infant safe sleep practices.⁴²

Safe crib requirement

If, prior to an infant's discharge from a facility to the infant's residence following birth, a facility determines through its infant safe sleep screening procedure that an infant is unlikely to have a safe crib at the infant's residence, the bill requires the facility

³⁹ R.C. 3701.66(F).

⁴⁰ R.C. 3701.63(A)(5).

⁴¹ R.C. 3701.63(A)(8) and 3701.67(A)(3).

⁴² R.C. 3701.67(B).



to make a good faith effort to arrange for the parent, guardian, or other person responsible for the infant to obtain a safe crib at no charge to the individual. In meeting the safe crib requirement, the facility may do any of the following:⁴³

--Obtain a safe crib with its own resources;

--Collaborate with or obtain assistance from persons or government entities that are able to procure a safe crib or provide money to purchase a safe crib;

--Refer the parent, guardian, or other person responsible for the infant to a person or government entity described above to obtain a safe crib free of charge from that source;

--If funds are available for the Cribs for Kids Program or a successor program administered by ODH, refer the parent, guardian, or other person responsible for the infant to a program site designated by ODH at which a safe crib may be obtained at no charge.

Exemptions

The bill exempts from the safe crib requirement both of the following:⁴⁴

(1) A hospital the ODH Director designates as a critical access hospital under continuing law.⁴⁵ (A "critical access hospital" (CAH) is a Medicare-certified hospital that (a) has not more than 25 inpatient beds, (b) maintains an annual average length of stay not exceeding 96 hours for acute inpatient care, (c) offers 24-hour, 7-day-a-week emergency care, and (d) is located in a rural area, at least 35 miles away from any other hospital or CAH.⁴⁶)

(2) A hospital that is not a CAH and has been identified by the ODH Director as not being served by a "Cribs for Kids" or successor program site associated with this exemption to the safe crib requirement. The bill requires the ODH Director to identify,

⁴³ R.C. 3701.67(C).

⁴⁴ R.C. 3701.67(C).

⁴⁵ R.C. 3701.073, not in the bill.

⁴⁶ U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA) – Health Information Technology, *What Are Critical Access Hospitals (CAH)?* (last visited December 3, 2014), available at <<http://www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Introduction/critical.html>>.



not less than annually, the facilities in Ohio that meet the criteria for the exemption and to notify those that do so.⁴⁷

Reporting requirement

The bill requires hospitals subject to the bill's safe crib requirement and those exempted from the requirement (as described above) when they register annually with ODH under existing law,⁴⁸ as well as freestanding birthing centers when they renew their licenses with ODH under existing law,⁴⁹ to report all of the following information associated with compliance with the bill in a manner ODH prescribes:⁵⁰

(1) The number of safe cribs that the facility obtained and distributed by using its own resources since the last time the facility reported this information to ODH;

(2) The number of safe cribs that the facility obtained and distributed by collaborating with or obtaining assistance from another person or government entity since the last time the facility reported this information to ODH;

(3) The number of referrals to a person or government entity described in (2), above, that the facility made since the last time the facility reported this information to ODH;

(4) The number of referrals to a "Cribs for Kids" or successor program site that the facility made since the last time the facility reported this information to ODH;

(5) Demographic information specified by the ODH Director regarding individuals to whom safe cribs were distributed and referrals described in (3) and (4), above, were made.

(6) In the case of a critical access hospital or a hospital meeting the exemption for hospitals not served by a "Cribs for Kids" or successor program site, demographic information specified by the ODH Director regarding each parent, guardian, or other person responsible for an infant determined through an infant safe sleep screening procedure as unlikely to have a safe crib at the infant's residence;

⁴⁷ R.C. 3701.67(D).

⁴⁸ R.C. 3701.07(A), not in the bill.

⁴⁹ Rules adopted under R.C. 3702.30, not in the bill, that are codified in O.A.C. 3701-83-04(B).

⁵⁰ R.C. 3701.67(E).



(7) Any other information collected by the facility regarding infant sleep environments and intended infant sleep environments that the ODH Director determines is appropriate.

