



Ohio Legislative Service Commission

Final Analysis

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Sens. Jones, Bacon, Beagle, Burke, Coley, Eklund, Faber, Hite, Hughes, Lehner, Manning, Obhof, Oelslager, Patton, Peterson, Smith, Uecker, Widener

Reps. Antonio, Sears, Smith, Sprague, Anielski, Baker, Blessing, Brown, Burkley, Carney, Conditt, Dovilla, Duffey, Grossman, Hackett, Hayes, Heard, Johnson, Kunze, Mallory, McGregor, Perales, Phillips, Pillich, Retherford, Rogers, Sheehy, Stinziano, Thompson, Batchelder

Effective date: Emergency – provisions addressing radiologic professionals and nursing facilities effective January 1, 2015; most other provisions effective March 19, 2015; certain provisions effective April 1, 2015, to maintain the act's provisions after that date

ACT 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 pre-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 to assess whether an infant will have a safe crib or other suitable place to sleep in once discharged to the infant's residence following birth.

- Requires the 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 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 none of them are subject to criminal prosecution or professional disciplinary action for an act or omission associated with complying with the act'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 act.
- Associated with the absolute immunity, specifies that a continuing 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 its duties.

SHAKEN BABY SYNDROME EDUCATION

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



OPIOID PRESCRIPTIONS & DRUG OFFENSES

Ohio Automated Rx Reporting System

- Modifies the law governing prescriber review of patient information from the State Board of Pharmacy's Ohio Automated Rx Reporting System (OARRS).
- Eliminates the requirement that an optometrist request patient information from OARRS before prescribing an opioid analgesic.
- Specifies that a prescriber who does not practice in Ohio or a pharmacist who does not dispense controlled substances in Ohio is not required to certify to a licensing board that he or she has been granted access to OARRS.

Opioid prescriptions for minors

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

Semiannual opioid prescription report

- Requires the State Board of Pharmacy to prepare a semiannual report regarding opioid prescriptions and to submit the report to the Governor, certain members of the General Assembly, and specified agencies.

Criminal offense – "corrupting another with drugs"

- Expands the offense of corrupting another with drugs to prohibit 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.
- Increases the penalty for corrupting another with drugs if a pregnant woman is involved, as described above.

RADIOLOGIC PROFESSIONALS

- Authorizes ODH to reinstate an inactive or lapsed license to practice as a general x-ray machine operator, radiographer, radiation therapy technologist, or nuclear medicine technologist.

LYME DISEASE TESTING

- Repeals the 2013 law that required a dentist, advanced practice registered nurse, physician assistant, or physician, when ordering a test for Lyme disease, to provide



the patient or patient's representative with information regarding the limits of current Lyme disease testing.

NURSING FACILITIES

- 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.

TABLE OF CONTENTS

SAFE SLEEP FOR INFANTS	5
Safe Sleep Education Program	5
Administration	5
Internal infant safe sleep policy	6
Model policy	7
Infant safe sleep screening procedure	7
Implementation	7
Model questions developed by ODH Director	7
Safe crib requirement	8
Exemptions	8
Reporting requirement	9
Written report by Director	10
Immunity	10
From civil liability	10
From criminal prosecution	11
From professional disciplinary action	11
Preservation of existing immunity	12
Commission on Infant Mortality	12
Duties	12
Membership	13
SHAKEN BABY SYNDROME	14
Shaken Baby Syndrome Education Program	14
OPIOID PRESCRIPTIONS & DRUG OFFENSES	15
Ohio Automated Rx Reporting System (OARRS)	15
Overview	15
License renewals and OARRS access	16
Optometrists and OARRS patient information	17
Board rules concerning OARRS	17
Definition of opioid analgesic and benzodiazepine	17
Disseminating information from OARRS	18
Issuing opioid prescriptions for minors	18
Pharmacy Board discipline	19
Semiannual opioid prescription report	19
New prohibition under corrupting another with drugs	20



