
DEPARTMENT OF HEALTH

Summary orders at nursing homes and assisted living facilities

- Permits the Director of Health (ODH Director) to issue orders, take corrective action, and impose fines without providing a nursing home, residential care (assisted living) facility, or other home with notice and an opportunity for a hearing if the Director determines immediate action is necessary to protect resident health or safety.
- Permits a home to request a hearing under the Administrative Procedure Act after a summary order is issued.

Inspections of assisted living facilities

- Authorizes the ODH Director to inspect a residential care (assisted living) facility every 30 months, instead of every 15 months as in current law, once the facility has had two consecutive 15-month inspections without any substantiated violations and other related conditions are met.

Long-term care bed buyback program

- Requires the Department of Health (ODH), in consultation with the Departments of Aging and Medicaid, to establish a long-term care bed buyback program during FY 2022 and FY 2023.
- Provides that under the program, nursing facility operators may voluntarily, permanently surrender for compensation one or more licensed long-term care beds due to a decrease in bed utilization.
- Requires ODH to solicit program applications from nursing home operators, setting forth program requirements and the criteria that will be used to evaluate competing bed surrender proposals.
- Requires a nursing facility that has received payment for the surrender of long-term care beds to provide notice to ODH that includes specified information.

Hospital licensure

- Within three years of the bill's effective date, requires a hospital operating in Ohio to be licensed by the ODH Director rather than registered as under current law.
- Specifies that any existing law reference to a hospital that is not included in the bill is to be construed as a reference to a hospital licensed under the bill's licensure requirements.

Home visiting services

- Allows families with children up to age five (instead of age three) to receive home visits through the Help Me Grow Program.
- Changes the frequency of the ODH summit on home visiting services to once every two years, instead of twice a year.

Technological resources

- Removes a requirement that providers conducting home visits under the Help Me Grow Program, WIC clinics, and Medicaid managed care organizations promote the use of technological resources that provide information on having a healthy pregnancy and healthy baby.

Smoking and tobacco

Minimum age to sell tobacco products

- Prohibits employees under 18 from selling tobacco products.

Dispensing tobacco cessation drugs without a prescription

- Authorizes pharmacists and pharmacy interns to dispense tobacco cessation drugs without a prescription in accordance with physician-established protocols.

Moms Quit for Two grant program

- Continues the Moms Quit for Two grant program for the delivery of tobacco cessation interventions to women who are pregnant or living with children and reside in communities with the highest incidence of infant mortality.

Smoke-Free Workplace Law

- Expands the Smoke-Free Workplace Law to include electronic smoking devices and vapor products.

Vapor products certificate of operation

- Requires any person seeking to sell vapor products to obtain a certificate of registration prior to doing so.
- Imposes a \$500 annual fee for a certificate of registration.
- Imposes a maximum fine of \$1,000, or \$100 if the violation is within 90 days of a certificate's expiration, for the sale, offer to sell, or possession with intent to sell without a certificate of registration.
- Specifies all fees and fines collected in relation to the vapor product certificate of registration program are to be deposited in the Tobacco Use Prevention Fund and used for administration of the certificate program or for tobacco and nicotine prevention or cessation interventions.

Renovation, Repair, and Painting Rule

- Authorizes the ODH Director to enter into agreements with the U.S. Environmental Protection Agency for the administration and enforcement of the federal Renovation, Repair, and Painting (RRP) Rule, which establishes requirements regarding lead-based paint hazards associated with renovation, repair, and painting activities.
- Allows the Director to do both of the following:

- Accept available assistance in support of those agreements; and
- Adopt rules to administer and enforce the federal RRP Rule.

Lead abatement fines and penalties

- Allows the Director of Health to impose an administrative fine of up to \$5,000 for violations of the law governing lead abatement, which must be deposited into the Department of Health's existing General Operations Fund.
- Increases, from \$1,000 to \$5,000, the maximum allowable civil penalty that a court of common pleas may impose against a person for violations of the law governing lead abatement.

