



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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(As Reported by H. Health)

Sens. Eklund, Lehner, Beagle, Hackett, Brown, Burke, Dolan, Hoagland, Kunze, LaRose, Manning, O'Brien, Schiavoni, Tavares, Terhar, Thomas, Wilson, Yuko

BILL SUMMARY

STATE BOARD OF PHARMACY

- Eliminates the statutory lists of drugs designated as schedule I, II, III, IV, and V controlled substances in Ohio and, in place of those lists, requires the State Board of Pharmacy to adopt and periodically update rules incorporating the five controlled substance schedules established under federal law.
- Until those statutory lists are adopted into rule, adds to schedule V certain cannabidiol drugs that have been approved by the U.S. Food and Drug Administration.
- Requires the Pharmacy Board to add a previously unscheduled compound, mixture, preparation, or substance to schedule I if the Board determines that the item has no accepted medical use in treatment and poses an imminent hazard to public health, safety, or welfare.
- Requires certain records pertaining to controlled substances to be maintained for five years, instead of three years.
- Authorizes a schedule II controlled substance to be dispensed upon an electronic prescription.

* This analysis was prepared before the report of the House Health Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Modifies the general prohibition against dispensing or selling an opioid analgesic if the drug is to be used on an outpatient basis and more than 14 days have elapsed since the prescription was issued.
- Exempts the following from the Pharmacy Board's licensure of office-based opioid treatment (OBOT) facilities: federally qualified health centers, federally qualified health center look-alikes, state or local correctional facilities, and other facilities specified in rules adopted by the Board.
- Specifies that the exemption from OBOT licensure that exists for programs or facilities licensed or certified by the Ohio Department of Mental Health and Addiction Services applies only if the licensure or certification is also approved by the Pharmacy Board.
- Requires each person seeking employment with a licensed OBOT facility to submit to a criminal records check.
- Narrows the disqualification from employment at a licensed OBOT facility by specifying that it applies to a person who was convicted of or pleaded guilty to a felony theft or drug offense within the ten years immediately preceding the date the person applied for employment (rather than at any time).
- Authorizes the Pharmacy Board to waive the disqualification from employment at a licensed OBOT facility even if the person was convicted or pleaded guilty within the ten-year period described above.
- Specifies persons that may participate in the drug take-back program administered by the Pharmacy Board and modifies the information the Board must include in its report on the program.
- Requires the Pharmacy Board to publish on the Internet certain information about the drug take-back program.
- Permits the Pharmacy Board to engage in other activities designed to promote public awareness of the drug take-back program.
- Requires certain persons to submit to criminal background checks as a condition of licensure as a manufacturer, outsourcing facility, third-party logistics provider, repackager, or wholesale distributor of dangerous drugs.
- Authorizes a licensed terminal distributor of dangerous drugs that is not a pharmacy to make occasional sales of dangerous drugs at wholesale if the drugs being sold are in shortage.



- Requires an emergency medical service organization satellite to be licensed separately from its associated headquarters, and establishes a reduced license fee for the satellite.
- Modifies the proof of education and training that is required as part of an application as a registered pharmacy technician or certified pharmacy technician.
- Excludes from the Public Records Law various residential, familial, and other personal information about Pharmacy Board employees and medical directors or members of cooperating physician advisory boards of emergency medical service organizations.
- Specifies that the authority to possess a controlled substance through a prescription applies only if the prescription is for a legitimate medical purpose, is not altered or forged, and was not obtained through deception or theft.
- Designates Pharmacy Board investigators as "peace officers" for purposes of the Ohio Peace Officer Training Commission, and thereby requires them to complete continuing professional training each year.

BOARDS OF HEALTH

- Permits a board of health to authorize an officer or employee of the board to use a credit card account held by the board.
- Requires boards of health to adopt written policies for the use of credit card accounts.
- Specifies that the use of a credit card account for expenses beyond those authorized by a board of health constitutes the crime of misuse of credit cards.
- Permits a board of health to select the titles it uses to refer to itself, including use of the term "public health."

STATE MEDICAL BOARD

- Eliminates a requirement that the State Medical Board maintain on its website the name of each supervising physician with authority to grant physician-delegated prescriptive authority to a physician assistant.

STATE BOARD OF EMERGENCY MEDICAL, FIRE, AND TRANSPORTATION SERVICES

- Expands the authority of the State Board of Emergency Medical, Fire, and Transportation Services (EMFTS) to transmit data from its Emergency Medical



Services Incident Reporting System, by allowing the Board to transmit data identifying recipients of care, rather than just providers as under current law, to the National Emergency Medical Services Information System and other eligible research databases.

- Grants the EMFTS Board authority to transmit data identifying trauma care recipients and providers from its State Trauma Registry to eligible research databases, including the National Trauma Data Bank.

DEPARTMENT OF MEDICAID

- Permits a Medicaid provider to choose to employ a person who otherwise may not be employed because of a database review or criminal records check requirement so long as the provider does not submit any Medicaid claims for the person's services.

