



# OHIO LEGISLATIVE SERVICE COMMISSION

## Final Analysis

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### Sub. S.B. 229

132nd General Assembly  
(As Passed by the General Assembly)

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

**Reps.** Huffman, T. Johnson, Anielski, Antonio, Blessing, Brenner, Carfagna, Craig, Galonski, Ginter, Holmes, Koehler, Landis, Lang, Leland, Lepore-Hagan, Lipps, Manning, Miller, Perales, Reineke, Scherer, T. Smith, Sprague, Young, R. Smith

**Effective date:** March 22, 2019; scheduling controlled substances by rule effective March 22, 2020; one provision effective June 29, 2019

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## ACT SUMMARY

### STATE BOARD OF PHARMACY

#### Controlled substance schedules by rule

- Effective March 22, 2020, eliminates the statutory lists of drugs designated as controlled substance schedules I, II, III, IV, and V and, in their place, requires the State Board of Pharmacy to adopt and periodically update rules incorporating the schedules that have been established under federal law.
- Until March 22, 2020, adds to schedule V certain cannabidiol drugs that have been approved by the U.S. Food and Drug Administration.
- Beginning March 22, 2019, requires the Board to adopt emergency rules that add a previously unscheduled compound, mixture, preparation, or substance to schedule I if the Board determines that the drug has no accepted medical use in treatment and poses an imminent hazard to public health, safety, or welfare.

#### Regulation of controlled substances

- Requires certain records pertaining to controlled substances to be maintained for five years, instead of three years.

- Authorizes the dispensing of a schedule II controlled substance pursuant to an electronic prescription.
- 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.

### **Office-based opioid treatment**

- Exempts the following facilities from the licensing requirement that must be met to provide office-based opioid treatment: federally qualified health centers and their look-alikes, state or local correctional facilities, and other facilities specified by the Board in rule.
- Allows an office-based opioid treatment facility to employ a person with a criminal record if (1) the disqualifying offense was committed more than ten years before the person applied or (2) the Board grants the facility a waiver permitting the person to be employed despite having a disqualifying offense within the preceding ten years.

### **Drug take-back program**

- Specifies persons that may participate in the drug take-back program administered by the Board and modifies the information that must be included in the Board's report on the program.
- Requires the Board to publish on its website certain information about the drug take-back program and permits the Board to otherwise promote public awareness of the program.

### **Licensing, regulatory, and administrative provisions**

- 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 for registration as a registered pharmacy technician or certified pharmacy technician.
- Excludes from the Public Records Law various residential, familial, and other personal information about (1) Board employees and (2) 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.
- Requires designated Board investigators to complete continuing professional training each year through the Ohio Peace Officer Training Commission.

## **BOARDS OF HEALTH**

### **Credit cards**

- 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.

### **Board titles**

- 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 authorized to grant 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 to transmit data from its Emergency Medical Services



Incident Reporting System by (1) allowing the transmission of data identifying recipients of care, rather than only providers, and (2) allowing the data to be transmitted to any research and monitoring information system, rather than only the National Emergency Medical Services Information System.

- Authorizes the Board to transmit data identifying trauma care recipients and providers from its State Trauma Registry to eligible research and monitoring information systems, including the National Trauma Data Bank.

## DEPARTMENT OF MEDICAID

- Permits certain Medicaid providers to employ persons who otherwise cannot be employed because of criminal records check requirements so long as Medicaid claims are not submitted for the employees' services.

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## CONTENT AND OPERATION

### STATE BOARD OF PHARMACY

#### Controlled substance schedules

Pursuant to federal law, drugs are classified into one of five schedules (I through V) depending on the drug's acceptable medical use and its abuse or dependency potential.<sup>1</sup> The schedules are numbered in descending order of severity, with schedule I consisting of drugs with no 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 under federal law. Generally, the schedules under Ohio law are automatically

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<sup>1</sup> U.S. Drug Enforcement Administration, *Controlled Substances Act*, available at <https://www.dea.gov/controlled-substances-act>.



updated when certain federal changes occur, subject to rule-making authority granted to the State Board of Pharmacy.<sup>2</sup>

As discussed below, the act moves Ohio's controlled substance schedules from statute to administrative rule.