Summary orders at nursing homes and assisted living facilities

(R.C. 3721.081)

Orders and action

In circumstances where the Director of Health (ODH Director) determines immediate action is necessary to protect resident health or safety, because a nursing home, residential care (assisted living) facility, or other home is not acting with sufficient promptness or efficiency to protect resident health or safety, the bill authorizes the Director to do either or both of the following without providing notice and an opportunity for a hearing:

1. Issue orders, including specifying actions that a home must immediately take;
2. Take direct action to protect resident health and safety if the home fails to act on an order issued.

The orders may be issued or action taken as necessary to protect the health or safety of residents of a home, including removing a threat to resident health or safety, transferring residents until a threat is resolved, and appointing a temporary administrator for the home.

Expenses and fines

A home is responsible for any expenses incurred to comply with an order. If the ODH Director takes action, a home must reimburse the Department of Health (ODH) for all necessary expenses.

The bill authorizes the Director to impose a fine of up to \$250,000, plus interest, for each instance of noncompliance with a summary order issued under the bill. All reimbursements, fines, and interest must be credited to the General Operations Fund in the state treasury.

Requests for hearings

A home that is subject to a summary order may request a hearing under the Administrative Procedure Act. The request must be received by the Director within 30 days after the notice of the order was mailed. The hearing must be held between 15 and 60 days after the request, unless the parties agree otherwise. The Director must issue a final adjudication order no

later than 90 days after the hearing is complete. A summary order remains in effect, unless reversed by the Director, until a final adjudication order is issued.

A final adjudication order may be appealed in accordance with the Administrative Procedure Act. The final adjudication order is not suspended while the appeal is pending.

Inspections of assisted living facilities

(R.C. 3721.02)

Under current law, before a nursing home or residential care (assisted living) facility may be licensed, it must be inspected by the ODH Director and the State Fire Marshal, or a fire department approved by the Fire Marshal. A home must be inspected every 15 months thereafter.

The bill extends the period for inspections by the ODH Director from 15 months to 30 months if all of the following apply:

- The facility has had at least two consecutive 15-month inspections with no substantiated violations;
- During that same time period, there were no substantiated violations from any other inspections or from any investigations of complaints;
- There are no outstanding violations from any previous inspections or investigations during any other time period.

An assisted living facility still must be inspected by the State Fire Marshal or an approved fire department once every 15 months.

Long-term care bed buyback program

(Section 291.50)

The bill requires ODH, in consultation with the Departments of Aging and Medicaid, to establish during FY 2022 and FY 2023 a long-term care bed buyback program under which nursing facility operators may voluntarily, permanently surrender for compensation one or more licensed long-term care beds due to a decrease in bed utilization. To be eligible for the program:

1. The bed must be located in a county with a bed excess, as calculated by ODH; and
2. After the bed is surrendered, the county must have sufficient beds remaining to address the bed need in the county, as calculated by ODH.

Applications

ODH must solicit applications from nursing home operators to participate in the program. In the solicitation, ODH must set forth program requirements and criteria that will be used to evaluate competing proposals. In evaluating the applications, ODH must consider which facilities best meet the bed buyback program requirements and shall give priority to operators that are current with their franchise permit fee payments. The bill prohibits a nursing facility operator from submitting a certificate of need involving any of the long-term care beds licensed at the

nursing facility or a change of operator application while the operator has a pending bed buyback program application.

If an application is denied, the applicant may request that ODH reconsider. ODH must then conduct a reconsideration of its decision. Its redetermination is final.

Notification

Not later than three business days after accepting payment from ODH for the surrender of a long-term care bed under the program, the operator of a licensed nursing facility must notify the ODH Director that (1) the operator is participating in the long-term care bed buyback program, (2) the operator has accepted payment for the surrender of beds, and (3) the number of beds that are being permanently surrendered by the operator. Upon the notice, those beds are permanently removed from the nursing facility's licensed bed capacity.

Hospital licensure

(R.C. 3722.02 (primary), 3722.01 to 3722.14, and 3722.99; conforming changes in numerous other R.C. sections)

Beginning three years after its effective date, the bill requires each hospital operating within Ohio to hold a license from the ODH Director, rather than be registered as under current law. Should a hospital fail to obtain the license by the required date, it will be subject to civil and criminal penalties.

Because the bill does not amend all of the references to registered hospitals in the Revised Code, it also specifies that, beginning three years after its effective date, any existing law reference to a hospital is to be construed as a reference to a hospital licensed under the bill's licensure requirements.

