



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Lisa Musielewicz

### **Sub. H.B. 541\***

132nd General Assembly

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

**Reps.** Patterson and LaTourette, Becker, Brown, Riedel, O'Brien, Seitz, Huffman, Johnson, Lepore-Hagan, Anielski, Antonio, Arndt, Boggs, Boyd, Celebrezze, Clyde, Craig, Dean, Faber, Gavarone, Ginter, Green, Greenspan, Hambley, Hood, Koehler, Lang, Leland, Manning, Miller, Patton, Perales, Ramos, Rezabek, Roegner, Rogers, Ryan, Sheehy, Slaby, K. Smith, Stein, Sweeney, Thompson, West, Wiggam, Young, R. Smith

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## **BILL SUMMARY**

### **Out-of-state practitioners and volunteer health services**

- Authorizes health care professionals licensed in other states to provide volunteer health services in Ohio during charitable events.
- Limits an out-of-state health care professional's scope of practice during the charitable event if the professional has a more limited scope in the other state.
- Requires the out-of-state health care professional or the event's organizer to give the relevant board notice of the intent to practice at least seven calendar days before the event begins.

### **Pharmacist administration of immunizations**

- Replaces the Pharmacy Board's duty to approve individual immunization administration courses and protocols for pharmacists and pharmacy interns with a requirement to adopt rules specifying requirements for the courses and protocols.
- Authorizes a pharmacist or pharmacy intern to complete a course in basic life-support that is approved by the Pharmacy Board as an alternative to a course certified by the American Red Cross or American Heart Association.

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

## Home medical equipment regulation

- Eliminates differences between how the Pharmacy Board is to conduct investigations and other regulatory functions with respect to home medical equipment providers and other professionals the Board regulates.

## Hyperbaric oxygen therapy

- For purposes of the law governing podiatrist supervision of hyperbaric oxygen therapy, clarifies that a physician is readily available for consultation with the podiatrist if the physician is able to communicate with the podiatrist in a timely fashion either in person or by oral, written, or electronic means.

## Kinship Child Care Program

- Modifies an earmark to the Kinship Child Care Program in the main appropriations act for the 132nd General Assembly (H.B. 49) to require that the Ohio Department of Job and Family Services allocate funds to the county departments of job and family services for providing relief of child caring functions to kinship caregivers.

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## CONTENT AND OPERATION

### Out-of-state practitioners and volunteer health services

The bill authorizes a health care professional who is licensed in good standing in another state to practice as a volunteer in Ohio during a charitable event. The professional cannot receive remuneration for the services and the event cannot last more than seven days.<sup>1</sup> The professional or the event's organizer must notify the relevant board of the professional's intent to practice during the event at least seven days before the first day of the event.<sup>2</sup>

#### Practitioners affected

The types of health care professionals who may provide volunteer health services under the bill include all of the following:

- Physicians, including podiatrists;

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<sup>1</sup> R.C. 4715.09, 4715.20, 4723.32, 4725.26, 4725.591, 4730.02, 4731.41, 4731.43, 4731.60, and 4734.14.

<sup>2</sup> R.C. 4715.09(E), 4715.20(C), 4723.321(B), 4725.26(G), 4725.591, 4730.02(H), 4731.41(C), 4731.43(B), 4731.60(C), and 4734.14(B)(2).



- Registered nurses, advanced practice registered nurses, and licensed practical nurses;
- Physician assistants;
- Dentists;
- Dental hygienists;
- Optometrists;
- Dispensing opticians;
- Chiropractors.

### **Scope of practice**

During the course of the charitable event, the health care professional's scope of practice is limited to the procedures that the same type of professional licensed in Ohio is authorized to perform unless the professional's scope of practice in the other state is more restrictive than in Ohio. In that case, the professional's scope of practice is limited to the procedures that the same type of professional in the other state may perform.<sup>3</sup>

### **Disciplinary action**

Except for a nurse, a health care professional who is licensed to practice in another state and provides volunteer services at an Ohio charitable event lasting not more than seven days is deemed by the bill to hold an Ohio-issued license for the course of the event.<sup>4</sup> An out-of-state nurse is not "deemed" to hold an Ohio-issued license under those circumstances, but is, instead, not prohibited from practicing under those circumstances if the nurse's activities are limited to those that the same type of nurse with an Ohio-issued license may engage in.<sup>5</sup>

In addition, the bill authorizes the board responsible for licensing that type of practitioner to take disciplinary action against the out-of-state practitioner. For instance, an optometrist licensed in another state could be disciplined by the State Vision Professionals Board for actions taken by the optometrist during the event. Under

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<sup>3</sup> R.C. 4715.09(F), 4715.20(C), 4723.32(G), 4725.26(G), 4725.591, 4730.02(H), 4731.41(C), 4731.43(B), 4731.60(C), and 4734.14(B)(2).

<sup>4</sup> R.C. 4715.09(F), 4715.20(C), 4725.26(G), 4725.591, 4730.02(H), 4731.41(C), 4731.43(B), 4731.60(C), and 4734.14(B)(2).

