



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 276

130th General Assembly  
(As Reported by H. Health & Aging)

**Sens.** Jones and Tavares, Brown, Bacon, Beagle, Burke, Coley, Eklund, Faber, Gentile, Hite, Hughes, Lehner, Manning, Obhof, Oelslager, Patton, Peterson, Sawyer, Schiavoni, Skindell, Smith, Turner, Uecker, Widener

**Reps.** Antonio, Sears, Smith, Sprague

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## BILL SUMMARY

### 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.

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## CONTENT AND OPERATION

### 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.<sup>1</sup> 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.<sup>2</sup>

Under the Safe Sleep Education Program, ODH must do all of the following:<sup>3</sup>

--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;

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<sup>1</sup> R.C. 3701.66(B).

<sup>2</sup> R.C. 3701.66(C) and (D).

<sup>3</sup> R.C. 3701.66(B).



--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.<sup>4</sup> 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:<sup>5</sup>

--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;

--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;<sup>6</sup>

--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.<sup>7</sup>

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<sup>4</sup> R.C. 3701.66(C).

<sup>5</sup> R.C. 3701.66(D).

<sup>6</sup> 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>>.)

<sup>7</sup> R.C. 3701.63(A)(5).



The bill also specifies that "other person responsible for the infant" includes a foster caregiver.<sup>8</sup>

### **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.<sup>9</sup>

#### **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 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.<sup>10</sup>

### **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.<sup>11</sup>

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<sup>8</sup> R.C. 3701.63(A)(8).

<sup>9</sup> R.C. 3701.66(E).

<sup>10</sup> R.C. 3701.66(F).

<sup>11</sup> R.C. 3701.63(A)(5).

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.<sup>12</sup>

### **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.<sup>13</sup>

### **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 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:<sup>14</sup>

--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:<sup>15</sup>

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<sup>12</sup> R.C. 3701.63(A)(8) and 3701.67(A)(3).

<sup>13</sup> R.C. 3701.67(B).

<sup>14</sup> R.C. 3701.67(C).

<sup>15</sup> R.C. 3701.67(C).



(1) A hospital the ODH Director designates as a critical access hospital under continuing law.<sup>16</sup> (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.<sup>17</sup>)

(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, not less than annually, the facilities in Ohio that meet the criteria for the exemption and to notify those that do so.<sup>18</sup>

### **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,<sup>19</sup> as well as freestanding birthing centers when they renew their licenses with ODH under existing law,<sup>20</sup> to report all of the following information associated with compliance with the bill in a manner ODH prescribes:<sup>21</sup>

(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;

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<sup>16</sup> R.C. 3701.073, not in the bill.

<sup>17</sup> 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>>.

<sup>18</sup> R.C. 3701.67(D).

<sup>19</sup> R.C. 3701.07(A), not in the bill.

<sup>20</sup> Rules adopted under R.C. 3702.30, not in the bill, that are codified in O.A.C. 3701-83-04(B).

<sup>21</sup> R.C. 3701.67(E).

(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;

(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.<sup>22</sup>

## **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;<sup>23</sup>

--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

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<sup>22</sup> R.C. 3701.67(F).

<sup>23</sup> R.C. 3701.64(B) and 3701.66(D).

or wanton misconduct.<sup>24</sup> (The bill defines "contractor" as a person who provides personal services pursuant to a contract.<sup>25</sup>)

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.<sup>26</sup> To receive this immunity, a facility, employee, contractor, or volunteer is not required to comply with an existing law provision (not modified by the bill)<sup>27</sup> governing immunity for the distribution of consumer goods by certain nonprofit agencies.<sup>28</sup>

### **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;<sup>29</sup>

--A facility required to implement an infant safe sleep screening procedure, and any employee, contractor, or volunteer of such a facility;<sup>30</sup>

--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.<sup>31</sup>

### **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

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<sup>24</sup> R.C. 3701.67(G).

<sup>25</sup> R.C. 3701.67(A)(1).

<sup>26</sup> R.C. 3701.67(H).

<sup>27</sup> R.C. 2305.37(D), not in the bill.

<sup>28</sup> R.C. 3701.67(H).