Effective date of mandatory licensure and interim period

For three years after the bill's effective date, existing law requirements are maintained, and the bill's new requirements apply only to hospitals that have obtained licenses. As described in more detail below, ODH may begin to consider applications for licensure one year after the bill's effective date. Hospitals will then have two years to become licensed. During that period, some facilities may be both licensed under the new hospital licensing plan and subject to existing law requirements. Once the bill's license mandate becomes effective, each hospital within the state must be licensed by the ODH Director in order to operate.

Definitions

The bill defines "**hospital**" to mean an institution or facility that provides inpatient medical or surgical services for a continuous period longer than 24 hours or a hospital operated by a health maintenance organization. Note that a **hospital** includes a "**children's hospital**," defined to mean a hospital or a distinct portion of a hospital that provides general pediatric medical and surgical care in which at least 75% of annual inpatient discharges for the preceding two calendar years were individuals younger than 18.

Entities not subject to hospital licensure

The bill specifies that its licensure requirements do not apply to the following:

- A hospital operated by the federal government;
- An ambulatory surgical facility or other health care facility licensed by the ODH Director;
- A nursing home or residential care (assisted living) facility licensed by the ODH Director;
- A hospital or inpatient unit licensed by the Department of Mental Health and Addiction Services (OhioMHAS);
- A residential facility licensed by OhioMHAS or the Department of Developmental Disabilities;
- A community addiction services provider certified by OhioMHAS;
- A facility providing services under a contract with the Department of Developmental Disabilities;
- A facility operated by a licensed hospice care program and that is used exclusively for the care of hospice patients;
- A facility operated by a licensed pediatric respite care program and that is used exclusively for the care of pediatric respite care patients;
- A health maintenance organization that does not operate a hospital;
- The site where a health care practice is operated, regardless of whether the practice is organized as an individual or group practice;
- A clinic providing ambulatory patient services where patients are not regularly admitted as inpatients;
- An institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation, and providing 24-hour nursing care pursuant to an exemption from certain Ohio Board of Nursing licensing requirements.

Note on maternity units and newborn care nurseries

Ohio law requires hospital maternity units and newborn care nurseries to be licensed by the ODH Director. The bill maintains this licensure – but only for the period during which a hospital is not required to be licensed. After hospital licensure is mandatory, the bill repeals the law governing maternity unit and newborn care nursery licensure because they will be covered by the hospital’s license.

Penalties for operating without a license

Should a hospital operate without a license, the bill requires the ODH Director to do the following:

- Notify the hospital that it is operating without a license and provide it with an opportunity to apply for licensure;
- Direct the hospital to cease operations;

- Impose a civil penalty of not more than \$250,000 as well as a penalty of not less than \$1,000 and not more than \$10,000 for each day the hospital operates without a license.

The bill also authorizes the Director to petition the court of common pleas of the county in which the hospital is located for an order enjoining the hospital from operating.

Moreover, a hospital can be subject to criminal penalties for operating without a license. Violations are first degree misdemeanors, punishable by a fine of not more than \$1,000 and a jail term of not more than 180 days.³⁴ In addition, the bill imposes an additional penalty of \$1,000 for each day the hospital operates without a license.

Applications for licensure

Each private or public entity, including a state university, seeking to operate a hospital must apply to the ODH Director for a license. The Director cannot consider any application until one year from the bill's effective date. Applications must be submitted in the form and manner prescribed by the Director in rules.

Eligibility

To be eligible for licensure, an applicant must satisfy the following:

- Have submitted a complete application, including payment of the fee specified in rules adopted by the Director;
- Be certified under Title XVIII of the Social Security Act (Medicare), or accredited by a national accrediting organization approved by the federal Centers for Medicare and Medicaid Services;
- Demonstrate the ability to comply with standards established in rules adopted by the Director;
- Specify the number of beds for the hospital, including skilled nursing beds, long-term care beds, and special skilled nursing beds.

Multiple buildings or hospital campus

If an applicant seeks to operate as a hospital a facility that consists of multiple buildings adjacent to one another, the applicant must submit a single application for licensure.