<sup>5</sup> R.C. 4723.32(G).



existing law, discipline may include license revocation or suspension, restrictions placed on the license, or imposition of a reprimand or monetary penalty.<sup>6</sup> Regarding nurses, existing law already authorizes the Nursing Board to impose disciplinary action on a nurse for any violation of the law governing nurses (R.C. Chapter 4723. and associated rules).<sup>7</sup>

### **Special activity certificates and free-of-charge camps**

Existing law unchanged by the bill permits a nurse or physician who is licensed in good standing in another state but not Ohio to practice at a free-of-charge camp accredited by the SeriousFun Children's Network for individuals with chronic illnesses. The nurse or physician must provide services in Ohio only in connection with camp activities and for not more than 30 days in a calendar year. The nurse or physician cannot be compensated for services provided at the camp. The nurse or physician also must provide documentation to the camp's medical director, an Ohio-licensed physician, that the nurse or physician holds a current, valid license.<sup>8</sup>

Current law unchanged by the bill also allows a physician (other than a podiatrist) licensed in another state to obtain from the State Medical Board a special activity certificate authorizing the physician to practice in conjunction with an Ohio activity, event, or program in the public interest.<sup>9</sup> An applicant for a certificate must demonstrate that the applicant holds an unrestricted license in another state and must pay a \$125 fee. The certificate is valid for a period of not more than 30 days.

### **Pharmacist administration of immunizations**

Continuing law authorizes a licensed pharmacist, as well as a licensed pharmacy intern supervised by a pharmacist, to administer certain immunizations specified in statute. To do so, the pharmacist or pharmacy intern must (1) complete a course in immunization administration that has been approved by the Pharmacy Board as meeting standards established by the U.S. Centers for Disease Control and Prevention (CDC), (2) be certified to perform basic life support by completing a basic life-support training course certified by the American Red Cross or American Heart Association, and (3) practice in accordance with a physician-established protocol that is approved by the Board.

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<sup>6</sup> R.C. 4725.19(A).

<sup>7</sup> R.C. 4723.28(B)(16).

<sup>8</sup> R.C. 4723.28 and 4731.41, not in the bill.

<sup>9</sup> R.C. 4731.294, not in the bill.



The bill eliminates the Pharmacy Board's involvement in approving individual immunization administration courses and protocols. Instead, the bill requires the Board to adopt rules specifying requirements that all courses and protocols must meet and specifies that those requirements must be consistent with CDC standards. Associated with this change, the bill requires that a pharmacist or pharmacy intern complete a course, and practice in accordance with a protocol, that meets the requirements in rules.

The bill also authorizes a pharmacist or pharmacy intern to complete a course in basic life support that is approved by the Board as an alternative to a course certified by the American Red Cross or American Heart Association.<sup>10</sup>

## **Home medical equipment regulation**

Effective January 21, 2018, the main appropriations act for fiscal years 2018 and 2019<sup>11</sup> abolished the Ohio Respiratory Care Board and transferred its duties with respect to home medical equipment providers to the Pharmacy Board.<sup>12</sup> In several instances, the Pharmacy Board is required to perform these duties differently than how it performs them with respect to pharmacists and pharmacy interns. The bill largely eliminates these differences, allowing for more consistency in how the Board performs regulatory duties for all professionals under its jurisdiction:

### **(1) Records maintenance and retention**

The bill requires that records on home medical equipment and services be maintained for the period of time the Board specifies in rules. Currently, no time period is specified.<sup>13</sup>

### **(2) Investigations**

The bill replaces provisions authorizing the Pharmacy Board to compel testimony from employees of home medical equipment providers and to employ investigators with provisions that provide more general authority to enforce all of the laws governing home medical equipment providers. Associated with that authority, the bill requires the Board to investigate when it has information that any provision of those laws has been violated and to take action it considers to be appropriate. The bill specifies that information the Board receives pursuant to an investigation is

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<sup>10</sup> R.C. 4729.41.

<sup>11</sup> Am. Sub. H.B. 49 of the 132nd General Assembly.

<sup>12</sup> R.C. 4752.04; Section 515.34 of Am. Sub. H.B. 49 of the 132nd General Assembly.

<sup>13</sup> R.C. 4752.07(A)(5).



confidential. The bill also specifies that the Board is not required to enforce minor violations if it determines that the public interest is adequately served by the notice or warning to the alleged offender.<sup>14</sup>

### **(3) Inspections**

The bill eliminates a provision authorizing a home medical equipment provider to appeal the results of a Pharmacy Board inspection.<sup>15</sup> Associated with this change, the bill repeals the Board's authority to adopt rules establishing standards and procedures for appeals.<sup>16</sup> The bill also repeals the Board's authority to establish inspection fees.<sup>17</sup> (The Board does not charge fees for other licensure-related inspections.<sup>18</sup>)

### **(4) Sanctions**

The bill expands and provides more specificity regarding the types of sanctions the Pharmacy Board may impose for disciplinary violations by home medical equipment providers. Currently, the Board may suspend or revoke a license; impose a fine not exceeding \$5,000; or take "other disciplinary action." Under the bill, the Board may also restrict, limit, or refuse to grant or renew a license or certificate of registration, reprimand or place the license or certificate holder on probation, or impose a monetary penalty or forfeiture not to exceed in severity a fine for a similar offense or not more than \$5,000 if the acts committed are not classified as offenses under Ohio law.<sup>19</sup>

### **(5) Disciplinary violations**

The bill extends the grounds for which the Pharmacy Board may impose discipline on a home medical equipment provider to include those circumstances in which the provider violates a Board rule for which a sanction may be imposed.<sup>20</sup>

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<sup>14</sup> R.C. 4752.08(A), (B), and (D).