Written report prepared by the ODH Director

The bill requires the ODH Director, not later than July 1 of each year beginning in 2015, to prepare a written report summarizing the information described above that ODH has collected in the preceding 12 months from hospitals and freestanding birthing centers. The bill requires the report to be submitted to the Governor and the General Assembly.⁵¹

Immunity

From civil liability

The bill grants qualified immunity from liability in a civil action as follows:

--To an entity or person required to distribute Shaken Baby Syndrome or safe sleep educational materials, unless the entity's or person's act or omission associated with the distribution constitutes willful or wanton misconduct;⁵²

--To a facility required to implement an infant safe sleep screening procedure, and any employee, contractor, or volunteer of such a facility, unless the facility's or person's act or omission associated with procedure implementation constitutes willful or wanton misconduct.⁵³ (The bill defines "contractor" as a person who provides personal services pursuant to a contract.⁵⁴)

The bill grants absolute immunity from liability in a civil action to a facility, and any employee, contractor, or volunteer of a facility, for injury, death, or loss to person or property that allegedly arises from a crib obtained by a parent, guardian, or other person responsible for the infant as a result of any action the facility, employee, contractor, or volunteer takes to comply with the bill's safe crib requirement.⁵⁵ To receive this immunity, a facility, employee, contractor, or volunteer is not required to

⁵¹ R.C. 3701.67(F).

⁵² R.C. 3701.64(B) and 3701.66(D).

⁵³ R.C. 3701.67(G).

⁵⁴ R.C. 3701.67(A)(1).

⁵⁵ R.C. 3701.67(H).



comply with an existing law provision (not modified by the bill)⁵⁶ governing immunity for the distribution of consumer goods by certain nonprofit agencies.⁵⁷

From criminal prosecution

The bill specifies that all of the following are not subject to criminal prosecution:

--An entity or person required to distribute Shaken Baby Syndrome or safe sleep educational materials;⁵⁸

--A facility required to implement an infant safe sleep screening procedure, and any employee, contractor, or volunteer of such a facility;⁵⁹

--A facility that is required to make a good faith effort to arrange for a parent, guardian, or other person responsible for the infant to obtain a safe crib pursuant to the options specified in the bill, and any employee, contractor, or volunteer of such a facility.⁶⁰

From professional disciplinary action

To the extent a person is regulated under Title 47 of the Revised Code (which includes the regulation of most health care professionals), the bill specifies that the person is not subject to professional disciplinary action under that title for an act or omission associated with distributing Shaken Baby Syndrome and safe sleep educational materials or implementing an infant safe sleep screening procedure.⁶¹

Preservation of existing immunity

The bill specifies that its provisions do not eliminate, limit, or reduce any other immunity or defense that the entities or persons described above may be entitled to under the existing Political Subdivision Sovereign Immunity (PSSI) Law.⁶² Under the PSSI Law, both of the following are the case:

⁵⁶ R.C. 2305.37(D), not in the bill.

⁵⁷ R.C. 3701.67(H).

⁵⁸ R.C. 3701.64(C) and 3701.66(D).

⁵⁹ R.C. 3701.67(G).

⁶⁰ R.C. 3701.67(H).

⁶¹ R.C. 3701.64(B) and 3701.66(D).

⁶² R.C. 3701.64(B), 3701.66(D), and 3701.67(G).



--A political subdivision is not generally liable for damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental function or proprietary function.⁶³ (Counties, townships, and municipal corporations are, among other entities, political subdivisions. Thus, hospitals operated by political subdivisions would be covered by the PSSI Law.)

--An employee of a political subdivision is immune from liability unless (1) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (2) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (3) civil liability is expressly imposed upon the employee by a section of the Revised Code.⁶⁴

The PSSI Law specifies that civil liability is not to be construed to exist under another Revised Code section merely because that section imposes a responsibility or mandatory duty on an employee, provides for a criminal penalty, uses the term "shall" in a provision pertaining to an employee or because of a general authorization in that section that an employee may sue and be sued.⁶⁵

Commission on Infant Mortality

Duties

The bill creates the Commission on Infant Mortality, which must:⁶⁶

(1) Conduct a complete inventory of services provided or administered by the state that are available to address the infant mortality rate in Ohio;

(2) For each service identified, determine both of the following:

(a) The sources of the funds that are used to pay for the service;

(b) Whether the service and its funding sources have a connection with programs provided or administered by local or community-based public or private entities and, to the extent they do not, whether they should.

⁶³ R.C. 2744.02(A)(1), not in the bill.

⁶⁴ R.C. 2744.03(A)(6), not in the bill.

⁶⁵ R.C. 2744.03(A)(6)(c), not in the bill.