In the case of a facility that consists of multiple buildings that are not adjacent, an applicant may submit a single application for licensure, but the Director may consider it only if the applicant demonstrates that the buildings are in the immediate vicinity of one another so as to constitute a medical center or medical campus.

License issuance, validity, and renewals

If an applicant meets the eligibility requirements, the Director must issue to the applicant a license to operate a hospital. The license is valid for three years and may be renewed for additional three-year periods. Applications for renewal must be submitted to the Director in the

³⁴ R.C. 2929.24 and 2929.28, not in the bill.

manner prescribed in rule. The bill provides for staggered renewals in the initial years of the licensure structure.

The bill further provides that a license is valid only for the entity and premises named in the application. It also requires the license holder to post a copy of the license in a conspicuous place in the hospital.

License transfer

If a hospital is assigned, sold, or transferred to a new owner, the new owner must apply for a license transfer within 30 days of the assignment, sale, or transfer.

The new owner is responsible for complying with any action taken or proposed by the Director (see “**Violations**” and “**Real and Present Danger**” below). If a notice has been issued under the Administrative Procedure Act, the new owner becomes party to the notice.

Hospital inspections

On the filing of a license application, the ODH Director may inspect the hospital prior to issuing or denying the license. The bill also appears to allow for inspections as part of the license renewal process.

Process to avoid inspections

An applicant may avoid an inspection by submitting to the Director a copy of the hospital’s most recent on-site survey report from an accrediting body demonstrating that the hospital is in deemed status.

Confidentiality of on-site survey reports

The bill specifies that an on-site survey report from an accrediting body that is submitted in accordance with the bill’s provisions is confidential and not a public record.

Unit inspections

At least once every 36 months, the bill requires the Director to inspect each licensed hospital’s maternity unit, newborn care nursery, and any unit providing any of the following services:

- Pediatric intensive care;
- Solid organ and bone marrow transplantation;
- Stem cell harvesting and reinfusion;
- Cardiac catheterization;
- Open heart surgery;
- Operation of linear accelerators;
- Operation of cobalt radiation therapy units;
- Operation of gamma knives.

Compliance inspections

To monitor compliance with the bill and the rules adopted under it, the Director may at any time inspect a licensed hospital.

Inspection fees

Any inspection conducted under the bill's provisions is subject to a fee. Upon conducting the inspection, the Director must provide the applicant or license holder with a fee statement. Not later than 15 days after receiving the fee statement, the applicant or license holder must submit the total amount of the fee.

Rulemaking

Health, safety, welfare, and quality standards

Not later than one year after the bill's effective date, the bill requires the ODH Director to adopt rules establishing health, safety, welfare, and quality standards for licensed hospitals, including standards for the following:

- Maternity units;
- Newborn care nurseries;
- Hospital services, including pediatric intensive care, solid organ and bone marrow transplantation, stem cell harvesting and reinfusion, cardiac catheterization, open heart surgery, operation of linear accelerators, operation of cobalt radiation therapy units, and operation of gamma knives.

Standards and procedures for licensure

Not later than one year after the bill's effective date, the ODH Director must adopt rules establishing standards and procedures for the licensure of hospitals, including all of the following:

- Procedures for applying and renewing licenses;
- Procedures for transferring licenses;
- Procedures for inspections following complaints;
- Fees for initial applications, license renewals, and license transfers, as well as inspections;
- Standards and procedures for imposing civil penalties;
- Standards and procedures for correcting violations, including through the submission of correction plans;
- Standards and procedures for identifying, monitoring, managing, reporting, and reducing exposures to risk conditions, such as Legionella, including through the use of environmental facility assessments, the development of water management plans, and the use of disinfection measures;
- Standards and procedures for data reporting;
- Standards and procedures for emergency preparedness;

- Standards and procedures for the provision of technical assistance.

Penalties

With respect to the rules governing the imposition of civil penalties, the Director must establish a scale for determining the amount of a civil penalty that may be imposed. The scale must include per day amounts for ongoing violations. The total amount of a civil penalty must not exceed \$250,000 for each violation.

Other rules

The bill authorizes the Director to adopt any other rules as necessary to implement the bill's provisions.

