



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 286*

132nd General Assembly

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

Reps. LaTourette, Arndt, Schaffer, Schuring, Anielski, Antonio, Ashford, Barnes, Blessing, Boggs, Boyd, Brenner, Brown, Carfagna, Celebrezze, Cera, Clyde, Craig, Cupp, Dean, DeVitis, Edwards, Faber, Fedor, Galonski, Gavarone, Ginter, Green, Greenspan, Hagan, Hambley, Hill, Holmes, Howse, Huffman, Hughes, Ingram, Kick, Landis, Lang, Leland, Lepore-Hagan, Lipps, Manning, McColley, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Ramos, Reece, Reineke, Rezabek, Riedel, Rogers, Ryan, Scherer, Seitz, Sheehy, K. Smith, R. Smith, Sprague, Stein, Sweeney, Sykes, Thompson, West, Young, Rosenberger

BILL SUMMARY

Hospice and palliative care

- Creates the Palliative Care and Quality of Life Interdisciplinary Council to consult with and advise the Department of Health on matters related to palliative care initiatives.
- Establishes the Palliative Care Consumer and Professional Information and Education Program in the Department of Health and requires the Department to publish on its website certain information regarding palliative care.
- Requires specified health care facilities and providers to establish a system for identifying patients or residents who could benefit from palliative care and to provide information on palliative care.
- Authorizes a licensed hospice care program to provide palliative care to a patient other than a hospice patient, but only if the care is provided in an inpatient hospice

* 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

care facility or unit, is provided on a short-term basis, and is medically necessary for the patient receiving the care.

- Clarifies that nothing in the law governing hospice care programs precludes an entity that holds a license for a hospice care program from owning, being owned by, or otherwise being affiliated with an entity that provides palliative care to nonhospice patients.
- Exempts from pain management clinic licensure certain components of a hospice care program's business and, subject to specified conditions, palliative care inpatient facilities and units.
- Specifies that the bill does not require the Medicaid program to cover palliative care or any other health care service that constitutes palliative care in an amount, duration, or scope that exceeds limits on the bill's effective date.

Certificate of need – relocation of beds

- Authorizes the Director of Health to approve relocation of certain county home beds or county nursing home beds to a long-term care facility in a contiguous county.

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CONTENT AND OPERATION

Palliative care

Palliative Care and Quality of Life Interdisciplinary Council

The bill creates the Palliative Care and Quality of Life Interdisciplinary Council and requires it to consult with and advise the Director of Health on matters related to the establishment, maintenance, operation, and evaluation of palliative care initiatives in Ohio.¹

Council duties

In addition to consulting on matters related to palliative care initiatives, the Council must do all of the following:²

(1) Consult with the Department of Health about the Palliative Care Consumer and Professional Information and Education Program (described below);

(2) Identify national organizations that have established standards of practice and best practice models for palliative care;

(3) Identify initiatives established at the national and state levels aimed at integrating palliative care into the health care system and enhancing the use and development of palliative care;

(4) Establish guidelines for health care facilities and providers to use in identifying patients who could benefit from palliative care;

(5) Prepare an annual report of recommendations for improving the provision of palliative care services in Ohio.

Recommendations

The Council's report of recommendations must be submitted on or before December 31 of each year to all of the following: the General Assembly, Governor, Director of Health, Director of Aging, Superintendent of Insurance, Medicaid Director, and Executive Director of the Office of Health Transformation.³

¹ R.C. 3701.36(E)(1).

² R.C. 3701.36(E)(2) to (6).

³ R.C. 3701.36(E)(6).



Council membership

The Director of Health is charged with appointing council members. They must include individuals with expertise in palliative care who represent the following constituencies or professions:⁴

(1) Patients;

(2) Family caregivers;

(3) Clergy or spiritual advisers;

(4) Physicians, including those board-certified in pediatrics and those board-certified in psychiatry as those designations are issued by a medical specialty certifying board recognized by the American Board of Medical Specialties or American Osteopathic Association;

(5) Physician assistants;

(6) Licensed practical nurses and registered nurses, including advanced practice registered nurses who are certified nurse practitioners or clinical nurse specialists;

(7) Licensed professional clinical counselors or licensed professional counselors;

(8) Independent social workers or social workers;

(9) Pharmacists;

(10) Psychologists;

(11) Marriage and family therapists;

(12) Child life specialists;

(13) Exercise physiologists;

(14) Health insurers.