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CONTENT AND OPERATION

STATE BOARD OF PHARMACY

Controlled substance schedules

Statutory schedules eliminated

One year after its effective date, the bill eliminates the lists of drugs that are designated in the Revised Code as controlled substances.¹ Under current law, these drugs are listed by name or chemical composition and separated into schedules I, II, III, IV, and V based on their potential for abuse or dependence. The schedules are numbered in descending order of severity, with schedule I consisting of drugs with no

¹ R.C. 3719.41, as amended in Sections 6 and 7 of the bill; effective date in Section 8.



medicinal purpose and schedule V consisting of drugs with the lowest potential for abuse relative to the preceding schedules.

Ohio's controlled substance schedules are similar to the controlled substance schedules established under federal law (see "**Federal Controlled Substances Act**," below). The schedules under Ohio law are automatically updated when certain federal changes occur, subject to rule-making authority granted to the State Board of Pharmacy.²

Schedules established by rule

In place of Ohio's statutory controlled substance schedules, the bill requires the Pharmacy Board to adopt rules that establish schedules I, II, III, IV, and V.³ The rules are to incorporate the five schedules of controlled substances established under the federal drug abuse control laws.⁴ The bill specifies that the schedules are to be established for purposes of administration, enforcement, and regulation of the manufacture, distribution, dispensing, and possession of controlled substances.

The bill permits the Pharmacy Board to include in the schedules any compound, mixture, preparation, or substance that was included in the schedules immediately before the effective date of the elimination of the statutory controlled substance schedules. However, this is to occur only if the inclusion does not have the effect of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal drug abuse control laws or associated regulations.⁵

The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).⁶ However, any rules that must be adopted pursuant to federal law, to become effective within 60 days of adoption, are exempt from existing requirements regarding the Joint Committee on Agency Rule Review, as long as the proposal contains a statement that it is being proposed to comply with federal law.⁷

² R.C. 3719.43 and 3719.44.

³ R.C. 3719.41, amended in Section 6 of the bill.

⁴ See R.C. 3719.01 and the federal "Comprehensive Drug Abuse Prevention and Control Act of 1970," 21 United States Code 801, as amended.

⁵ R.C. 3719.41(A), as amended in Section 6 of the bill.

⁶ *Id.*

⁷ R.C. 119.03(C)(3).



Transition period for initial rule adoption

Prior to the bill's elimination of the statutory controlled substance schedules, the bill requires the Pharmacy Board to adopt rules establishing Ohio's controlled substance schedules as anticipated by that legislative change. The rule-making process must be completed so that the rules take effect when the elimination of the statutory schedules takes effect. The rules must be adopted in accordance with the Administrative Procedure Act. However, the Board is not subject to the business review requirements that otherwise would apply under existing law.⁸

Cannabidiol drugs

Prior to the elimination of the statutory schedules, the bill adds to schedule V certain cannabidiol drugs that have been approved by the U.S. Food and Drug Administration.⁹

Periodic updates and automatic changes

The bill requires the Pharmacy Board to periodically update Ohio's controlled substance schedules by rule to correspond to (1) any change in the federal drug abuse control laws or associated regulations, (2) any addition, transfer, or removal by Congress or the U.S. Attorney General, or (3) any addition, transfer, or removal by the Board through existing rule-making authority.¹⁰

As with Ohio's existing controlled substance schedules established in statute, the bill specifies that certain federal changes are to be automatically effected in the schedules established by Pharmacy Board rule. Under the bill, these automatic changes are to occur not only when the U.S. Attorney General adds, transfers, or removes a compound, mixture, preparation, or substance, but also when Congress does so. The bill also requires the Board to incorporate the addition, transfer, or removal into or from the schedules in its next update of the schedules.¹¹

Emergency rules

The bill requires the Pharmacy Board, by emergency rule adopted in accordance with the Administrative Procedure Act,¹² to add a previously unscheduled compound,

⁸ Section 9.

⁹ R.C. 3719.41, as amended in Section 1 of the bill.

¹⁰ R.C. 3719.41(B), as amended in Section 6 of the bill, and 3719.44(L).

¹¹ R.C. 3719.43.

¹² R.C. 119.03(G).



mixture, preparation, or substance to schedule I if the Board determines that the compound, mixture, preparation, or substance has no accepted medical use in treatment in Ohio and poses an imminent hazard to the public health, safety, or welfare.¹³ The Board may make the determination by telephone conference call.¹⁴

In making the determination, the Pharmacy Board must consider all of the following with respect to the compound, mixture, preparation, or substance:¹⁵

- Its actual or relative potential for abuse;
- The scope, duration, and significance of that abuse;
- The risk it poses to the public health.