Administrative Procedure Act

Rules adopted under the bill's provisions must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

Violations

The bill specifically requires each licensed hospital to comply with its provisions and the rules adopted under it. If the ODH Director finds that an applicant or license holder has violated any of the bill's requirement or the rules, the bill authorizes the Director to do any of the following:

- Suspend, revoke, or refuse to issue or renew a license;
- Provide the license holder an opportunity to correct the violation;
- Provide the license holder with a plan to correct or mitigate the violation;
- Prohibit the license holder from admitting new patients;
- Impose a civil penalty;
- If the Director believes there is a danger of immediate and serious harm to the public, summarily suspend either a license or type of health care service.

Any decision or determination to take any of the foregoing actions is subject to the Administrative Procedure Act.

Summary suspensions

If the Director suspends a license or health care service, the bill requires the Director to issue a written order of suspension and furnish a copy to the license holder either by certified mail or in person. If the license holder requests an adjudication, the adjudication must be held within 30 days but not less than 15 days after the request, unless another date is agreed to by the license holder and director. The summary suspension remains in effect, unless reversed by the Director, until the Director issues a final adjudication order.

The Director must issue a final adjudication order not later than 90 days after the adjudication. If the Director fails to do so within the 90-day period, the summary suspension is void, but any final adjudication order issued subsequent to the 90-day period is valid. In the event

an appeal and while the appeal is pending, a court of common pleas is prohibited from issuing an order reversing the summary suspension.

Injunctive relief

If the Director suspends or revokes a license and the license holder continues to operate a hospital, the Director may ask the Attorney General to apply to the common pleas court of the county where the hospital is located for an order enjoining the license holder from continuing to operate the hospital.

Real and present danger

The bill authorizes the ODH Director to take certain actions if the Director determines that a real and present danger exists at a hospital. “**Real and present danger**” is defined to mean imminent danger or serious physical or life-threatening harm to one or more occupants of a hospital.

The actions that the Director may take include:

- Petitioning a court for injunctive relief, which may include closing the hospital or transferring its occupants to other hospitals or appropriate settings;
- If the Director opts not to pursue injunctive relief, providing written notice of proposed action;
- If the hospital notifies the Director that it has corrected the conditions giving rise to a real and present danger, conducting inspections to determine if the danger remains;
- Performing on-site hospital monitoring.

Notice of proposed action

When providing notice of proposed action, the Director must deliver that notice to the hospital’s administrator, governing board, and statutory agent. This may be done either by hand or certified mail.

Appointment of a special master and on-site monitoring

If a court grants injunctive relief, the bill allows it to appoint a special master to oversee hospital operations. The special master has the powers and authority over the hospital and a length of appointment as the court considers necessary. The special master’s salary and any costs incurred by the master are the hospital’s obligation.

The bill prohibits a special master from entering into any employment contract on behalf of a hospital or purchase with the hospital’s funds any capital goods totaling more than \$10,000, unless the special master has obtained approval from the hospital or the court.

The bill also authorizes the Director to appoint ODH employees to conduct on-site monitoring. Appointment of monitors is not subject to appeal. The bill prohibits ODH from appointing any of the following as a monitor: an employee of a hospital for which monitors are appointed, a person employed by the hospital within the previous two years, or a person who currently has a consulting contract with ODH or a hospital. Every monitor must have the professional qualifications necessary to monitor correction of the conditions that give rise to or,

in the Director’s judgment, will give rise to a real and present danger. The number of monitors present at a hospital at any given time may not exceed one for every 50 patients, or fraction thereof.

On finding that that the real and present danger for which injunctive relief was granted has been eliminated and that the hospital has demonstrated the capacity to prevent the real and present danger from recurring, the court must terminate its jurisdiction over the hospital and return control and management to the hospital.

If the real and present danger cannot be eliminated practicably within a reasonable time following appointment of a special master, the court may order the special master to close the hospital and transfer all patients to other hospitals or other appropriate care settings.

Technical assistance

The bill authorizes the ODH Director to provide each hospital with technical assistance in all of the following areas:

- Infectious diseases, including measures to prevent and control their spread;
- Quality improvement projects, including health equity and disparities;
- Population health initiatives;
- Data analytics;
- Workforce recruitment and development.