⁶⁶ R.C. 3701.68(B).



(3) With assistance from academic medical centers, track and analyze infant mortality rates by county for the purpose of determining the impact of state and local initiatives to reduce those rates. (The bill defines "academic medical center" as a medical school and its affiliated teaching hospitals.⁶⁷)

For purposes of fulfilling the third duty, the State Registrar of Vital Statistics must ensure that the Commission and academic medical centers have access to any electronic system of vital records the State Registrar or ODH maintains, including the Ohio Public Health Information Warehouse.⁶⁸

Not later than six months after this provision's effective date, the Commission must prepare a written report of its findings and recommendations concerning the matters described above. On completion, the Commission must submit the report to the Governor and the General Assembly.⁶⁹

The Senate President and Speaker of the House of Representatives must determine the responsibilities of the Commission following submission of the report.⁷⁰

The Commission may request assistance from the staff of the Legislative Service Commission.⁷¹

Membership

The Commission is to consist of the following 15 members:⁷²

- Two members of the Senate, one from the majority party and one from the minority party, each appointed by the Senate President;
- Two members of the House of Representatives, one from the majority party and one from the minority party, each appointed by the Speaker of the House of Representatives;
- The Executive Director of the Office of Health Transformation or the Executive Director's designee;

⁶⁷ R.C. 3701.68(A)(1).

⁶⁸ R.C. 3701.68(F).

⁶⁹ R.C. 3701.68(F).

⁷⁰ R.C. 3701.68(G).

⁷¹ R.C. 3701.68(E).

⁷² R.C. 3701.68(C).



- The Director of Medicaid or the Director's designee;
- The Director of Health or the Director's designee;
- The Executive Director of the Commission on Minority Health or the Executive Director's designee;
- The Attorney General or the Attorney General's designee;
- A health commissioner of a city or general health district, appointed by the Governor;
- A coroner, deputy coroner, or other person who conducts death scene investigations, appointed by the Governor;
- An individual who represents the Ohio Hospital Association, appointed by the Association's president;
- An individual who represents the Ohio Children's Hospital Association, appointed by the Association's president;
- Two individuals who represent community-based programs that serve pregnant women or new mothers whose infants tend to be at a higher risk for infant mortality, appointed by the Governor.

The appointed Commission members must be appointed not later than 30 days after this provision's effective date. An appointed member holds office until a successor is appointed. A vacancy must be filled in the same manner as the original appointment.⁷³

From among the members, the Senate President and Speaker of the House of Representatives must appoint two to serve as co-chairpersons of the Commission.⁷⁴

A member must serve without compensation except to the extent that serving on the Commission is considered part of the member's regular duties of employment.⁷⁵

The bill specifies that the Commission is not subject to the Sunset Review Law.⁷⁶

⁷³ R.C. 3701.68(D).

⁷⁴ R.C. 3701.68(D).

⁷⁵ R.C. 3701.68(D).

⁷⁶ R.C. 3701.68(H).



SHAKEN BABY SYNDROME

Shaken Baby Syndrome Education Program

The bill makes technical and conforming changes to the statutes governing the Shaken Baby Syndrome Education Program, known collectively as "Claire's Law." In particular, the bill:

--Requires the ODH Director to develop educational materials for the Program that, to the extent possible, minimize administrative or financial burdens on the entities and persons that must distribute the materials,⁷⁷ in contrast to current law, which prohibits the Director from developing educational materials that will impose an administrative or financial burden on the distributors;⁷⁸

--Specifies that staff of a pediatrician's office, hospital, freestanding birthing center, or the Help Me Grow program may distribute the program's educational materials to an infant's guardian or other person responsible for the infant, including a foster caregiver, if that individual uses the facility's services in lieu of a parent;⁷⁹

--Adds PCSAs to the list of entities and persons that must distribute the Program's educational materials, and specifies that PCSAs must distribute the materials when the PCSA has initial contact with an infant's parent, guardian, or other person responsible for the infant, including a foster caregiver;⁸⁰

--Specifies that the only hospitals that must distribute the Program's educational materials are those that (1) have a maternity unit or (2) receive for care infants who (a) have been transferred to them from other facilities and (b) have never been discharged to their residences following birth.⁸¹

--Updates the definition of "maternity unit" to correspond with changes that were made by subsequent enactments.⁸²

⁷⁷ R.C. 3701.63(C).