If the Pharmacy Board determines an imminent hazard is posed, the Board must determine whether to issue a resolution requesting that the Governor issue an order authorizing the Board to adopt an emergency rule. The resolution must include the full text of the proposed emergency rule and the Board's reasons for its determination.¹⁶ The Board's determination whether to request the Governor to issue an order may be made by telephone conference call.¹⁷

An emergency rule adopted under the bill becomes invalid after its 180th day in effect if it is not adopted as a nonemergency rule during that time. Existing law provides that most other emergency rules become invalid after 120 days.¹⁸

The authority to adopt an emergency rule under the bill does not extend to distilled spirits, wine, or beer; dangerous drugs or prescription drugs approved by the U.S. Food and Drug Administration (FDA); or any FDA-approved drug to be sold over the counter.¹⁹ "Dangerous drug" is a statutory term that, in general, describes drugs that are available only by prescription.²⁰

¹³ R.C. 3719.45(A)(1).

¹⁴ R.C. 3719.45(C).

¹⁵ R.C. 3719.45(A)(2).

¹⁶ R.C. 3719.45(B).

¹⁷ R.C. 3719.45(C).

¹⁸ R.C. 119.03(G).

¹⁹ R.C. 3719.45(E).

²⁰ R.C. 4729.01(F), not modified by the bill.

Conforming changes

The bill makes conforming changes throughout the Revised Code to account for (1) the elimination of the statutory lists of drugs included in Ohio's controlled substance schedules and (2) the additional rule-making authority granted to the Pharmacy Board for establishing the schedules by rule.²¹

Federal Controlled Substances Act – background

Title II of the "Comprehensive Drug Abuse Prevention and Control Act of 1970" is known as the "Controlled Substances Act" (CSA). The CSA placed all substances that were regulated in some manner under federal law at the time of its passage into one of five schedules based on the substance's medical use, potential for abuse, and safety or dependence liability. The CSA also provided a mechanism for a substance to be (1) controlled or added to a schedule, (2) decontrolled or removed from control, and (3) rescheduled or transferred from one schedule to another.²² The following describes the standards that apply to each schedule and presents examples of the drugs they include:

Schedule I

- The drug or other substance has a high potential for abuse and no currently accepted medical use in treatment in the U.S.
- There is a lack of accepted safety for use of the drug or other substance under medical supervision.
- Examples: heroin, LSD, marijuana, and methaqualone.

Schedule II

- The drug or other substance has a high potential for abuse but has a currently accepted medical use in treatment in the U.S. or a currently accepted medical use with severe restrictions.
- Abuse of the drug or other substance may lead to severe psychological or physical dependence.
- Examples: morphine, PCP, cocaine, methadone, and methamphetamine.

²¹ R.C. 2907.02(B), 2907.05(C)(1), 2925.03(J), 2925.11(H), 3313.752, 3345.41(A)(1), 3707.50(A)(1), 3719.01, 3719.40, 3719.44(A), 3796.01(B), 4729.01(W), 4729.46(A), 4729.52(A)(3), 4729.54(A)(6), and 4731.97(A)(1).

²² U.S. Drug Enforcement Administration, *Controlled Substances Act*, available at <https://www.dea.gov/controlled-substances-act>.



Schedule III

- The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.
- The drug or other substance has a currently accepted medical use in treatment in the U.S.
- Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.
- Examples: anabolic steroids, codeine, hydrocodone with Tylenol[®], and some barbiturates.

Schedule IV

- The drug or other substance has a low potential for abuse relative to the drugs and substances in schedule III.
- The drug or other substance has a currently accepted medical use in treatment in the U.S.
- Abuse of the drugs or other substances may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.
- Examples: Darvon[®], Talwin[®], Equanil[®], Valium[®], and Xanax[®].

Schedule V

- The drug or other substance has a low potential for abuse relative to the drugs and other substances in schedule IV.
- The drug or other substance has a currently accepted medical use in treatment in the U.S.
- Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs and other substances in schedule IV.
- Example: Cough medicines with codeine that may be available without a prescription.

Requirements to maintain records pertaining to controlled substances

The bill requires certain records pertaining to controlled substances to be maintained for five years, instead of three years, unless otherwise specified in rules adopted by the Pharmacy Board.²³ The five year requirement applies to the following:

- Records relating to the sale of schedule II controlled substances;²⁴
- Records of controlled substances received, administered, dispensed, or used by licensed health professionals authorized to prescribe drugs;²⁵
- Records of controlled substances purchased;²⁶
- Records of controlled substances compounded, mixed, cultivated, grown, or produced by manufacturers, wholesalers, or other licensees, as well as controlled substances received and sold;²⁷
- Records of controlled substances received and sold by category III terminal distributors of dangerous drugs;²⁸
- Records relating to the sale or purchase of certain schedule V controlled substances.²⁹

The bill also specifies that an official written order for a schedule II controlled substance must comply with all requirements of the federal drug abuse control laws and rules adopted by the Pharmacy Board. This replaces existing provisions that require such orders to be signed in triplicate and originals to be presented and maintained.³⁰

²³ R.C. 3719.04(B) and 3719.07(D).

²⁴ R.C. 3719.04(B).

²⁵ R.C. 3719.07(B)(1).