<sup>29</sup> R.C. 3701.64(C) and 3701.66(D).

<sup>30</sup> R.C. 3701.67(G).

<sup>31</sup> R.C. 3701.67(H).

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.<sup>32</sup>

### **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.<sup>33</sup> Under the PSSI Law, both of the following are the case:

--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.<sup>34</sup> (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.<sup>35</sup>

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.<sup>36</sup>

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<sup>32</sup> R.C. 3701.64(B) and 3701.66(D).

<sup>33</sup> R.C. 3701.64(B), 3701.66(D), and 3701.67(G).

<sup>34</sup> R.C. 2744.02(A)(1), not in the bill.

<sup>35</sup> R.C. 2744.03(A)(6), not in the bill.

<sup>36</sup> R.C. 2744.03(A)(6)(c), not in the bill.



## Commission on Infant Mortality

### Duties

The bill creates the Commission on Infant Mortality, which must:<sup>37</sup>

(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.

(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.<sup>38</sup>)

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.<sup>39</sup>

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.<sup>40</sup>

The Senate President and Speaker of the House of Representatives must determine the responsibilities of the Commission following submission of the report.<sup>41</sup>

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<sup>37</sup> R.C. 3701.68(B).

<sup>38</sup> R.C. 3701.68(A)(1).

<sup>39</sup> R.C. 3701.68(F).

<sup>40</sup> R.C. 3701.68(F).

<sup>41</sup> R.C. 3701.68(G).

The Commission may request assistance from the staff of the Legislative Service Commission.<sup>42</sup>

## Membership

The Commission is to consist of the following 15 members:<sup>43</sup>

- 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;
- 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.

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<sup>42</sup> R.C. 3701.68(E).

<sup>43</sup> R.C. 3701.68(C).



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.<sup>44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

The bill specifies that the Commission is not subject to the Sunset Review Law.<sup>47</sup>

## **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,<sup>48</sup> in contrast to current law, which prohibits the Director from developing educational materials that will impose an administrative or financial burden on the distributors;<sup>49</sup>

--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;<sup>50</sup>

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<sup>44</sup> R.C. 3701.68(D).

<sup>45</sup> R.C. 3701.68(D).

<sup>46</sup> R.C. 3701.68(D).

<sup>47</sup> R.C. 3701.68(H).

<sup>48</sup> R.C. 3701.63(C).

<sup>49</sup> R.C. 3701.63(C).

<sup>50</sup> R.C. 3701.64(B)(2).



--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;<sup>51</sup>

--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.<sup>52</sup>

--Updates the definition of "maternity unit" to correspond with changes that were made by subsequent enactments.<sup>53</sup>

## **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.<sup>54</sup> 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.

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<sup>51</sup> R.C. 3701.64(B)(6).

<sup>52</sup> R.C. 3701.63(A)(5) and 3701.64(B)(3).

<sup>53</sup> R.C. 3701.63(A)(6); see Sub. H.B. 331 of the 127th General Assembly.

<sup>54</sup> 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.



## 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.<sup>55</sup> 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.<sup>56</sup>

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 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.<sup>57</sup>

With respect to a pharmacist only, the bill provides that he or she is subject to possible discipline for a false certification.<sup>58</sup> 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.<sup>59</sup>

## 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

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<sup>55</sup> R.C. 4715.14, 4723.486, 4725.16, 4729.12, 4730.48, and 4731.281.

<sup>56</sup> 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.

<sup>57</sup> R.C. 4715.14, 4723.486, 4725.16, 4729.12, 4730.48, and 4731.281.

<sup>58</sup> R.C. 4729.12.

<sup>59</sup> R.C. 4725.092, 4725.16, and 4725.19.



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.<sup>60</sup>

### **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.<sup>61</sup>

### **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.<sup>62</sup>

### **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

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<sup>60</sup> R.C. 4725.092.

<sup>61</sup> R.C. 4715.30(D), 4723.487(D), 4725.092(B), 4730.53(D), and 4731.055(D).

<sup>62</sup> R.C. 3719.01.

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.<sup>63</sup>

### **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 written parental consent for an opioid prescription when providing treatment to a minor.<sup>64</sup>

### **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.<sup>65</sup>

### **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.<sup>66</sup>

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

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<sup>63</sup> R.C. 4729.86.