<sup>15</sup> R.C. 4752.08(B).

<sup>16</sup> R.C. 4752.17(A)(7).

<sup>17</sup> R.C. 4752.17(A)(9).

<sup>18</sup> Correspondence from Pharmacy Board staff.

<sup>19</sup> R.C. 4752.09(A).

<sup>20</sup> R.C. 4752.09(B).



## **(6) Emergency license suspensions**

The bill requires the Pharmacy Board to use existing procedures in the Administrative Procedure Act when suspending a home medical equipment provider license in emergency situations. This policy replaces one in which the Board's president and executive director must make a preliminary determination and present evidence for their decision to other Board members.<sup>21</sup>

## **(7) Failure to make timely hearing request**

The bill specifies that the Pharmacy Board is not required to hold a hearing and may adopt a final order imposing a sanction if a licensee fails to make a timely request for a hearing after having been given notice of the right to do so.

## **(8) Records pertaining to a criminal case**

The bill provides that sealing the following records on which the Pharmacy Board bases an action has no effect on the Board's action or a Board-imposed sanction, despite an existing criminal law provision<sup>22</sup> specifying that the sealing of such records means the case must be deemed not to have occurred: records of any conviction, guilty plea, judicial finding of guilt resulting from a plea of no contest, or a judicial finding of eligibility for a pretrial diversion program or intervention in lieu of conviction. The Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.<sup>23</sup>

## **Hyperbaric oxygen therapy**

Current law authorizes a podiatrist to supervise hyperbaric oxygen therapy if certain conditions are met, including that the podiatrist has consulted with a physician who is authorized to perform such therapy by the facility in which the therapy is rendered. The law further requires that the physician be readily available for consultation when the podiatrist supervises hyperbaric oxygen therapy. The bill clarifies that a physician is considered readily available for consultation if the physician is able to communicate with the podiatrist in a timely fashion either in person or by oral, written, or electronic means. It also specifies that the physician is not required to be physically present at the facility in which the therapy is provided.<sup>24</sup>

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<sup>21</sup> R.C. 4752.09(C).

<sup>22</sup> R.C. 2953.32(C)(2).

<sup>23</sup> R.C. 4752.09(E).

<sup>24</sup> R.C. 4731.511.



## Kinship Child Care Program

The bill makes changes to the earmark for the Kinship Child Care Program established in the main appropriations act for the 132nd General Assembly, H.B. 49. H.B. 49 included a \$15.0 million appropriation in each of fiscal years 2018 and 2019 to support a program to provide child care to kinship caregivers and gave the Ohio Department of Job and Family Services (ODJFS) authority to adopt rules as needed. The rules had to include eligibility criteria, benefit amounts, and attendance tracking requirements. The bill specifies that, in fiscal year 2019, the funds are to be used to support kinship care and that, on the bill's effective date, the remaining portion of the \$15.0 million be used to provide funds to the county departments of job and family services according to the following formula:<sup>25</sup>

- 12% divided equally among the counties;
- 48% divided in the ratio that the number of residents under 18 bears to the total number of such persons in the state; and
- 40% divided in the ratio that the number of residents with incomes under the federal poverty level bears to the total number of such persons in the state.

The bill specifies that the funds are to be used by each public children services agency to provide reasonable and necessary relief of child caring functions so that kinship caregivers can provide and maintain a home for a child in place of a child's parents. When a county children services board is designated as the public children services agency, it must enter into a memorandum of understanding with the county department to expend the funds for that purpose up to the amount of the allocation.<sup>26</sup> The bill eliminates the requirement that rules adopted by ODJFS include eligibility criteria, benefit amounts, and attendance tracking requirements.

The bill further specifies that the Kinship Caregiver Support Program be incorporated into each county's Prevention, Retention, and Contingency (PRC) program. (The counties are not responsible for any additional costs of the program after expending their allocation.) The PRC program is one of Ohio's programs funded under the Temporary Assistance for Needy Families program. Each county is required to develop its own PRC program to provide benefits that individuals need to overcome

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<sup>25</sup> Section 3.

<sup>26</sup> Section 3.



immediate barriers to achieving or maintaining self sufficiency and personal responsibility.<sup>27</sup>

The bill additionally states that individuals already enrolled in the Kinship Child Care Program remain enrolled pursuant to existing law.<sup>28</sup>

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## HISTORY

ACTION	DATE
Introduced	03-06-18
Reported, H. Health	05-22-18
Passed House (93-0)	06-20-18
Reported, S. Health, Human Services & Medicaid	---

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<sup>27</sup> R.C. 5108.03, not in the bill.

<sup>28</sup> Section 3.