²⁶ R.C. 3719.07(B)(1).

²⁷ R.C. 3719.07(B)(2).

²⁸ R.C. 3719.07(B)(3).

²⁹ R.C. 3719.07(B)(4).

³⁰ R.C. 3719.04(B).



Electronic prescriptions for schedule II controlled substances

The bill specifies that a schedule II controlled substance may be dispensed upon an electronic prescription. Current law permits a schedule II controlled substance to be dispensed only upon a written prescription or, in certain emergency situations, through an oral prescription.³¹ Since 2010, U.S. Drug Enforcement Administration regulations have permitted controlled substance prescriptions to be electronic.³²

Limits on dispensing or selling opioid analgesics

14-day prescription deadline

The bill modifies existing limitations regarding dispensing or selling outpatient prescriptions for opioid analgesics. Current law generally prohibits an opioid analgesic from being dispensed or sold if the drug is to be used on an outpatient basis and more than 14 days have elapsed since the prescription was issued. The bill makes the prohibition applicable only when the pharmacist dispenses the drug, not when the terminal distributor subsequently sells the drug.³³ The bill also establishes additional exemptions to the prohibition. The circumstances when an opioid analgesic can be dispensed under these exemptions are described below.

Filling prescriptions issued in advance

The bill permits a pharmacist to dispense the opioid analgesic after 14 days have elapsed since the prescription was issued if, on the date the prescription was issued, the prescriber issued only one prescription for the drug to the patient and both of the following apply:³⁴

--The prescriber provided written instructions on the prescription specifying the earliest date on which the prescription may be filled; and

--Not more than 14 days have elapsed since the earliest fill-date specified by the prescriber.

The bill permits the Pharmacy Board to adopt rules that further decrease the 14-day deadline relative to a single prescription. The same authority to decrease the deadline is extended to an existing provision under which the opioid analgesic may be

³¹ R.C. 3719.05(A)(3).

³² 75 Federal Register 16236, March 31, 2010; *see also* U.S. Department of Justice, *Electronic Prescriptions for Controlled Substances*, available at: https://www.deadiversion.usdoj.gov/ecommm/e_rx/faq/faq.htm.

³³ R.C. 4729.46(B).

³⁴ R.C. 4729.46(B)(3)(a).

dispensed if a prescription is one of multiple prescriptions issued on the same day by a single prescriber with an earliest fill-date specified.³⁵

Refilling prescriptions for schedule III, IV, or V drugs

The bill permits a pharmacist to dispense the opioid analgesic by refilling the prescription after more than 14 days have elapsed since the prescription was issued if the opioid analgesic is included in schedule III, IV, or V.³⁶

Completing partially filled prescriptions

If the prescription for the opioid analgesic was partially filled within the applicable 14-day period, the bill permits a pharmacist to dispense the remaining amount of the opioid analgesic after more than 14 days have elapsed since the prescription was issued.³⁷

Drugs for treating opioid dependence or addiction

The bill also specifies that the 14-day prescription deadline, as well as an existing provision that prohibits the dispensing of an opioid analgesic in an amount that exceeds a 90-day supply, does not apply when the opioid analgesic is used as part of an individual's treatment for opioid dependence or addiction.³⁸

Office-based opioid treatment

Exceptions to licensure

With some exceptions, a facility where a physician or other prescriber provides office-based opioid treatment (OBOT) to more than 30 patients must hold a license issued by the Pharmacy Board. Specifically, it must hold a category III terminal distributor of dangerous drugs license with an office-based opioid treatment classification. "Office-based opioid treatment" is defined by current law as the treatment of opioid dependence or addiction using a controlled substance.³⁹

One of the current exceptions to the OBOT licensing requirement applies in the case of a program or facility that is licensed or certified by the Ohio Department of Mental Health and Addiction Services. Under the bill, a program or facility comes

³⁵ R.C. 4729.46(D).

³⁶ R.C. 4729.46(B)(3)(c).

³⁷ R.C. 4729.46(B)(3)(d).

³⁸ R.C. 4729.46(C)(2).

³⁹ R.C. 4729.553(A).



within this exception only if the license or certification issued by the Department is also approved by the Pharmacy Board.⁴⁰

The bill creates four new exceptions to the OBOT licensing requirement. The new exceptions apply to federally qualified health centers, federally qualified health center look-alikes, state or local correctional facilities, and any other facilities specified in rules adopted by the Pharmacy Board.⁴¹

Criminal records checks

A facility that holds an OBOT license must require all employees of the facility and persons seeking employment to submit to criminal records checks. It must ensure that no person is employed who has been convicted of or pleaded guilty to a felony theft offense or felony drug offense.⁴²

Under the bill, a felony theft offense or felony drug offense disqualifies a person from employment by the facility only if the person was convicted of or pleaded guilty to the offense within the ten years immediately preceding the date the person applied for employment.