The bill also allows the Director to engage with one or more quality improvement organizations to assist in providing technical assistance. Such an organization must provide the assistance without compensation from ODH. The Director may terminate the assistance of a quality improvement organization at any time.

The Director may use any fees or civil penalties collected in accordance with the bill’s provisions to fund the provision of technical assistance to licensed hospitals, including contracting with entities to provide training or technical assistance determined necessary by the Director.

Hospital governing board

Each licensed hospital is required by the bill to have a governing board to oversee its management, operation, and control. The governing board is specifically responsible for both:

- Overseeing the appointment, reappointment, and assignment of privileges to medical staff; and
- Establishing protocols for the admission and treatment of patients.

Admitting privileges

The bill repeals the law governing the admission and medical supervision of hospital patients, including admissions initiated by advanced practice registered nurses and physician assistants.³⁵

Opioid reporting

The bill revises the law governing reports of the number of babies diagnosed as opioid dependent at birth. Under current law, each licensed maternity unit, newborn care nursery, and maternity home must report those numbers to the ODH Director quarterly. Beginning three years after the bill's effective date, the duty to report will fall instead on hospitals operating maternity units or newborn care nurseries. However, until the three years have run, maternity units, newborn care nurseries, and maternity homes must continue to report to the Director. Note that after the three years have elapsed, maternity homes will continue to be required to report.

Disease reporting

Beginning three years after the bill's effective date, each hospital must report to the ODH Director the contagious, environmental, or infectious diseases, illnesses, or health conditions or unusual infectious agents or biological toxins for which it provides treatment to patients.

The bill requires the Director to adopt rules that:

- Specify the diseases, illnesses, conditions, infectious agents, and biological toxins to be reported;
- Specify the frequency with which a hospital must report; and
- Prescribe the manner in which reports are to be made.

Any information reported is protected health information as described under continuing law and may be released only in accordance with that law. Under the bill, information that does not identify an individual may be released in summary, statistical, or aggregate form.

Under continuing law not amended by the bill, hospitals are among a list of health care providers required to report to local boards of health the existence of certain diseases.³⁶ Health providers may do this by submitting an electronic report to the Ohio Disease Reporting System.

General operations fund

The bill specifies that any fees and civil penalties collected under it must be deposited in the state treasury and used solely for purposes of administering and enforcing the bill's provisions.

³⁵ R.C. 3727.06.

³⁶ R.C. 3701.17 and 3701.23, not in the bill, and O.A.C. 3701-3-03 and 3701-3-05.

Home visiting services

(R.C. 3701.61 and 3701.613 with conforming changes in R.C. 5167.16)

The bill expands eligibility to receive home visiting services through the Help Me Grow Program to include families with children under age five. Current law limits home visits to families with pregnant women or children under age three. The goals of home visits include improving maternal and child health, reducing family violence, improving school readiness, improving economic self-sufficiency, and reducing smoking.

Moreover, the bill reduces, from twice a year to every two years, the frequency with which ODH must facilitate a summit to share the latest research on home visiting programs and to discuss how to make home visiting programs more effective.

Technological resources

(R.C. 3701.132 and 3701.61; repealed R.C. 5167.172)

The bill repeals the law that requires the Help Me Grow Program, WIC clinics, and Medicaid managed care organizations to promote the use of technological resources, such as text messaging applications, that provide information on having a healthy pregnancy and healthy baby.

Smoking and tobacco

Minimum age to sell tobacco products

(R.C. 2927.02)

The bill expands the offense of illegal distribution of tobacco products by prohibiting tobacco businesses from permitting employees under 18 from selling tobacco products. A violation is a fourth degree misdemeanor on a first offense and a third degree misdemeanor on a subsequent offense.

The bill also provides that it is not a violation of either of the following other prohibitions for an employer to permit an employee age 18, 19, or 20 to sell a tobacco product:

- The prohibition against a tobacco business distributing tobacco products to any person under 21;
- The prohibition against a tobacco business distributing tobacco products in a place lacking a conspicuous, required sign relating to the underage sale of tobacco products.