⁷⁸ R.C. 3701.63(C).

⁷⁹ R.C. 3701.64(B)(2).

⁸⁰ R.C. 3701.64(B)(6).

⁸¹ R.C. 3701.63(A)(5) and 3701.64(B)(3).

⁸² R.C. 3701.63(A)(6); see Sub. H.B. 331 of the 127th General Assembly.



PHARMACY BOARD & DRUG OFFENSES

Ohio Automated Rx Reporting System (OARRS)

Overview

The bill makes several changes to the law governing the review of patient information in the Ohio Automated Rx Reporting System (OARRS), the drug database established and maintained by the State Board of Pharmacy.⁸³ Am. Sub. H.B. 341 of the 130th General Assembly established several conditions related to OARRS that apply to (1) a prescriber when prescribing or personally furnishing an opioid analgesic or a benzodiazepine and (2) a prescriber, pharmacist, or pharmacy intern when renewing a professional license, certificate to prescribe, or identification card. Some of the provisions of H.B. 341 take effect January 1, 2015 (license renewals), while others take effect April 1, 2015 (prescribing or furnishing opioid analgesics or benzodiazepines).

For the purposes of the OARRS law, a prescriber includes all of the following: a dentist, an advanced practice registered nurse holding a certificate to prescribe, an optometrist holding a therapeutic pharmaceutical agents certificate, a physician assistant holding a certificate to prescribe, and a physician authorized to practice medicine, osteopathic medicine, or podiatry.

License renewals and OARRS access

Beginning January 1, 2015, Ohio law will require that a prescriber who prescribes or personally furnishes opioid analgesics or benzodiazepines, as well as a pharmacist or pharmacy intern, when renewing a professional license, certificate to prescribe, or identification card, certify to the licensing board that he or she has been granted access to OARRS, with certain exceptions.⁸⁴ Ohio law also permits a licensing board, beginning January 1, 2015, to discipline a prescriber for a false certification regarding OARRS. Existing law does not subject a pharmacist or pharmacy intern to discipline for a false certification concerning OARRS.⁸⁵

The bill provides for an additional exception to the requirement that a prescriber or pharmacist certify access to OARRS. A prescriber who does not practice in Ohio or a pharmacist who does not dispense controlled substances in Ohio, but is authorized to

⁸³ R.C. 3719.01, 4715.14, 4715.30, 4715.302, 4723.28, 4723.481, 4723.486, 4723.487, 4725.092, 4725.16, 4725.19, 4729.12, 4729.16, 4729.18, 4729.86, 4730.25, 4730.41, 4730.48, 4731.055, 4731.22, and 4731.281.

⁸⁴ R.C. 4715.14, 4723.486, 4725.16, 4729.12, 4730.48, and 4731.281.

⁸⁵ R.C. 4715.14, 4715.30, 4723.28, 4723.486, 4725.16, 4725.19, 4729.12, 4730.25, 4730.48, 4731.22, and 4731.281.



do so, is not required to certify access to OARRS. The bill further specifies that a pharmacy intern is not required to certify access to OARRS when renewing his or her identification card.⁸⁶

With respect to a pharmacist only, the bill provides that he or she is subject to possible discipline for a false certification.⁸⁷ The bill maintains the disciplinary provisions governing prescribers that were enacted by H.B. 341.

With respect to the provisions that apply to an optometrist, the bill makes the following corrective changes: (1) replaces a reference to a topical ocular certificate with a reference to a therapeutic pharmaceutical agents certificate, (2) clarifies references to an optometrist's limited authority to prescribe or personally furnish analgesic controlled substances that are opioid analgesics, and (3) eliminates references to prescribing or personally furnishing a benzodiazepine since an optometrist is not authorized to prescribe those drugs.⁸⁸

Optometrists and OARRS patient information

Beginning April 1, 2015, before initially prescribing or personally furnishing an opioid analgesic or a benzodiazepine, a prescriber must request patient information from OARRS that covers at least the previous 12 months. The bill eliminates this requirement in the case of an optometrist, but maintains the requirement for all other prescribers.⁸⁹

Board rules concerning OARRS

The bill authorizes, rather than requires, the following boards to adopt rules establishing standards and procedures for the review of patient information in OARRS: the State Dental Board, the Board of Nursing, and the State Medical Board. With respect to the State Board of Optometry, the bill requires that the Board adopt rules establishing standards and procedures for the review of patient information in OARRS.⁹⁰

⁸⁶ R.C. 4715.14, 4723.486, 4725.16, 4729.12, 4730.48, and 4731.281.