Currently, the disqualification applies regardless of when the offense was committed. Even under the bill's ten-year look-back period, however, the bill grants the Pharmacy Board authority to waive an individual's disqualification from employment. This means that the Board could permit a facility to employ a person who was convicted of or pleaded guilty to a felony theft offense or felony drug offense within the ten-year period.⁴³

Drug take-back program

The bill makes various changes to Ohio's drug take-back program, which is administered by the Pharmacy Board under current law. Under the program, drugs are collected from the community by participating entities to be destroyed and disposed of.⁴⁴

The bill specifies that program participants can be (1) law enforcement agencies, (2) registrants authorized by the federal Drug Enforcement Administration, and (3)

⁴⁰ R.C. 4729.553(B)(2)(f).

⁴¹ R.C. 4729.553(B)(2)(g), (h), and (i).

⁴² R.C. 4729.553(D).

⁴³ R.C. 4729.553(D)(5).

⁴⁴ R.C. 4729.69(A)(1).

other entities specified by the Pharmacy Board in rule.⁴⁵ The bill prohibits the Board from adopting rules that limit the authority of an entity to collect controlled substances in accordance with federal law.⁴⁶

Current law authorizes the Pharmacy Board to compile data on the amount and type of drugs collected under the program. If the Board does so, it must submit a report to the Governor and the General Assembly. The bill eliminates many of the current items that must be included in the report, and instead limits the report to the total weight of drugs collected.⁴⁷

The bill adds a provision specifying that an ordinance, resolution, or other law adopted by a municipal corporation or other political subdivision on or after the effective date of the drug take-back provisions cannot do any of the following:

- (1) Require any entity to establish, fund, or operate a drug take-back program;
- (2) Establish a new licensing requirement or fee to participate in the program;
- (3) Require any entity to compile data on drugs collected;

(4) Limit the authority of an entity to collect controlled substances in accordance with federal law.⁴⁸

The bill requires the Pharmacy Board to make available on the Internet information regarding the drug take-back program. The information must include (1) a description of the drugs eligible for collection and the options for collections, such as by receptacle or mail, (2) a directory of participating entities, contact information, and hours of operation, and (3) a list of take-back events, including the date, time, and location.⁴⁹

The bill permits the Pharmacy Board to engage in other activities designed to promote public awareness of the drug take-back program.⁵⁰

⁴⁵ R.C. 4729.69(A)(2).

⁴⁶ R.C. 4729.69(E)(4).

⁴⁷ R.C. 4729.69(F) and (G).

⁴⁸ R.C. 4729.69(J) and (E).

⁴⁹ R.C. 4729.691(A).

⁵⁰ R.C. 4729.691(B).



Licensure of manufacturers, wholesalers, and other distributors of dangerous drugs

Criminal records checks

As a condition of licensure as a manufacturer, outsourcing facility, third-party logistics provider, repackager, or wholesale distributor of dangerous drugs, the bill requires the following to submit to criminal records checks:

- (1) The applicant;
- (2) Any person seeking to serve as the responsible person on the license;
- (3) Any person who has an ownership interest;
- (4) Any person who is a corporate officer.⁵¹

The bill requires the Pharmacy Board to adopt rules defining "responsible person" and specifying the persons with ownership interests and the corporate officers required to submit to the criminal records checks.⁵²

Authorization to conduct criminal records checks

The bill permits the Superintendent of the Bureau of Criminal Identification and Investigation to conduct criminal records checks of the following applicants:

- (1) Manufacturers of dangerous drugs;
- (2) Outsourcing facilities;
- (3) Third-party logistics providers;
- (4) Repackagers of dangerous drugs;
- (5) Wholesale distributors of dangerous drugs;
- (6) Pharmacy technician trainees;
- (7) Registered pharmacy technicians;

⁵¹ R.C. 4729.53(A)(7).

⁵² R.C. 4729.53(C).



(8) Certified pharmacy technicians.⁵³

It requires the Superintendent to review relevant information gathered, including sealed records, for those applicants, as well as pharmacists.⁵⁴

Conviction reporting

By prosecutors

The bill generally requires a prosecutor to report a conviction of a violation of the Controlled Substances Law or Drug Offenses Law to the Pharmacy Board for any of the following:

- (1) Outsourcing facilities;
- (2) Third-party logistics providers;
- (3) Repackagers of dangerous drugs;
- (4) Pharmacy technician trainees;
- (5) Registered pharmacy technicians;
- (6) Certified pharmacy technicians.⁵⁵

To regulatory and licensing boards and agencies

Provisions in the Drug Offenses Law require the reporting of certain convictions to regulatory or licensing boards and agencies.⁵⁶ The bill adds pharmacy technician trainees, registered pharmacy technicians, and certified pharmacy technicians to the list of persons whose convictions must be reported. It does so by adding those persons to the definition of "professionally licensed person."⁵⁷

⁵³ R.C. 109.572(A)(9).

⁵⁴ R.C. 109.572(B)(1).

⁵⁵ R.C. 3719.12.

⁵⁶ R.C. 2925.38, not in the bill.