Penalty for violating the new prohibition	20
Continuing prohibitions.....	21
Penalties for violating continuing prohibitions	21
RADIOLOGIC LICENSES	22
Reinstatement of radiologic licenses	22
Background.....	22
The act.....	22
LYME DISEASE TESTING	23
NURSING FACILITIES	24
Nursing facilities' Medicaid provider agreement terms.....	24
Exclusion of parts.....	24
Denials of admissions	24

CONTENT AND OPERATION

SAFE SLEEP FOR INFANTS

Safe Sleep Education Program

Administration

The act requires the Ohio Department of Health (ODH) to establish the Safe Sleep Education Program. The Program is to operate in a manner similar to the Shaken Baby Syndrome Education Program that ODH administers under continuing law with the modifications the act makes to that Program.¹

Under the Safe Sleep Education Program, ODH must do all of the following:²

--By May 18, 2015, 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; and

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

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.³ The materials must be distributed with and in the

¹ R.C. 3701.66.

² R.C. 3701.66(B).

³ R.C. 3701.66(C).



same manner as the Shaken Baby Syndrome materials are distributed under law slightly modified by the act. Specifically, the distribution must be made as follows:⁴

--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;

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

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

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.⁵

The act specifies that "other person responsible for the infant" includes a foster caregiver.⁶

Internal infant safe sleep policy

The act 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

⁴ R.C. 3701.66(D).

⁵ R.C. 3701.63(A)(5).

⁶ R.C. 3701.63(A)(8).



or volunteering at the facility or location and be consistent with the model internal infant safe sleep policy adopted by the ODH Director.⁷

Model policy

The act requires the ODH Director to adopt a model 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.⁸

Infant safe sleep screening procedure

Implementation

The act 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 hospitals subject to the infant safe sleep screening procedure requirement are the same ones subject to the educational material distribution requirement. 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.⁹

The act 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.¹⁰

Model questions developed by ODH Director

The act requires the ODH Director to develop questions that hospitals and freestanding birthing centers may use when implementing their infant safe sleep

⁷ R.C. 3701.66(E).

⁸ R.C. 3701.66(F).

⁹ R.C. 3701.63(A)(5) and 3701.67(B).

¹⁰ R.C. 3701.63(A)(8) and 3701.67(A)(3).



screening procedures. When developing the questions, the Director may consult with persons and government entities that have expertise in infant safe sleep practices.¹¹

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 safe sleep screening procedure that an infant is unlikely to have a safe crib at the residence, the facility must make a good faith effort to arrange for the parent, guardian, or other person 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:¹²

--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 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, refer the parent, guardian, or other person to a program site designated by ODH at which a safe crib may be obtained at no charge. (The Cribs for Kids Program, administered by ODH, distributes cribs and infant safe sleep education materials through local and regional health departments to families who meet income eligibility requirements for the Women, Infants, and Children (WIC) program.¹³)

Exemptions

The act exempts from the safe crib requirement both of the following:¹⁴

(1) A hospital the ODH Director designates as a critical access hospital under continuing law.¹⁵ (A "critical access hospital" (CAH) is a Medicare-certified hospital that

¹¹ R.C. 3701.67(B).

¹² R.C. 3701.67(C).

¹³ Ohio Department of Health, *Ohio Department of Health Infant Vitality: Cribs for Kids Partners* (updated October 8, 2014), available at www.odh.ohio.gov/~media/ODH/ASSETS/Files/infant%20safe%20sleep/ODH%20Cribs%20for%20Kids%20Partners.ashx.

¹⁴ R.C. 3701.67(C).

¹⁵ R.C. 3701.073, not in the act.



(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.¹⁶⁾

(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 Director must identify, not less than annually, the facilities in Ohio that meet the criteria for the exemption and to notify those that do so.¹⁷⁾

Reporting requirement

The act requires hospitals subject to its safe crib requirement and those exempted from the requirement (as described above) when they register annually with ODH under continuing law, as well as freestanding birthing centers when they renew their licenses with ODH under continuing law, to report all of the following information associated with compliance with the act in a manner ODH prescribes:¹⁸⁾

(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 it 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 it made since the last time the facility reported this information to ODH;

(4) The number of referrals to a Cribs for Kids or successor program site that it 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.

¹⁶ U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA) – Health Information Technology, *What Are Critical Access Hospitals (CAH)?*, available at www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Introduction/critical.html.