### **Schedules established by rule**

On March 22, 2020, the act eliminates the lists of drugs that are designated in the Revised Code as controlled substances. In place of the statutory controlled substance schedules, the act requires the Board to adopt rules that establish schedules I, II, III, IV, and V.<sup>3</sup> The rules are to incorporate the five schedules of controlled substances established under the federal drug abuse control laws.<sup>4</sup> The act 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.<sup>5</sup>

The act permits the Board to include in the schedules established by rule any compound, mixture, preparation, or substance that the statutory schedules included immediately before their elimination. However, this is to occur only if the inclusion does not provide less stringent control than is provided under the federal drug abuse control laws or associated regulations.<sup>6</sup>

The Board's rules establishing controlled substance schedules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). However, any rules that federal law requires to be adopted and in effect within 60 days of adoption are exempt from general requirements regarding legislative review by the Joint Committee on Agency Rule Review.<sup>7</sup>

### **Transition period for initial rule adoption**

Before the statutory controlled substance schedules are eliminated on March 22, 2020, the act requires the Board to adopt rules establishing Ohio's controlled substance

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<sup>2</sup> R.C. 3719.43 and 3719.44.

<sup>3</sup> R.C. 3719.41, as amended in Section 6. Also Section 8, establishing effective date of March 22, 2020.

<sup>4</sup> R.C. 3719.01(I); "Comprehensive Drug Abuse Prevention and Control Act of 1970," 21 United States Code 801.

<sup>5</sup> R.C. 3719.41, as amended in Section 6.

<sup>6</sup> R.C. 3719.41(A), as amended in Section 6.

<sup>7</sup> R.C. 119.03(C)(3) and 3719.41(A), as amended in Section 6.



schedules as anticipated by that legislative change. The rule-making process must be completed so that the rules take effect on the same date the statutory schedules are eliminated. 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.<sup>8</sup>

### **Cannabidiol drugs**

From March 22, 2019, to March 22, 2020, the act adds to schedule V certain cannabidiol drugs that have been approved by the U.S. Food and Drug Administration (FDA).<sup>9</sup> Generally, cannabidiol is a substance derived from the Cannabis (marijuana) species. It has certain analgesic, anti-inflammatory, and other effects, but lacks any psychoactive effect.<sup>10</sup>

### **Periodic updates and automatic changes**

The act requires the Board to periodically update the controlled substance schedules established 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 its rule-making authority.<sup>11</sup>

As with the prior statutory controlled substance schedules, the act specifies that certain federal changes are to be automatically effected in the schedules established by rule. Under the act, these automatic changes are to occur not only when the U.S. Attorney General has taken action, but also when Congress has done so. The act requires the Board to incorporate the automatic changes in its next update of the schedules.<sup>12</sup>

### **Emergency rules**

Beginning March 22, 2019, the act requires the Board, by emergency rule adopted in accordance with the Administrative Procedure Act, to add a previously unscheduled compound, mixture, preparation, or substance to schedule I if the Board determines

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<sup>8</sup> Section 9.

<sup>9</sup> R.C. 3719.41, as amended in Section 1. Also Section 11(A)(1), establishing effective date of March 22, 2019.

<sup>10</sup> National Center for Biotechnology Information, National Library of Medicine, *Cannabidiol*, available at <https://pubchem.ncbi.nlm.nih.gov/compound/cannabidiol#section=Top>.

<sup>11</sup> R.C. 3719.41(B), as amended in Section 6, and 3719.44(L).