⁵⁷ R.C. 2925.01(W)(14).



Miscellaneous provisions regarding terminal distributors of dangerous drugs

Supervision of dangerous drugs

The bill specifies that, in addition to a pharmacist or prescriber, another person authorized by the Pharmacy Board may supervise the procurement for sale and distribution of dangerous drugs by a terminal distributor.⁵⁸ Further, for purposes of providing proof of supervision and control of dangerous drugs as part of a terminal distributor's license application, the bill permits proof of supervision by other persons authorized by the Board.⁵⁹

Possession of controlled substances

The bill clarifies that a licensed terminal distributor of dangerous drugs may be in possession of controlled substances, which includes drugs in schedules I through V. Current law only refers to possession of dangerous drugs (prescription drugs), which includes drugs in schedules II through V; "dangerous drug" does not include drugs in schedule I as those drugs cannot be prescribed due to having no currently accepted medical use and a high potential for abuse (see "**Schedule I**," above).⁶⁰ The bill also clarifies that a laboratory, as a licensed terminal distributor, may possess schedule I controlled substances, as well as dangerous drugs.⁶¹

Occasional sales of commercially unavailable drugs

The bill authorizes a licensed terminal distributor of dangerous drugs that is not a pharmacy to make occasional sales of dangerous drugs at wholesale if the drugs being sold are in shortage, as defined in rules to be adopted by the Pharmacy Board.⁶²

Emergency medical service organization satellites

The bill establishes a reduced license fee of \$120 for an emergency medical service organization satellite.⁶³ "Emergency medical service organization satellite" is

⁵⁸ R.C. 4729.01(Q).

⁵⁹ R.C. 4729.55(B).

⁶⁰ R.C. 4729.55(B); R.C. 4729.01(F) (definition of "dangerous drug," not modified by the bill).

⁶¹ R.C. 4729.01(BB).

⁶² R.C. 4729.51(A)(4).

⁶³ R.C. 4729.54(G)(2).

described as a location where dangerous drugs are stored that is separate from, but associated with, the headquarters of an emergency medical service organization.⁶⁴

Current law does not distinguish between an emergency medical service organization and a satellite. Under the bill, each must be separately licensed. The application requirements for a satellite must be specified in rules adopted by the Pharmacy Board.⁶⁵

Several other licensees have a reduced fee under current law, and the bill adds emergency medical service organization satellites to that list.

Applications for pharmacy technicians and trainees

The bill eliminates a provision of current law under which an application for registration as a registered pharmacy technician or certified technician must include an attestation from a pharmacy's responsible person that the applicant has met education and training requirements. Completion of education and training requirements is still required, but the method of proving completion is no longer specified.⁶⁶

Public records exclusion

The bill excludes from the Public Records Law various types of information concerning both Pharmacy Board employees and medical directors or members of cooperating physician advisory boards of emergency medical service organizations. The excluded information includes the following:

--The address of the individual's personal residence;

--The individual's Social Security number, residential telephone number, emergency telephone number, bank account number, and debit card or credit card number;

--The individual's medical information;

--The name of any beneficiary of employment benefits provided to the individual;

--The identity and amount of any charitable or employment benefit deduction made by the individual;

⁶⁴ R.C. 4729.54(A).

⁶⁵ R.C. 4729.54(C) and (D).

⁶⁶ R.C. 4729.90(B).

--The following concerning the individual's spouse, former spouse, or child: name, residential address, employer name and address, Social Security number, residential telephone number, emergency telephone number, bank account number, and credit or debit card number.

The same type of information is currently excluded from the public records law for peace officers, parole officers, probation officers, bailiffs, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, community-based correctional facility employees, youth services employees, firefighters, emergency medical technicians, Bureau of Criminal Identification and Investigation investigators, and federal law enforcement officers, as well as their spouses, former spouses, and children.⁶⁷

Lawful prescriptions

For purposes of the Controlled Substances Law and other drug laws administered by the Pharmacy Board, the bill specifies that an individual's existing authority to possess a controlled substance through a prescription applies only if the prescription meets the following conditions:⁶⁸

- (1) It is issued for a legitimate medical purpose;
- (2) It is not altered or forged;
- (3) It was not obtained through deception or commission of a theft offense.

Similar provisions specifying when a person is authorized to possess drugs through a prescription are included as part of the Drug Offenses Law. The bill modifies those laws by listing the conditions that a prescription must meet, as described above. In doing so, the bill eliminates the definition of "legitimate prescription" that contained the same criteria.⁶⁹

Pharmacy Board investigators

Existing law establishes the Peace Office Training Commission to oversee the training of law enforcement, as well as private security, local corrections, jail personnel, bailiffs, and public defender investigators. For purposes of the Commission, the bill adds to the definition of "peace officer" an employee of the Pharmacy Board who is

⁶⁷ R.C. 149.43 and 149.45.

⁶⁸ R.C. 3719.09.