¹⁷ R.C. 3701.67(D).

¹⁸ R.C. 3701.67(E).



(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 Director regarding each parent, guardian, or other person responsible for an infant determined through 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 Director determines is appropriate.

Written report by Director

The act 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 report must be submitted to the Governor and the General Assembly.¹⁹

Immunity

From civil liability

The act 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;²⁰

--To a facility required to implement an infant safe sleep screening procedure, and any employee, contractor, or volunteer of such a facility, unless the facility's or person's act or omission associated with procedure implementation constitutes willful or wanton misconduct.²¹ (The act defines "contractor" as a person who provides personal services pursuant to a contract.²²)

The act 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,

¹⁹ R.C. 3701.67(F).

²⁰ R.C. 3701.64(B) and 3701.66(D).

²¹ R.C. 3701.67(G).

²² R.C. 3701.67(A)(1).



contractor, or volunteer takes to comply with the act's safe crib requirement.²³ To receive this immunity, a facility, employee, contractor, or volunteer is not required to comply with a continuing law provision (not modified by the act)²⁴ governing immunity for the distribution of consumer goods by certain nonprofit agencies.²⁵

From criminal prosecution

The act 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;²⁶

--A facility required to implement an infant safe sleep screening procedure, and any employee, contractor, or volunteer of such a facility;²⁷

--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 act, and any employee, contractor, or volunteer of such a facility.²⁸

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 act specifies that the person is not subject to professional disciplinary action under that title for an act or omission associated with distributing Shaken Baby Syndrome and safe sleep educational materials or implementing an infant safe sleep screening procedure.²⁹

²³ R.C. 3701.67(H).

²⁴ R.C. 2305.37(D), not in the act.

²⁵ R.C. 3701.67(H).

²⁶ R.C. 3701.64(B) and 3701.66(D).

²⁷ R.C. 3701.67(G).

²⁸ R.C. 3701.67(H).

²⁹ R.C. 3701.64(B) and 3701.66(D).



Preservation of existing immunity

The act 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 Political Subdivision Sovereign Immunity (PSSI) Law.³⁰

Commission on Infant Mortality

Duties

The act creates the Commission on Infant Mortality, which must:³¹

(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:

(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 act defines "academic medical center" as a medical school and its affiliated teaching hospitals.³²)

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.³³

Not later than September 19, 2015, the Commission must prepare a written report of its findings and recommendations concerning the matters described above. On

³⁰ R.C. 3701.64(B), 3701.66(D), and 3701.67(G).

³¹ R.C. 3701.68(B).

³² R.C. 3701.68(A)(1).

³³ R.C. 3701.68(F).



completion, the Commission must submit the report to the Governor and the General Assembly.³⁴

The Senate President and Speaker of the House of Representatives must determine the responsibilities of the Commission following submission of the report.³⁵

The Commission may request assistance from the staff of the Legislative Service Commission.³⁶

Membership

The Commission is to consist of the following 15 members:³⁷

- 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;
- 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 ODH Director 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;

³⁴ R.C. 3701.68(F).

³⁵ R.C. 3701.68(G).

³⁶ R.C. 3701.68(E).

³⁷ R.C. 3701.68(C).



- An individual who represents the Ohio Hospital Association, appointed by the Association's president;
- An individual who represents the Ohio Children's Hospital Association, appointed by the Association's president;
- Two individuals who represent community-based programs that serve pregnant women or new mothers whose infants tend to be at a higher risk for infant mortality, appointed by the Governor.

The appointed Commission members must be appointed not later than April 18, 2015. An appointed member holds office until a successor is appointed. A vacancy must be filled in the same manner as the original appointment.³⁸

From among the members, the Senate President and Speaker of the House must appoint two to serve as co-chairpersons.³⁹

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.⁴⁰

The Commission is not subject to the Sunset Review Law.⁴¹

SHAKEN BABY SYNDROME

Shaken Baby Syndrome Education Program

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

--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.⁴² In contrast, prior law,

³⁸ R.C. 3701.68(D).

³⁹ R.C. 3701.68(D).

⁴⁰ R.C. 3701.68(D).