⁸⁷ R.C. 4729.12.

⁸⁸ R.C. 4725.092, 4725.16, and 4725.19.

⁸⁹ R.C. 4725.092.

⁹⁰ R.C. 4715.30(D), 4723.487(D), 4725.092(B), 4730.53(D), and 4731.055(D).



Definition of opioid analgesic and benzodiazepine

The bill defines an opioid analgesic and a benzodiazepine for the purposes of the OARRS law, as follows:

(1) "Opioid analgesic" -- a controlled substance that has analgesic pharmacologic activity at the opioid receptors of the central nervous system, including the following drugs and their varying salt forms or chemical congeners: buprenorphine, butorphanol, codeine (including acetaminophen and other combination products), dihydrocodeine, fentanyl, hydrocodone (including acetaminophen combination products), hydromorphone, meperidine, methadone, morphine sulfate, oxycodone (including acetaminophen, aspirin, and other combination products), oxymorphone, tapentadol, and tramadol.

(2) "Benzodiazepine" -- a controlled substance that has United States Food and Drug Administration approved labeling indicating that it is a benzodiazepine, benzodiazepine derivative, triazolobenzodiazepine, or triazolobenzodiazepine derivative, including the following drugs and their varying salt forms or chemical congeners: alprazolam, chlordiazepoxide hydrochloride, clobazam, clonazepam, clorazepate, diazepam, estazolam, flurazepam hydrochloride, lorazepam, midazolam, oxazepam, quazepam, temazepam, and triazolam.⁹¹

Disseminating information from OARRS

Ohio law prohibits the dissemination of any written or electronic information received from OARRS except in certain circumstances, including when necessary in the investigation of a crime or when provided by a prescriber to his or her delegate. The bill provides for the following additional exceptions: (1) when a prescriber or pharmacist provides the information to a patient or patient's representative and (2) when a prescriber or pharmacist includes the information in a patient's medical record.⁹²

Issuing opioid prescriptions for minors

For the purposes of the law governing parental consent for opioid prescriptions issued for minors enacted by Sub. H.B. 314, the bill makes three changes. First, it replaces references to a controlled substance containing an opioid and a compound that is a controlled substance containing an opioid with opioid analgesic. Second, it defines "emergency facility" as a hospital emergency department or any other facility that provides emergency care. Third, it excludes an emergency facility from having to obtain

⁹¹ R.C. 3719.01.

⁹² R.C. 4729.86.



written parental consent for an opioid prescription when providing treatment to a minor.⁹³

Pharmacy Board discipline

For the purposes of the law governing the discipline of pharmacists and pharmacy interns by the Pharmacy Board, the bill replaces references to liquor with references to alcohol.⁹⁴

Semiannual opioid prescription report

The bill requires the Pharmacy Board to prepare a semiannual report on opioid-related information derived from OARRS and submit the report to the Governor, Senate President, Speaker of the House of Representatives, the Ohio Attorney General, the chairpersons of the standing committees of the House and Senate considering health and human services issues, the Ohio Department of Public Safety, the State Dental Board, the Board of Nursing, the State Board of Optometry, the State Medical Board, and the State Veterinary Medical Licensing Board. The report also must be made available to the public on the Board's website.⁹⁵

The bill requires that each semiannual report include all of the following for the period covered by the report:

(1) An aggregate of the information, submitted to the Pharmacy Board by pharmacies under current law not modified by the bill,⁹⁶ regarding prescriptions for controlled substances containing opioids, including all of the following:

- The number of prescribers who issued the prescriptions;
- The number of patients to whom the controlled substances were dispensed;
- The average quantity of the controlled substances dispensed per prescription;
- The average daily morphine equivalent dose of the controlled substances dispensed per prescription.

⁹³ R.C. 3719.01, 3719.061, 4715.30, 4723.28, 4725.19, 4730.25, 4730.41, and 4731.22.

⁹⁴ R.C. 4729.16 and 4729.18.

⁹⁵ R.C. 4729.85(B).

⁹⁶ Specifically, R.C. 4729.77, not in the bill.