⁶⁹ R.C. 2925.01 and 2925.11.

designated by the Board's Executive Director⁷⁰ to investigate drug offenses, the Pure Food and Drug Law, Controlled Substances Law, Medical Marijuana Control Program, Pharmacy Law, and Home Medical Services Law.⁷¹ Designating Board investigators as peace officers requires them to complete continuing professional training each year, as directed by the Commission.⁷² It also permits the Board to apply to the Commission for reimbursement of the costs of the training.⁷³

Existing law specifies that creation of the Commission does not confer arrest authority or any ability or authority to detain a person, write or issue any citation, or provide any disposition alternative as may be otherwise authorized under current law.⁷⁴

Statutory updates and other conforming changes

In addition to the changes described above, the bill makes a number of other changes in existing statutes related to drugs and the Pharmacy Board. These changes involve the removal of obsolete provisions, the coordination of various provisions, and the addition of other conforming or corrective provisions.⁷⁵

BOARDS OF HEALTH

Credit card account use

Authorization and use policy

The bill permits a board of health to authorize an officer or employee of the board to use a credit card account held by the board. It requires adoption of a written policy for use of credit card accounts. The policy must address all of the following:⁷⁶

- The officers or positions authorized to use a credit card account;
- The types of expenses for which the credit card account may be used;

⁷⁰ R.C. 4729.04.

⁷¹ R.C. 109.71(A)(25).

⁷² R.C. 109.803(A), not in the bill.

⁷³ R.C. 109.802(D), not in the bill.

⁷⁴ R.C. 109.71.

⁷⁵ See, for example, R.C. 1751.68, 2925.01(W), 2925.03(J), 2925.09(B), 2925.11(H), 2925.23(B) and (C)(6), 2925.34, 3719.01, 3719.04(A)(1), 3719.061, 3719.07(B)(3), 3719.09(A), 3719.12, 3719.811, 3796.01, 3923.602, 4729.19, 4729.46 (relative to pharmacy interns dispensing drugs), 4729.55, and 5164.7511.

⁷⁶ R.C. 3709.42(B).



- The procedure for acquisition, use, and management of a credit card account and presentation instruments related to the account, such as physical credit cards and checks;
- The procedure for submitting itemized receipts to the fiscal officer or the fiscal officer's designee;
- The procedure for issuing, reissuing, and canceling a credit card and the process for reporting lost or stolen credit cards;
- The credit card account's maximum credit limit or limits; and
- The actions or omissions by an officer or employee that qualify as misuse of a credit card.

Name on credit cards and checks

The bill requires that the name of the board of health holding the credit card account appear on each presentation instrument related to the account, including credit cards and checks.⁷⁷

Review of credit card account use

The bill specifies that if the fiscal officer of the board of health does not retain general possession and control of the credit card account and presentation instruments, the board of health must appoint a compliance officer to conduct the review discussed below. The compliance officer may not use the credit card account and may not authorize use by officers and employees. The fiscal officer is not eligible to be appointed as the compliance officer.⁷⁸

At least quarterly, the compliance officer and the board of health must review the number of cards and accounts issued and the number that are active, as well as the expiration dates and credit limits.⁷⁹

Itemized receipts

If a fiscal officer retains general possession and control of the credit card accounts and presentation instruments, and officers or employees may use the account or instruments, the fiscal officer may use a system to sign out credit cards to the

⁷⁷ R.C. 3709.42(C).

⁷⁸ R.C. 3709.42(D).

⁷⁹ R.C. 3709.42(E).

authorized users. The officer or employee is liable in person and upon any official bond the officer or employee has given to the board of health to reimburse the health fund⁸⁰ of the city or general health district the amount for which the officer or employee does not provide itemized receipts in accordance with the credit card policy described above.⁸¹

Misuse of credit card

Additionally, the bill specifies that an officer, employee, or public servant who knowingly uses a credit card account for expenses beyond those authorized by the board of health is guilty of misuse of credit cards, which is a continuing law criminal offense. Depending on the circumstances and the amount of money involved, misuse of credit cards ranges from a first degree misdemeanor to a second degree felony.⁸²

Credit card rewards

The fiscal officer or the fiscal officer's designee annually must file a report with the board of health detailing all rewards received based on the use of the board of health's credit card account.⁸³

Definitions

The bill defines "board of health" as a board of health of a city or general health district, or the authority having the duties of a board of health under existing law.⁸⁴

"Credit card account" is defined to include any bank-issued credit card account, store-issued credit card account, financial institution-issued credit card account, financial depository-issued credit card account, affinity credit card account, or any other card account allowing the holder to purchase goods or services on credit or otherwise transact with the account, and any debit or gift card account related to the receipt of grant moneys. The term expressly excludes any procurement card account, gasoline or telephone credit card account, or any other card account where merchant category codes are in place as a system of control for use of the account.⁸⁵

⁸⁰ R.C. 3709.31, not in the bill.

⁸¹ R.C. 3709.42(F).

⁸² R.C. 3907.42(G); R.C. 2913.21, not in the bill.