<sup>12</sup> R.C. 3719.43.



that it has no accepted medical use in treatment in Ohio and poses an imminent hazard to the public health, safety, or welfare. The Board may make the determination by telephone conference call and must consider all of the following with respect to the compound, mixture, preparation, or substance:<sup>13</sup>

- 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 Board determines an imminent hazard is posed, it must determine whether to issue a resolution requesting the Governor to issue an order authorizing it 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. The Board's determination whether to request the Governor to issue an order may be made by telephone conference call.<sup>14</sup>

The act specifies that the Board's authority to adopt an emergency rule does not extend to distilled spirits, wine, or beer; dangerous drugs approved by the FDA; or any FDA-approved drug to be sold over the counter.<sup>15</sup> "Dangerous drug" is a statutory term that, in general, describes drugs that are available only by prescription.<sup>16</sup>

Beginning March 22, 2020, an emergency rule adopted under the act becomes invalid after its 180th day in effect if it is not adopted as a nonemergency rule during that time. Most other emergency rules become invalid after 120 days.<sup>17</sup>

### **Conforming changes**

The act makes conforming changes throughout the Revised Code to account for (1) its elimination of the statutory lists of drugs included in Ohio's controlled substance schedules and (2) the additional rule-making authority granted to the Board to establish the schedules by rule.<sup>18</sup>

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<sup>13</sup> R.C. 3719.45(A) and (C) and Section 10. Also Section 11(A)(2), establishing effective date of March 22, 2019.

<sup>14</sup> R.C. 3719.45(B) and (C).

<sup>15</sup> R.C. 3719.45(E).

<sup>16</sup> R.C. 4729.01(F).

<sup>17</sup> R.C. 119.03(G). Also Section 11(B), establishing effective date of March 22, 2020.

<sup>18</sup> R.C. 2907.02(B), 2907.05(C)(1), 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); also





## Record retention for controlled substances

The act 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 Board. The five-year requirement applies to the following:<sup>19</sup>

- Records relating to the sale of schedule II controlled substances;
- Records of controlled substances received, administered, dispensed, or used by prescribers;
- Records of controlled substances purchased;
- Records of controlled substances compounded, mixed, cultivated, grown, or produced by manufacturers, wholesalers, or other licensees, as well as controlled substances received and sold;
- Records of controlled substances received and sold by category III terminal distributors of dangerous drugs;
- Records relating to the sale or purchase of certain schedule V controlled substances.

The act 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 Board. This replaces provisions that required the orders to be signed in triplicate and originals to be presented and maintained.<sup>20</sup>

## Electronic prescriptions for schedule II controlled substances

The act specifies that a schedule II controlled substance may be dispensed on an electronic prescription. This is in addition to dispensing on a written prescription or, in certain emergency situations, through an oral prescription, as provided in continuing law.<sup>21</sup>

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Section 11(B), establishing effective date of March 22, 2022. R.C. 2925.03(J), as amended in Sections 3 to 5, effective June 29, 2019.

<sup>19</sup> R.C. 3719.04(B) and 3719.07(B) and (D).

<sup>20</sup> R.C. 3719.04(B).

<sup>21</sup> R.C. 3719.05(A)(3); see also U.S. Department of Justice, Electronic Prescriptions for Controlled Substances, available at <https://pubchem.ncbi.nlm.nih.gov/compound/cannabidiol#section=Top>.



## Limits on dispensing or selling opioid analgesics

### 14-day deadline for filling prescriptions

The act modifies provisions that generally prohibit an opioid analgesic from being dispensed through a prescription if the drug is to be used on an outpatient basis and more than 14 days have elapsed since the prescription was issued. Through these modifications, the act does the following:

--Applies the 14-day limitation only with respect to when a pharmacist may dispense an opioid analgesic, not to when the terminal distributor may subsequently sell the drug;<sup>22</sup>

--For single prescriptions, generally permits a pharmacist to dispense the drug after 14 days have elapsed since the prescription was issued, if the prescriber specified in writing the earliest date that the prescription may be filled and not more than 14 days have elapsed since that date;<sup>23</sup>