Dispensing tobacco cessation drugs without a prescription

(R.C. 4729.42 and 4731.90)

Provider and protocol requirements

The bill authorizes a pharmacist, or pharmacy intern practicing under the direct supervision of a pharmacist, to dispense tobacco cessation drugs without a prescription in accordance with a physician-developed protocol to individuals who are seeking to quit using tobacco-containing products. The following requirements must be met in order for the authorization to apply:

- The pharmacist or intern must successfully complete an accredited or approved course on tobacco cessation therapy;
- The pharmacist or intern must practice in accordance with a physician-established protocol that specifies a definitive set of treatment guidelines and the locations where the tobacco cessation drugs may be dispensed.

The bill requires the protocol to include provisions to implement the following requirements:

- Use by the pharmacist or intern of a screening procedure to determine if an individual is a good candidate to receive tobacco cessation drugs dispensed by a pharmacist or intern;
- Referral by the pharmacist or intern of high-risk individuals or individuals with contraindications to a primary care or other provider;
- Development and implementation of a follow-up care plan in accordance with guidelines adopted in rules;
- Parental or guardian consent for individuals younger than 18.

Documentation and notice

The bill requires documentation related to screening, dispensing, and follow-up care plans to be maintained in the pharmacy's records. Not later than 30 days after a screening is conducted, the pharmacist or pharmacy intern must provide notice to the individual's primary care provider, or to the individual if the primary care provider is unknown.

Prohibition

The bill prohibits a pharmacist or pharmacy intern from dispensing tobacco cessation drugs without a prescription unless the bill's requirements are met. It also prohibits a pharmacist from delegating the pharmacist's authority to dispense or supervise the dispensing of tobacco cessation drugs.

Rules

The bill requires the Pharmacy Board to adopt rules in accordance with the Administrative Procedure Act to implement its provisions. The rules must specify which tobacco cessation drugs may be included in a protocol. The Department of Health must be consulted before adopting rules that specify those drugs.

Regarding rules related to requirements for protocols, the Pharmacy Board must consult with the State Medical Board.

Moms Quit for Two grant program

(Section 291.30)

The bill continues Moms Quit for Two. Authorized in each biennium since 2015, it is a grant program administered by ODH that awards funds to government or private, nonprofit entities demonstrating the ability to deliver evidence-based tobacco cessation interventions to

women who are pregnant or living with children and reside in communities that have the highest incidence of infant mortality, as determined by the ODH Director.

Program funds cannot be used to provide tobacco cessation interventions to Medicaid-eligible women.

Smoke-Free Workplace Law

(R.C. 3794.01)

The bill expands the Smoke-Free Workplace Law to include electronic smoking devices and vapor products. Current law prohibits smoking in a public place or a place of employment. For a first violation of this prohibition, ODH issues a warning letter to the offending individual or proprietor. Subsequent fines are set in accordance with the following:

| Violation # | Proprietor Violation | Individual Violation |
|--------------------------------|----------------------|----------------------|
| 2 nd | \$100 | \$100 |
| 3 rd | \$500 | \$100 |
| 4 th | \$1,000 | \$100 |
| 5 th and subsequent | \$2,500 | \$100 |

ODH may also sue repeat offenders seeking a court requiring the offender to stop the offending behavior.³⁷

Vapor products certificate of operation

(R.C. 2927.025 to 2927.0210)

The bill sets up a registration structure for persons seeking to sell vapor products. Vapor products are products, other than cigarettes or other tobacco products, that contain or are made or derived from nicotine and that are intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. Vapor products include any component of an electronic smoking device.

Under the bill, individuals are prohibited from selling, offering to sell, or possessing with intent to sell vapor products unless they have obtained a certificate of registration from ODH for the place of business where the vapor products are to be sold.

The bill specifies that a certificate of registration does not constitute property, is not subject to attachment and execution, and is not alienable.

³⁷ R.C. 3794.02 and 3794.09, not in the bill; O.A.C. 3701-52-09.

Application

To obtain a certificate, the applicant must file an application with ODH. The application fee is \$100 (plus the \$500 annual fee discussed below under “**Fees and renewal**”). Additionally, ODH may require an applicant to submit documentation verifying that the location where vapor products are to be sold meets all relevant building and safety codes. ODH is authorized to conduct an investigation to determine whether or not an applicant should be issued a certificate of registration.