⁸³ R.C. 3907.42(H).

⁸⁴ R.C. 3907.42(A)(1).

⁸⁵ R.C. 3907.42(A)(2).

Board titles

The bill specifies that a board of health may select the titles it uses to refer to itself, the health district it represents, or any health facility or other entity it operates. The titles may include any terms selected by the board, including "public health."⁸⁶

STATE MEDICAL BOARD

Maintaining supervision agreement information online

The bill eliminates a current requirement that the State Medical Board maintain on its website the name of each supervising physician with authority to grant physician-delegated prescriptive authority to a physician assistant. Current law requires each supervising physician and physician assistant to enter into a supervision agreement outlining a physician assistant's responsibilities and the limitations governing his or her practice.⁸⁷ Prior law required supervision agreements to be submitted to the Medical Board for review. That requirement was eliminated by H.B. 111 of the 132nd General Assembly, effective September 28, 2018. Accordingly, the bill eliminates a related requirement that requires the Medical Board to include supervising physician information on its website.⁸⁸

STATE BOARD OF EMERGENCY MEDICAL, FIRE, AND TRANSPORTATION SERVICES

Data sharing

The bill revises the law governing data maintained by the State Board of Emergency Medical, Fire, and Transportation Services (EMFTS) in two of its databases – (1) the Emergency Medical Services Incidence Reporting System and (2) the State Trauma Registry.⁸⁹ Current law permits the EMFTS Board to transmit from the Emergency Medical Services Incidence Reporting System data that identifies or tends to identify specific providers of emergency medical care services and that has not been risk-adjusted if that data is transmitted directly to the National Emergency Medical Services Information System (NEMSIS) under certain conditions. These conditions include the following – that the EMFTS Board and agency administering NEMSIS have

⁸⁶ R.C. 3709.011 and 3709.01.

⁸⁷ R.C. 4730.19, not in the bill.

⁸⁸ R.C. 4730.51, repealed. R.C. 4730.51 also requires the Medical Board to include on its website the name of each licensed physician assistant. However, R.C. 4731.071, not in the bill, establishes an Internet directory of license holders.

⁸⁹ R.C. 4765.06.



entered into a written contract, that the EMFTS Board transmits the data in accordance with the contract, and that the agency uses the data solely for inclusion in NEMSIS and does not disclose it to the public in a manner that identifies a specific provider of emergency medical services care.

Under the bill, the EMFTS Board may also transmit directly to NEMSIS – under the same conditions as existing law – data that identifies or tends to identify specific recipients of emergency medical care services. Moreover, the EMFTS Board may transmit both provider and recipient data not only to NEMSIS but to other research and monitoring databases as well.

With respect to the State Trauma Registry, existing law does not permit the EMFTS Board to transmit any data from the Registry to other research and monitoring databases. The bill, however, grants the EMFTS Board authority to transmit from the Registry data that identifies or tends to identify specific trauma care recipients and providers and that has not been risk adjusted to the National Trauma Data Bank or another research and monitoring database. As is the case for data transmitted from the Board's Emergency Medical Services Incidence Reporting System, the EMFTS Board and agency administering the National Trauma Data Bank or other database must enter into a written contract, the EMFTS Board must transmit data only in accordance with the contract, the agency must use the data solely for inclusion in its database and not disclose it to the public in a way that identifies a specific trauma care recipient or provider.

DEPARTMENT OF MEDICAID

Criminal records checks of Medicaid providers' employees

Current law permits the Department of Medicaid to require a Medicaid provider to (1) review databases specified in the Department's rules to determine whether an employee or prospective employee is included in a database and (2) require an employee or prospective employee to submit to a criminal records check as a condition of employment. A provider cannot employ a person if the person (1) has been excluded from being a Medicaid provider, Medicare provider, or provider for any other federal health care program, (2) is found by a database review to be included in a database and the Department's rules prohibit the Department from employing a person included in the database, or (3) fails to obtain a required criminal records check or, unless the Department's rules provide otherwise, is found by the criminal records check to have been convicted of or pleaded guilty to a disqualifying offense. A provider may conditionally employ a person pending the results of a criminal records check but must terminate the employment if the results are not received within 60 days or, unless the

Department's rules provide otherwise, the results of the criminal records check indicate that the person has been convicted of or pleaded guilty to a disqualifying offense.⁹⁰

The bill permits a Medicaid provider to choose to employ a person that the provider would otherwise be prohibited from employing or continuing to employ because of a database review or criminal records check requirement. If a provider chooses to employ or continue the employment of such a person, the provider cannot submit any Medicaid claims for any services the person provides.⁹¹

HISTORY

ACTION	DATE
Introduced	11-08-17
Reported, S. Health, Human Services & Medicaid	05-23-18
Passed Senate (32-0)	06-27-18
Reported, H. Health	---

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⁹⁰ R.C. 5164.34(C)(3), (D)(3), and (H).

⁹¹ R.C. 5164.34(D)(3), (H)(2), (I), and (K)(4)(d).