⁴¹ R.C. 3701.68(H).

⁴² R.C. 3701.63(C).



prohibited the Director from developing educational materials that would impose an administrative or financial burden on the distributors.⁴³

--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;⁴⁴

--Adds public children services agencies to the list of entities and persons that must distribute the Program's educational materials, and specifies that the agencies must distribute the materials when they have initial contact with an infant's parent, guardian, or other person responsible for the infant, including a foster caregiver;⁴⁵

--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.⁴⁶

--Updates the definition of "maternity unit" to correspond with changes that were made by subsequent enactments.⁴⁷

OPIOID PRESCRIPTIONS & DRUG OFFENSES

Ohio Automated Rx Reporting System (OARRS)

Overview

The act makes several changes to the law governing the review of patient information in the Ohio Automated Rx Reporting System (OARRS), the drug database maintained by the State Board of Pharmacy.

Rules adopted by the Board require that when a controlled substance is dispensed by a pharmacy or personally furnished by a health care professional to an

⁴³ R.C. 3701.63(C).

⁴⁴ R.C. 3701.64(A)(2).

⁴⁵ R.C. 3701.64(A)(6).

⁴⁶ R.C. 3701.63(A)(5) and 3701.64(A)(3).

⁴⁷ R.C. 3701.63(A)(7).



outpatient, this information must be reported to OARRS daily.⁴⁸ Health care professionals and pharmacists may access patient information in the database.⁴⁹

H.B. 341 of the 130th General Assembly established several conditions related to OARRS that apply in the following circumstances: (1) when a prescriber prescribes or personally furnishes an opioid analgesic or a benzodiazepine and (2) when a prescriber, pharmacist, or pharmacy intern renews a professional license, certificate to prescribe, or identification card. Some provisions of H.B. 341 took 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: a dentist, an advanced practice registered nurse holding a certificate to prescribe, an optometrist holding a therapeutic pharmaceutical agents certificate, a physician assistant holding a certificate to prescribe, and a physician authorized to practice medicine, osteopathic medicine, or podiatry.

License renewals and OARRS access

Beginning January 1, 2015, Ohio law requires 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. Ohio law also permits a licensing board, beginning January 1, 2015, to discipline a prescriber for a false certification regarding OARRS. H.B. 341 did not subject a pharmacist or pharmacy intern to discipline for a false certification concerning OARRS.⁵⁰

The act 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 act further specifies that a pharmacy intern is not required to certify access to OARRS when renewing his or her identification card.⁵¹

⁴⁸ Ohio Administrative Code (O.A.C.) 4729-37-03 and 4729-37-07.

⁴⁹ R.C. 4729.80, not in the act.

⁵⁰ 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.

⁵¹ R.C. 4715.14, 4723.486, 4725.16, 4729.12, 4730.48, and 4731.281.



With respect to a pharmacist only, the act provides that he or she is subject to possible discipline for a false certification.⁵² The act maintains the disciplinary provisions governing prescribers that were enacted by H.B. 341.

With respect to the provisions that apply only to an optometrist, the act 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 under Ohio law to prescribe those drugs.⁵³

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 information from OARRS regarding a patient's prescriptions for controlled substances over the previous 12 months. The act eliminates this requirement in the case of an optometrist, but maintains the requirement for all other prescribers.⁵⁴

Board rules concerning OARRS

The act 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 act requires that the Board adopt rules establishing standards and procedures for the review of patient information in OARRS.⁵⁵

Definition of opioid analgesic and benzodiazepine

The act 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,

⁵² R.C. 4729.12.

⁵³ R.C. 4725.092, 4725.16, and 4725.19.

⁵⁴ R.C. 4725.092.

⁵⁵ R.C. 4715.302(D), 4723.487(D), 4725.092(B), 4730.53(D), and 4731.055(D).

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 U.S. 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.⁵⁶

Disseminating information from OARRS

Existing law prohibits the dissemination of any written or electronic information received from OARRS except in certain circumstances, including when necessary in the investigation of a crime or when provided by a prescriber to his or her delegate. The act 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.⁵⁷

Issuing opioid prescriptions for minors

In the law governing parental consent for opioid prescriptions issued for minors, enacted earlier in 2014 by H.B. 314 of the 130th General Assembly, the act 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.⁵⁸

⁵⁶ R.C. 3719.01.