(2) An aggregate of the information, submitted to the Pharmacy Board by pharmacies under current law not modified by the bill,⁹⁷ regarding controlled substances containing opioids that have been personally furnished to a patient by a prescriber (other than a prescriber who is a veterinarian), including all of the following:

--The number of prescribers who personally furnished the controlled substances;

--The number of patients to whom the controlled substances were personally furnished;

--The average quantity of the controlled substances that were furnished at one time;

--The average daily morphine equivalent dose of the controlled substances that were furnished at one time.

Existing prohibitions under corrupting another with drugs

Currently, the offense of corrupting another with drugs includes four separate prohibitions. The prohibitions do not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.⁹⁸ The current prohibitions prohibit a person from knowingly doing any of the following:⁹⁹

(1) By force, threat, or deception, administering to another or inducing or causing another to use a controlled substance;

(2) By any means, administering or furnishing to another or inducing or causing another to use a controlled substance with purpose to cause serious physical harm to the other person, or with purpose to cause the other person to become drug dependent;

(3) By any means, administering or furnishing to another or inducing or causing another to use a controlled substance, and thereby causing serious physical harm to the other person, or causing the other person to become drug dependent;

(4) By any means: furnishing or administering a controlled substance to a juvenile who is at least two years the offender's junior, when the offender knows the

⁹⁷ Specifically, R.C. 4729.79, not in the bill.

⁹⁸ R.C. 2925.02(B).

⁹⁹ R.C. 2925.02(A)(1) to (4).



juvenile's age or is reckless in that regard; inducing or causing a juvenile who is at least two years the offender's junior to use a controlled substance, when the offender knows the juvenile's age or is reckless in that regard; inducing or causing a juvenile who is at least two years the offender's junior to commit a felony drug abuse offense, when the offender knows the juvenile's age or is reckless in that regard; or using a juvenile, whether or not the offender knows the juvenile's age, to perform any surveillance activity intended to prevent the detection of the offender or any other person in the commission of a felony drug abuse offense or to prevent the arrest of the offender or any other person for the commission of a felony drug abuse offense.

Prohibition under corrupting another with drugs added by the bill

The prohibition the bill adds to the offense of corrupting another with drugs prohibits a person from knowingly, by any means, furnishing or administering a controlled substance to a pregnant woman or inducing or causing a pregnant woman to use a controlled substance, when the offender knows that the woman is pregnant or is reckless in that regard.¹⁰⁰ This prohibition will not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.¹⁰¹

The existing prohibitions under the offense, as described above, do not prohibit the conduct covered by the bill's added prohibition unless: (1) the person engaging in the conduct uses force, threat, or deception in administering the controlled substance to the pregnant woman or in inducing or causing the pregnant woman to use the controlled substance, administers or furnishes the controlled substance to the pregnant woman or induces or causes the pregnant woman to use the controlled substance with purpose to cause serious physical harm to her or with purpose to cause her to become drug dependent, or administers or furnishes the controlled substance to the pregnant woman or induces or causes the pregnant woman to use the controlled substance and thereby causes serious physical harm to her or causes her to become drug dependent, or (2) the pregnant woman is a juvenile and one of the specified additional circumstances described above in (4) under "**Existing prohibitions under corrupting another with drugs**" applies. Because the prohibition the bill adds to the offense applies to conduct that is not prohibited under existing law unless other circumstances exist with respect to the conduct, the penalties provided in the bill for a violation of the added prohibition cannot be directly compared to any existing penalty.

¹⁰⁰ R.C. 2925.02(A)(5).

¹⁰¹ R.C. 2925.02(B).



Penalties for corrupting another with drugs

For a violation of an existing prohibition

Under existing law and under the bill, a person who violates any of the existing prohibitions under the offense of corrupting another with drugs is penalized as follows:¹⁰²

(1) If the drug involved is any compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana or 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (hereafter, these synthetic cannabinoids are referred to as K2 or Spice), except as otherwise described in this paragraph, the offense is a second degree felony and, subject to a special major drug offender sentencing provision, the court must impose as a mandatory prison term one of the prison terms prescribed for a second degree felony. If the offense was committed in the vicinity of a school, it is a first degree felony and, subject to a special major drug offender sentencing provision, the court must impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(2) If the drug involved is any compound, mixture, preparation, or substance included in Schedule III, IV, or V, except as otherwise described in this paragraph, the offense is a second degree felony and there is a presumption for a prison term for the offense. If the offense was committed in the vicinity of a school, it is a second degree felony and the court must impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(3) If the drug involved is marihuana, K2, or Spice, except as otherwise described in this paragraph, the offense is a fourth degree felony and R.C. 2929.13(C) applies (i.e., there is no presumption for or against a prison term) in determining whether to impose a prison term on the offender. If the offense was committed in the vicinity of a school, it is a third degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender.