The membership must also include individuals who have worked with differing age groups and those who have experience or expertise in various palliative care delivery models, including acute care, long-term care, hospice, home health agency services, home-based care, and spiritual care. Employees of state agencies that

⁴ R.C. 3701.36(B).



administer programs pertaining to palliative care or are otherwise concerned with the delivery of palliative care in Ohio also may be included as members.⁵

At least two Council members must be physicians who are board-certified in hospice and palliative care by a medical specialty certifying board recognized by the American Board of Medical Specialties or American Osteopathic Association. At least one Council member must be employed as an administrator of a hospital or system of hospitals in Ohio or be a professional specified in (4) to (13), above, who treats patients as an employee or contractor of a hospital or system of hospitals in Ohio.⁶

No more than 20 individuals may serve as members at any one time. The bill also prohibits more than two members from being employed by the same health care facility or provider or practicing at or for the same facility or provider.⁷

In making appointments to the Council, the Director must seek to include as members individuals who represent underserved areas of Ohio and to have all geographic areas of Ohio represented.⁸

Initial appointments

The Director must make initial appointments not later than 90 days after the bill's effective date.⁹

Membership terms

Terms of office are for three years. Each member holds office from the date of appointment until the end of the term for which the member was appointed. A member must continue in office after the member's term expires until the member's successor takes office, or until a period of 60 days has elapsed, whichever occurs first. In the event of a member's death, removal, resignation, or incapacity, the Director must appoint a successor to hold office for the remainder of the predecessor's term.¹⁰

⁵ R.C. 3701.36(C).

⁶ R.C. 3701.36(C).

⁷ R.C. 3701.36(C).

⁸ R.C. 3701.36(C).

⁹ R.C. 3701.36(D).

¹⁰ R.C. 3701.36(D).



Meetings and chairpersons

The Council must meet at the call of the Director, but not less than twice a year. Each year, the Council must select from among its members a chairperson and vice-chairperson. The duties of the chairperson and vice-chairperson are to be established by the Council.¹¹

Compensation

Each member is to serve without compensation, except to the extent that serving on the Council is considered part of the member's regular employment duties.¹²

Administrative support

The bill requires the Department to provide administrative support to the Council.¹³

Funding sources

At the request of the Council, the Department must examine potential sources of funding to assist with any duties established by the bill.¹⁴

Sunset review

The bill specifies that the Council is not subject to the law governing the sunset review of agencies.¹⁵

Consumer and Professional Information and Education Program

The bill establishes the Palliative Care Consumer and Professional Information and Education Program in the Department of Health. It specifies that the Program's purpose is to maximize the effectiveness of palliative care initiatives in Ohio by ensuring that comprehensive and accurate information and education on palliative care is available to the health care facilities, other health care providers, and the public. As

¹¹ R.C. 3701.36(D).

¹² R.C. 3701.36(D).

¹³ R.C. 3701.36(F).

¹⁴ R.C. 3701.36(F).

¹⁵ R.C. 3701.36(G) referencing R.C. 101.82 to 101.87, not in the bill.



part of the Program, the Department must consult with the Palliative Care and Quality of Life Interdisciplinary Council.¹⁶

Department website

The bill requires the Department to publish on its website information about palliative care, including all of the following:¹⁷

- (1) Continuing education opportunities for health care professionals;
- (2) Information about palliative care delivery in a patient's home and in primary, secondary, and tertiary environments;
- (3) Best practices for palliative care delivery;
- (4) Consumer educational materials and referral information for palliative care, including hospice.

Program initiatives

Under the bill, the Department may develop and implement other initiatives regarding palliative care and education as it considers appropriate.

Duties of health care facilities and providers

The bill requires certain health care facilities and providers to establish a system for identifying patients or residents who could benefit from palliative care. It also requires each of them to provide information on palliative care to those patients and residents.¹⁸ The following health care facilities and providers are subject to these requirements: hospitals, ambulatory surgical facilities, nursing homes, residential care facilities, county or district homes, veterans' homes, home health agencies, hospice care programs, and pediatric respite care programs.¹⁹

Palliative care definition

The bill defines "palliative care" as specialized care for a patient of any age diagnosed with a serious or life-threatening illness that is provided at any stage of the illness by an interdisciplinary team working in consultation with other health care

¹⁶ R.C. 3701.361.

¹⁷ R.C. 3701.361.

¹⁸ R.C. 3701.362.

¹⁹ R.C. 3701.362(A)(1).



professionals, including those who may be seeking to cure the illness, and that aims to do all of the following:²⁰

- (1) Relieve the symptoms, stress, and suffering resulting from the illness;
- (2) Improve the quality of life of the patient and the patient's family;
- (3) Address the patient's physical, emotional, social, and spiritual needs;
- (4) Facilitate patient autonomy, access to information, and medical decision making.

This definition applies to all of the following: (1) the Palliative Care and Quality of Life Interdisciplinary Council and the Palliative Care Consumer and Professional Information and Education Program established by the bill, (2) the bill's requirements that health care facilities and providers establish a system for identifying patients who could benefit from palliative care and provide information on such care, (3) the law governing licensed hospice care programs, and (4) the bill's provision regarding coverage for palliative care under the Medicaid program (described below).

Existing law defines palliative care – for purposes of the law relating to licensed hospice care programs – as treatment for a patient with a serious or life-threatening illness directed at controlling pain, relieving other symptoms, and enhancing the quality of life of the patient and the patient's family rather than treatment for the purpose of cure.²¹

Inpatient palliative care by hospice care programs

Current law limits the provision of services – including palliative care – by a licensed hospice care program to hospice patients. To be considered a hospice patient under existing law, an individual must have been diagnosed as terminally ill, have an anticipated life expectancy of six months or less, and have voluntarily requested and be receiving care from a licensed hospice care program.²²

The bill authorizes a hospice care program, in addition to providing palliative care to hospice patients, to provide palliative care to certain patients who are not hospice patients. The care may be provided to nonhospice patients only if the following conditions are met:

²⁰ R.C. 3712.01(E).