⁵⁷ R.C. 4729.86.

⁵⁸ R.C. 3719.01, 3719.061, 4715.30, 4723.28, 4725.19, 4730.25, 4730.41, and 4731.22.



Pharmacy Board discipline

For the purposes of the law governing the discipline of pharmacists and pharmacy interns by the Board of Pharmacy, the act replaces references to "liquor" with references to "alcohol."⁵⁹

Semiannual opioid prescription report

Under the act, the Board of Pharmacy must prepare, from information reported to OARRS, a semiannual report regarding prescriptions for controlled substances containing opioids. The Board must submit the report to the Governor, Senate President, Speaker of the House, the chairpersons of the House and Senate standing committees considering health and human services issues, the Ohio Attorney General, the 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 must also be made available to the public on the Board's website.⁶⁰

Each report must include the following for the period covered by the report:

(1) An aggregate of the information, submitted by pharmacies to OARRS under current law not modified by the act,⁶¹ regarding prescriptions for controlled substances containing opioids, including:

- 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 by pharmacies to OARRS under current law not modified by the act,⁶² regarding controlled substances containing opioids that have been personally furnished to a patient by a prescriber (other than a veterinarian), including:

⁵⁹ R.C. 4729.16 and 4729.18.

⁶⁰ R.C. 4729.85(B).

⁶¹ Specifically, R.C. 4729.77, not in the act.

⁶² Specifically, R.C. 4729.79, not in the act.



- 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.

New prohibition under corrupting another with drugs

The act adds, to the existing offense of corrupting another with drugs, a new prohibition against 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.⁶³ This prohibition does 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 the Controlled Substances Law and the laws regulating the applicable health professions.⁶⁴

Penalty for violating the new prohibition

A person who violates the new prohibition is penalized as follows:⁶⁵

(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;

⁶³ R.C. 2925.02(A)(5).

⁶⁴ R.C. 2925.02(B).

⁶⁵ R.C. 2925.02(C)(4) to (6).

(3) If the drug involved is marihuana, K2, or Spice, the offense is a third degree felony and in determining whether to impose a prison term on the offender, the sentencing court must comply with the purposes and principles of sentencing and with statutory factors dealing with the seriousness of the offense and recidivism.

Continuing prohibitions

The offense of corrupting another with drugs included four separate prohibitions prior to the fifth prohibition added by the act. These prohibitions continue to prohibit a person from knowingly doing any of the following:⁶⁶

(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 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 thus causing serious physical harm to the other person, or causing the other person to become drug dependent;

(4) By any means: (a) 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, (b) inducing or causing a juvenile who is at least two years the offender's junior to use a controlled substance or to commit a felony drug abuse offense, when the offender knows the juvenile's age or is reckless in that regard, or (c) 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, or to prevent the arrest of the offender or any other person for, the commission of a felony drug abuse offense.

Penalties for violating continuing prohibitions

The act makes technical changes to the penalties for a violation of the four continuing prohibitions under the offense of corrupting another with drugs.⁶⁷

⁶⁶ R.C. 2925.02(A)(1) to (4).

⁶⁷ R.C. 2925.02(C)(1) to (3).



RADIOLOGIC LICENSES

Reinstatement of radiologic licenses

Background

Ohio law requires that the following radiologic professionals be licensed by ODH: general x-ray machine operators, radiographers, radiation therapy technologists, or nuclear medicine technologists.⁶⁸ A radiologic license must be renewed every two years. Under ODH rules, a license not renewed by its expiration date is considered to be lapsed.⁶⁹

Existing ODH rules allow a lapsed license to be renewed if the application, fee, and evidence of having satisfied continuing education requirements are received within 30 calendar days after the expiration date. Beyond the 30 calendar days, a lapsed license will not be renewed; instead, the individual must apply for a new license. Under ODH rules, this application must include evidence of having passed the state examination; a general x-ray machine operator applicant must show evidence of having passed the state examination within the past five years.