The bill makes technical changes in the above provisions.

For a violation of the prohibition added by the bill

Under the bill, a person who violates the prohibition the bill adds to the offense of corrupting another with drugs is penalized as follows:¹⁰³

¹⁰² R.C. 2925.02(C)(1) to (3).



(1) If the drug involved is any compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana, K2, or Spice, the offense is a first degree felony and, subject to a special major drug offender sentencing provision, the court must impose as a mandatory prison term one of the prison terms prescribed for a first degree felony;

(2) If the drug involved is any compound, mixture, preparation, or substance included in Schedule III, IV, or V, the offense is a second degree felony and the court must impose as a mandatory prison term one of the prison terms prescribed for a second degree felony;

(3) If the drug involved is marihuana, K2, or Spice, the offense is a third degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender.

RADIOLOGIC PROFESSIONALS

Reinstatement of radiologic professional licenses

The bill authorizes ODH to reinstate an individual's inactive or lapsed license to practice as a general x-ray machine operator, radiographer, radiation therapy technologist, or nuclear medicine technologist. The individual seeking license reinstatement must apply to ODH on a form that ODH prescribes and provides. The application must be accompanied by the appropriate reinstatement fee established in rules the bill requires the ODH Director to adopt.¹⁰⁴

To be eligible for license reinstatement, the applicant must:¹⁰⁵

(1) Continue to meet the conditions for receiving an initial license, including passing the examination required by existing law or meeting criteria to be exempt from the examination requirement; and

(2) Complete the continuing education requirements for reinstatement established in rules the bill requires the ODH Director to adopt.¹⁰⁶

In the case of an applicant seeking license reinstatement based on having passed the examination required by existing law, the bill specifies that the length of time that

¹⁰³ R.C. 2925.02(C)(4) to (6).

¹⁰⁴ R.C. 4773.03(E)(1) and 4773.08(B).

¹⁰⁵ R.C. 4773.03(E)(2).

¹⁰⁶ R.C. 4773.08(F).



has elapsed since the examination was passed is not to be a consideration in determining whether the applicant is eligible for reinstatement.¹⁰⁷

The bill also specifies that an individual may apply for license reinstatement even if the individual had applied for a new license prior to the bill's effective date under pre-existing rules¹⁰⁸ and that application was denied. In this case, ODH must accept and review the individual's license reinstatement application. If the applicant meets the requirements for reinstatement, ODH must reinstate the license.¹⁰⁹

The bill authorizes ODH to refuse to reinstate a radiologic professional license described above. Under existing law, ODH may already refuse to issue or renew or suspend or revoke such a license.¹¹⁰

LYME DISEASE

Lyme disease testing information

The bill repeals provisions that require a dentist, advanced practice registered nurse, physician assistant, or physician, when ordering a test for the presence of Lyme disease in a patient, to provide to the patient or patient's representative a written notice with the following information:¹¹¹

"Your health care provider has ordered a test for the presence of Lyme disease. Current testing for Lyme disease can be problematic and may lead to false results. If you are tested for Lyme disease and the results are positive, this does not necessarily mean that you have contracted Lyme disease. In the alternative, if the results are negative, this does not necessarily mean that you have not contracted Lyme disease. If you continue to experience symptoms or have other health concerns, you should contact your health care provider and inquire about the appropriateness of additional testing or treatment."

¹⁰⁷ R.C. 4773.03(E)(2)(a).

¹⁰⁸ Rules adopted under R.C. 4773.08 that are codified in O.A.C. 3701-72-02(O).

¹⁰⁹ Section 7.

¹¹⁰ R.C. 4773.03(F).

¹¹¹ R.C. 4715.15, 4723.433, 4730.093, and 4731.77.



