Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL: **Sub. H.B. 354** DATE: **March 17, 1998**

STATUS: **As Reported by Senate Health** SPONSOR: **Rep. Terwilleger**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **"Do not resuscitate" (DNR) identifications, orders and protocols, award of punitive damages for violation of rights of a nursing home resident**

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund – Department of Health			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Minimal increase	- 0 -	- 0 -

- The adoption of rules should have a one-time minimal fiscal effect on the Department of Health.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Counties			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

- Any costs associated with prosecution, adjudication and incarceration would be paid by the county and any fine revenue would also go to the county. While it cannot be predicted, it is assumed that relatively few people would "purposely" violate the bill's do not resuscitate provisions; therefore any costs associated with violations expected to be minimal. The application of current tort law to nursing home resident actions should have only the negligible effect of potentially curtailing the complexity of such actions at the common please court level.

Detailed Fiscal Analysis

The bill makes changes to existing law and adds numerous provisions regarding "do not resuscitate" (DNR) identification methods, orders and protocols. The bill also establishes civil and criminal immunity, as well as immunity from professional discipline for specified health care personnel.

Department of Health

The Department of Health (DOH) is required to adopt rules to establish a protocol for withholding CPR from a patient who has made such a request and to approve one or more standard forms of DNR identification (defined as an identification card, form, necklace or bracelet) to be used in Ohio. To help with these tasks, the department is required to establish an advisory committee, which includes representatives from specified health care groups. No reimbursement is indicated for the committee; therefore, there is no fiscal effect from this provision. The adoption of rules should have a one-time minimal fiscal effect on the department.

Immunity/Prohibitions and Penalties

The bill provides for civil and criminal immunity, as well as immunity from professional discipline, to various specified health care personnel. Violators of the bill's provisions are guilty of third degree misdemeanor, punishable by a maximum of 60 days in jail and a fine of no more than $500. Any costs associated with prosecution, adjudication and incarceration will be paid by the county in which the violation occurred and any fine revenue will go to the county. While it cannot be predicted, it is assumed that relatively few people would "purposely" violate the bill's provisions; therefore any costs associated with violations are expected to be minimal.

Rights of Nursing Home Residents

The bill addresses the issue of punitive damages for the violation of the rights of a nursing home resident. Under section 2315.21 of the Revised Code, the awarding of punitive and exemplary damages is limited. Division (C) of this section states that "Subject to division (E) of this section, punitive or exemplary damages are not recoverable from a defendant in a tort action unless both of the following apply." The two conditions dealt with compensatory damages.

This bill applies the tort reform standards to civil actions involving nursing home resident rights. Under current law, the court may award actual and punitive damages for violations of a resident's rights. This change would allow the awarding of punitive or exemplary damages only if it is determined that the resident is entitled to recover compensatory damages.

Section 2315.21 of the Revised Code also limits the amount of punitive damages that can be awarded to a plaintiff. These awards, with certain exceptions, are limited to the lesser of three times the amount of the compensatory damages awarded to the plaintiff or $100,000. Under division (D)(3)(b) of this section, the court can exceed the punitive damage award cap if it determines by clear and convincing evidence that the total amount of prior punitive or exemplary damages awards was totally insufficient to punish that defendant's behavior in the future. This section would have no fiscal effect on state or local expenditures or revenues other than potentially curtailing the complexity of certain civil suits.

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