The act

The act authorizes ODH to reinstate an inactive or lapsed radiologic license. An individual seeking reinstatement must apply using a form that ODH prescribes and provides. The application must be accompanied by the reinstatement fee established in rules that the act requires the ODH Director to adopt.⁷⁰

To be eligible for license reinstatement, the applicant must:

(1) Continue to meet the conditions for receiving an initial license, including passing the required examination or meeting criteria that exempt the applicant from the examination; and

(2) Complete the continuing education required for reinstatement established in rules that the act requires the ODH Director to adopt.⁷¹

⁶⁸ R.C. Chapter 4773.01.

⁶⁹ O.A.C. 3701-72-02(N).

⁷⁰ R.C. 4773.03(E)(1) and 4773.08(B).

⁷¹ R.C. 4773.03(E)(2) and 4773.08(F).



In the case of an applicant who passed the examination required for the initial license, the act specifies that the length of time that has elapsed since passage is not to be considered in determining whether the applicant is eligible for reinstatement.⁷²

The act also specifies that an individual may apply for reinstatement even if the individual had applied, prior to the act's effective date, for a new license under ODH rules⁷³ and that application was denied. In this case, ODH must accept and review the individual's application. If the applicant meets the requirements for reinstatement, ODH must reinstate the license.⁷⁴

The act requires ODH to refuse to reinstate a radiologic license if the applicant does not meet the requirements for reinstatement. Under existing law unchanged by the act, ODH must refuse to issue or renew, or may suspend or revoke, a radiologic license if the applicant or holder does not meet specified requirements.⁷⁵

LYME DISEASE TESTING

The act repeals the law enacted in 2013 that had required a dentist, advanced practice registered nurse, physician assistant, or physician, when ordering a test for Lyme disease, to provide to the patient or patient's representative a written notice with the following information:⁷⁶

"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."

⁷² R.C. 4773.03(E)(2)(a).

⁷³ Rules adopted under R.C. 4773.08 that are codified in O.A.C. 3701-72-02(O).

⁷⁴ Section 6.

⁷⁵ R.C. 4773.03(F).

⁷⁶ R.C. 4715.15, 4723.433, 4730.093, and 4731.77.



NURSING FACILITIES

Nursing facilities' Medicaid provider agreement terms

The act revises terms that must be included in a nursing facility's Medicaid provider agreement.⁷⁷

Exclusion of parts

A Medicaid provider agreement may permit 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.⁷⁸ Under prior law, this statutory authority for a nursing facility to exclude any of its parts from its provider agreement was to end January 1, 2015.⁷⁹

The act allows a nursing facility to continue, on and after January 1, 2015, to exclude one or more parts from its Medicaid provider agreement.⁸⁰

Denials of admissions

A Medicaid provider agreement may prohibit 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.⁸¹ Prior law would have revised this admission – denial authority effective January 1, 2015. Under the revision, a nursing facility would have been allowed to refuse to admit an individual who is or may have become a Medicaid recipient if at least 80% (rather than 25%) of its Medicaid-certified beds were occupied

⁷⁷ R.C. 5165.08, 5165.513, 5165.515, and 5165.99; Sections 7, 8, and 10.

⁷⁸ R.C. 5165.08(B)(1).

⁷⁹ Sections 110.25, 110.26, and 110.27 of Am. Sub. H.B. 59 of the 130th General Assembly.

⁸⁰ R.C. 5165.08(B)(1) and (F); Sections 7, 8, and 10.

⁸¹ R.C. 5165.08(B)(2)(b)(i).



by Medicaid recipients at the time the individual would otherwise have been admitted.⁸²

The act 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.⁸³

COMMENT

Provisions identical to those of this act also were simultaneously enacted by H.B. 394 of the 130th General Assembly.

HISTORY

ACTION	DATE
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
Passed House (92-1)	12-10-14
Senate concurred in House amendments (22-8)	12-11-14

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⁸² Sections 110.25, 110.26, and 110.27 of Am. Sub. H.B. 59 of the 130th General Assembly.

⁸³ R.C. 5165.08(B)(2)(b)(i); Sections 7, 8, and 10.