The bill also repeals provisions that require a dentist, advanced practice registered nurse, physician assistant, or physician to obtain a signature from the patient or patient's representative indicating receipt of the notice.¹¹²

NURSING FACILITIES

Nursing facilities' Medicaid provider agreement terms

The bill revises terms that must be included in a nursing facility's Medicaid provider agreement.¹¹³

Exclusion of parts

Current law requires a Medicaid provider agreement to permit, until January 1, 2015, a nursing facility to exclude one or more of its parts from the provider agreement, even though those parts meet federal and state standards for Medicaid certification, if (1) the nursing facility initially obtained both its nursing home license and Medicaid certification on or after January 1, 2008, (2) the nursing facility is located in a county that has, according to the ODH Director, more long-term care beds than it needs at the time the nursing facility excludes the parts from the provider agreement, (3) federal law permits the provider to exclude the parts from the provider agreement, and (4) the provider gives the Department of Medicaid written notice of the exclusion not less than 45 days before the first day of the calendar quarter in which the exclusion is to occur.¹¹⁴ Beginning January 1, 2015, a nursing facility will no longer have statutory authority to exclude any of its parts from its provider agreement.¹¹⁵

The bill allows a nursing facility to continue, on and after January 1, 2015, to exclude one or more parts from its Medicaid provider agreement.¹¹⁶

Denials of admissions

Current law requires a Medicaid provider agreement to prohibit, until January 1, 2015, a nursing facility from refusing to admit an individual who is or may become a Medicaid recipient if at least 25% of its Medicaid-certified beds are occupied by

¹¹² R.C. 4715.15, 4723.433, 4730.093, and 4731.77.

¹¹³ R.C. 5165.08, 5165.513, 5165.515, and 5165.99; Sections 8, 9, and 11.

¹¹⁴ R.C. 5165.08(B)(1).

¹¹⁵ Sections 110.25, 110.26, and 110.27 of Am. Sub. H.B. 59 of the 130th General Assembly.

¹¹⁶ R.C. 5165.08(B)(1) and (F); Sections 8, 9, and 11.



Medicaid recipients at the time the individual would otherwise be admitted.¹¹⁷ Beginning January 1, 2015, a nursing facility will be allowed to refuse to admit an individual who is or may become a Medicaid recipient if at least 80% (rather than 25%) of its Medicaid-certified beds are occupied by Medicaid recipients at the time the individual would otherwise be admitted.¹¹⁸

The bill allows a nursing facility to continue, on and after January 1, 2015, to refuse to admit an individual who is or may become a Medicaid recipient if at least 25% (rather than 80%) of its Medicaid-certified beds are occupied by Medicaid recipients at the time the individual would otherwise be admitted.¹¹⁹

MOTORSPORTS CAMPS

Recreational Vehicle Parks, Recreation Camps, Combined Park-Camps, and Temporary Park-Camps Law

The bill exempts a motorsports park that holds at least one annual event sanctioned by the National Association for Stock Car Auto Racing or the National Hot Rod Association during a motor sports racing event and provides parking for recreational vehicles, dependent recreational vehicles, and portable camping units that belong to participants in the event from the requirement to obtain a license under the Recreational Vehicle Parks, Recreation Camps, Combined Park-Camps, and Temporary Park-Camps Law. The bill specifies that this exemption only applies to participant-only areas during the time of preparation for and operation of the event.¹²⁰ Current law requires every person who intends to operate a recreational vehicle park, recreation camp, combined park-camp, or temporary park-camp to obtain a license to do so.¹²¹

In addition, the bill allows a person subject to that Law to apply to the Director of Health for a waiver or variance from it or rules adopted under it. The bill then authorizes the Director to grant such a waiver or variance if the person demonstrates, to the Director's satisfaction, that the waiver or variance will not result in any adverse effect on the public health or safety. The Director must adopt rules establishing

¹¹⁷ R.C. 5165.08(B)(2)(b)(i).

¹¹⁸ Sections 110.25, 110.26, and 110.27 of Am. Sub. H.B. 59 of the 130th General Assembly.

¹¹⁹ R.C. 5165.08(B)(2)(b)(i); Sections 8, 9, and 11.

¹²⁰ R.C. 3729.05(F).

¹²¹ R.C. 3729.05(A)(1) and (2).



requirements and procedures governing the application for and granting of a waiver or variance.¹²²

HISTORY

ACTION	DATE
Introduced	12-23-13
Reported, H. Health & Aging	03-12-14
Passed House (82-7)	04-02-14
Reported, S. Medicaid, Health & Human Services	---

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¹²² R.C. 3729.05(G).