<sup>64</sup> R.C. 3719.01, 3719.061, 4715.30, 4723.28, 4725.19, 4730.25, 4730.41, and 4731.22.

<sup>65</sup> R.C. 4729.16 and 4729.18.

<sup>66</sup> R.C. 4729.85(B).

(1) An aggregate of the information, submitted to the Pharmacy Board by pharmacies under current law not modified by the bill,<sup>67</sup> 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.

(2) An aggregate of the information, submitted to the Pharmacy Board by pharmacies under current law not modified by the bill,<sup>68</sup> 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.<sup>69</sup> The current prohibitions prohibit a person from knowingly doing any of the following:<sup>70</sup>

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<sup>67</sup> Specifically, R.C. 4729.77, not in the bill.

<sup>68</sup> Specifically, R.C. 4729.79, not in the bill.

<sup>69</sup> R.C. 2925.02(B).

<sup>70</sup> R.C. 2925.02(A)(1) to (4).

(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 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.<sup>71</sup> 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.<sup>72</sup>

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

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<sup>71</sup> R.C. 2925.02(A)(5).

<sup>72</sup> R.C. 2925.02(B).

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.

## **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:<sup>73</sup>

(1) If the drug involved is any compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marijuana 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.

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<sup>73</sup> R.C. 2925.02(C)(1) to (3).

(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:<sup>74</sup>

(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.<sup>75</sup>

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<sup>74</sup> R.C. 2925.02(C)(4) to (6).

<sup>75</sup> R.C. 4773.03(E)(1) and 4773.08(B).



To be eligible for license reinstatement, the applicant must:<sup>76</sup>

(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.<sup>77</sup>

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 has elapsed since the examination was passed is not to be a consideration in determining whether the applicant is eligible for reinstatement.<sup>78</sup>

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 rules<sup>79</sup> 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.<sup>80</sup>

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.<sup>81</sup>

## 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:<sup>82</sup>

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<sup>76</sup> R.C. 4773.03(E)(2).

<sup>77</sup> R.C. 4773.08(F).

<sup>78</sup> R.C. 4773.03(E)(2)(a).

<sup>79</sup> Rules adopted under R.C. 4773.08 that are codified in O.A.C. 3701-72-02(O).

<sup>80</sup> Section 6.

<sup>81</sup> R.C. 4773.03(F).

<sup>82</sup> R.C. 4715.15, 4723.433, 4730.093, and 4731.77.



"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."

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.<sup>83</sup>

## **NURSING FACILITIES**

### **Nursing facilities' Medicaid provider agreement terms**

The bill revises terms that must be included in a nursing facility's Medicaid provider agreement.<sup>84</sup>

#### **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.<sup>85</sup> Beginning January 1, 2015, a nursing facility will no longer have statutory authority to exclude any of its parts from its provider agreement.<sup>86</sup>

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<sup>83</sup> R.C. 4715.15, 4723.433, 4730.093, and 4731.77.

<sup>84</sup> R.C. 5165.08, 5165.513, 5165.515, and 5165.99; Sections 7, 8, and 10.

<sup>85</sup> R.C. 5165.08(B)(1).

<sup>86</sup> Sections 110.25, 110.26, and 110.27 of Am. Sub. H.B. 59 of the 130th General Assembly.



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.<sup>87</sup>

### **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 Medicaid recipients at the time the individual would otherwise be admitted.<sup>88</sup> 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.<sup>89</sup>

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.<sup>90</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-12-14
Reported, S. Medicaid, Health & Human Services	05-28-14
Passed Senate (33-0)	06-03-14
Reported, H. Health & Aging	12-04-14

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<sup>87</sup> R.C. 5165.08(B)(1) and (F); Sections 7, 8, and 10.

<sup>88</sup> R.C. 5165.08(B)(2)(b)(i).

<sup>89</sup> Sections 110.25, 110.26, and 110.27 of Am. Sub. H.B. 59 of the 130th General Assembly.

<sup>90</sup> R.C. 5165.08(B)(2)(b)(i); Sections 7, 8, and 10.