²¹ R.C. 3712.01(E).

²² R.C. 3712.01(A).



- The care is provided in an inpatient facility or unit operated by the program;
- The care is provided to each patient on a short-term basis;
- The care is medically necessary for the patient receiving the care.

The bill specifies that the provision of palliative care in this manner is considered a component of the activities authorized by the hospice care program's license.²³

The bill requires the Director of Health to adopt rules governing the provision of palliative care to nonhospice patients by hospice care programs under these circumstances. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).²⁴

The bill specifies that nothing in the law governing hospice care programs (R.C. Chapter 3712.) precludes an entity that holds a license for a hospice care program, including a program that exercises the authority described above, from owning, being owned by, or otherwise being affiliated with an entity that provides palliative care to patients who are not hospice patients.²⁵

The bill relocates a provision prohibiting the hospice care licensing law from being interpreted as meaning that palliative care may be provided only by or as a component of a hospice care program or pediatric respite care program.²⁶

Medicaid coverage

The bill specifies that it does not require the Medicaid program to cover palliative care or any other health care service that constitutes palliative care, regardless of how the service is designated by a Medicaid provider or the Medicaid program, in an amount, duration, or scope that exceeds the coverage that is included in the program as it exists on the bill's effective date.²⁷

Exemptions from pain management clinic licensure

Under existing law not modified by the bill, the State Board of Pharmacy must license pain management clinics as terminal distributors of dangerous drugs with a

²³ R.C. 3712.10(A).

²⁴ R.C. 3712.10(B).

²⁵ R.C. 3712.10(C).

²⁶ R.C. 3712.01(E) and 3712.11.

²⁷ Section 3.



pain management classification.²⁸ There are a number of exemptions from the licensure requirement, including one that applies to licensed hospice care programs.²⁹

Hospice care programs

The bill limits the components of a licensed hospice care program's business that may be exempt from pain management clinic licensure. Under the bill, a hospice care program is exempt from pain management clinic licensure only with respect to its hospice patients.³⁰

Inpatient palliative care

The bill specifies that both of the following settings in which palliative care is provided on an inpatient basis are also exempt from pain management clinic licensure:³¹

--A hospice care program with respect to the provision of palliative care in an inpatient facility or unit to patients who are not hospice patients, as authorized by the bill, but only in the case of those palliative care patients who have a life-threatening illness; and

--A palliative care inpatient facility or unit that does not admit hospice patients and is not otherwise excluded as a pain management clinic as described above, but only in the case of those palliative care patients who have a life-threatening illness.

Certificate of need – relocation of beds

The bill authorizes the Director of Health to issue a certificate of need (CON) under which beds can be relocated from a county home or county nursing home to a long-term care facility in a contiguous county.³²

Under current law, a "reviewable activity" related to a long-term care facility can be conducted only under a CON issued by the Director.³³ One of the activities that is reviewable is the relocation of beds from a long-term care facility to a facility in another

²⁸ R.C. 4729.552, not in the bill.

²⁹ R.C. 4731.054(A)(5)(b), renumbered to 4731.054(A)(6)(b), in the bill.

³⁰ R.C. 4731.054(A)(6)(b)(v).

³¹ R.C. 4731.054(A)(6)(b)(vi) and (vii).

³² R.C. 3702.594.

³³ R.C. 3702.511 and 3702.53, not in the bill.



county. The Director is permitted to accept an application for an increase in beds in an existing nursing home if all of the following conditions are met:

(1) The proposed increase is attributable solely to relocation of licensed nursing home beds from an existing nursing home to another existing nursing home in a contiguous county;

(2) Not more than a total of 30 nursing home beds are proposed for relocation to the same existing nursing home;

(3) After the relocation, there will be nursing home beds remaining in the county from which the beds are relocated;

(4) The beds are proposed to be licensed under Ohio law as nursing home beds.³⁴

For purposes of the CON law, county homes that provide long-term care services and are certified under Medicare or Medicaid are considered long-term care facilities.³⁵ However, they generally are not licensed as nursing homes, so the bed relocation exception in current law does not apply. By making the exception apply to long-term care facilities, rather than only nursing homes, the bill extends the exception to a county home or county nursing home that is certified as a skilled nursing facility under Medicare or a nursing facility under Medicaid. This allows the Director to accept and approve a CON application for relocation of beds from an existing county home or county nursing home to a long-term care facility in a contiguous county. The bill also eliminates the requirement that the relocated beds be proposed to be licensed as nursing home beds.

HISTORY

ACTION	DATE
Introduced	06-22-17
Reported, H. Aging & Long Term Care	10-26-17
Passed House (91-0)	11-29-17
Reported, S. Health, Human Services & Medicaid	---

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³⁴ R.C. 3702.594.

³⁵ R.C. 3703.51.