ODH must issue a certificate of registration to an applicant unless it finds any of the following:

- The application contains materially false information, or the applicant has submitted materially false information to ODH in the past;
- The applicant has failed to pay any taxes due to the state;
- The applicant has failed to provide documentation showing the location where vapor products are to be sold meets all relevant safety codes;
- The applicant, during the previous three years, has been convicted of or pleaded guilty or no contest to either:
 - The illegal distribution of cigarettes, other tobacco products, or alternative nicotine products; or
 - An illegal tobacco product or alternative nicotine product transaction scan.
- ODH determines, subsequent to an investigation, that the applicant is unsuitable to receive a certificate of registration.

Fees and renewal

A certificate of registration is valid for one year. The annual fee for the certificate is \$500. ODH may renew the registration of any applicant if the applicant has paid all related fines and fees. A certificate of registration subject to administrative or court proceedings is not eligible for renewal.

Revocation of certificate

ODH is authorized to suspend or revoke a certificate of registration at its discretion.

Any person aggrieved by a denial of an application, or the refusal to renew, the suspension, or revocation of a certificate of registration may appeal to ODH.

Fines

The holder of an expired certificate of registration who continues to sell vapor products is subject to a fine of \$100, if the violation occurred within 90 days of the certificate expiring. Otherwise, a person selling vapor products without a certificate of registration is subject to a fine of up to \$1,000. ODH may waive all or any part of such fines if it is proved that failure to obtain or renew a certificate or registration was due to reasonable cause.

Tobacco use prevention fund

All fees and fines collected in relation to the certificate of registration are to be deposited into the Tobacco Use Prevention Fund for administering the registration requirements and for tobacco and nicotine prevention or cessation interventions.

Renovation, Repair, and Painting Rule

(R.C. 3742.11)

The bill authorizes the ODH Director to enter into agreements with the U.S. Environmental Protection Agency (USEPA) for the administration and enforcement of the federal Renovation, Repair, and Painting (RRP) Rule. Under the RRP Rule, firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities, and pre-schools built before 1978 must be certified by USEPA (or a USEPA-authorized state), use certified renovators who are trained by USEPA-approved training providers, and follow lead-safe work practices.

The bill also allows the Director to accept available assistance in support of the agreements. The Director may adopt rules to administer and enforce the federal RRP Rule. If the Director adopts rules, the rules must specify the following:

1. Provisions governing applications for certification to undertake renovation, repair, and painting projects;
2. Provisions governing the approval and denial of certification and the renewal, suspension, and revocation of certification;
3. Fees for any certification issued or renewed under the Rule;
4. Requirements for training and certification, which must include levels of training and periodic refresher training for certifications issued under the Rule;
5. Procedures to be followed by a person certified under the Rule to undertake renovation, repair, and painting projects and to prevent public exposure to lead hazards and ensure worker protection during renovation, repair, or painting projects;
6. Provisions governing the imposition of civil penalties (up to \$5,000 per violation) for violations of procedures adopted under the Rule;
7. Record-keeping and reporting requirements for a person certified under the Rule;
8. Procedures for the approval of training providers under the Rule, including specific training course requirements; and
9. Any other procedures and requirements that the Director determines necessary for implementation of the Rule.

Lead abatement fines and penalties

(R.C. 3742.16, 3742.18, and 3742.19)

The bill authorizes the ODH Director to impose an administrative fine of up to \$5,000, in addition to the Director's current authority to deny, suspend, or revoke a license, accreditation, or certification, for one or more of the following reasons:

1. A violation of any provision of the law governing lead abatement;
2. Failure to pay fees for lead abatement professional licenses (for example, a lead abatement contractor or worker), fees for training program accreditation, or fees for any required certification;
3. Any material misrepresentation in an application for a license, accreditation, certification, or approval;
4. Interference with a lead poisoning investigation;
5. Failure to meet the lead abatement licensing requirements; or
6. Employing or using lead abatement personnel that are not licensed.

Administrative fines must be deposited in ODH's General Operations Fund.

The bill also increases, from \$1,000 to \$5,000, the maximum civil penalty that a court of common pleas may impose for violations of the laws governing lead abatement. Currently, if the Director makes a request, the Attorney General may commence a civil action for civil penalties and injunctive and other equitable relief against any person who violates those laws.