--Permits the Board to adopt rules to decrease the 14-day deadline relative to a single prescription, and extends the same authority to decrease the deadline to a continuing provision that permits the drug to be dispensed if a prescription is one of multiple prescriptions issued on the same day by a single prescriber with an earliest fill-date specified;<sup>24</sup>

--Permits a pharmacist to refill a prescription for an opioid analgesic after more than 14 days have elapsed since the prescription was issued, if the drug is included in schedule III, IV, or V;<sup>25</sup>

--If a prescription was partially filled within the 14-day period, permits a pharmacist to dispense the remaining amount of the opioid analgesic after the period has ended.<sup>26</sup>

### Treating opioid dependence or addiction

The act also specifies that the 14-day deadline for filling a prescription for an opioid analgesic, as well as a continuing provision that prohibits dispensing more than

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<sup>22</sup> R.C. 4729.46(B).

<sup>23</sup> R.C. 4729.46(B)(3)(a).

<sup>24</sup> R.C. 4729.46(D).

<sup>25</sup> R.C. 4729.46(B)(3)(c).

<sup>26</sup> R.C. 4729.46(B)(3)(d).

a 90-day supply, does not apply when the drug is used for treating opioid dependence or addiction.<sup>27</sup>

## **Office-based opioid treatment**

Ohio law generally requires a facility where a physician or other prescriber provides office-based opioid treatment to more than 30 patients to be licensed by the Board, specifically by obtaining a category III terminal distributor of dangerous drugs license with an office-based opioid treatment classification. "Office-based opioid treatment" is defined as the treatment of opioid dependence or addiction using a controlled substance.<sup>28</sup>

The act modifies the laws governing office-based opioid treatment by (1) creating additional exemptions from the licensing requirement and (2) permitting the employment of certain persons with records of committing otherwise disqualifying offenses. Identical provisions were included in H.B. 101 of the 132nd General Assembly (effective April 8, 2019).

### **Licensure exemptions**

Several types of facilities are exempt under continuing law from the office-based opioid treatment licensing requirement, including hospitals, hospital-operated treatment facilities, and clinical research facilities. The act creates exemptions for the following:

(1) Federally qualified health centers;

(2) Federally qualified health center look-alikes, which are community health organizations that do not receive the federal grants that federally qualified health centers receive, but meet all of the eligibility requirements for the funding;<sup>29</sup>

(3) State or local correctional facilities;

(4) Any other facilities specified in rules adopted by the Board.<sup>30</sup>

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<sup>27</sup> R.C. 4729.46(C)(2).

<sup>28</sup> R.C. 4729.553(A) and (B).

<sup>29</sup> FQHC.org. *What Is an FQHC Look-Alike and What Benefits Does One Receive?*, available at <https://www.fqhc.org/fqhc-look-alike-info>.

<sup>30</sup> R.C. 4729.553(B)(2)(g), (h), and (i).



The act also limits an exemption that applies to programs and facilities licensed or certified by the Ohio Department of Mental Health and Addiction Services. Under the act, a program or facility is exempt only if its license or certification from the Department is also approved by the Board.<sup>31</sup>

### **Criminal records checks**

Continuing law requires all employees of a licensed office-based opioid treatment facility to submit to a criminal records check. The act also requires persons seeking employment to submit a criminal records check.

Under the act, 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 preceding the date the person applied for employment. Prior to the act, the disqualification applied regardless of when the offense was committed.

Even under the act's ten-year period of consideration, a person with a disqualifying offense may be employed. For this to occur, the Board must authorize the employment by waiving the disqualification requirement for the facility.<sup>32</sup>

### **Drug take-back program**

The act makes a number of changes to the drug take-back program administered by the Board. Under the program, drugs are collected from the community for destruction and disposal.<sup>33</sup>

### **Participants and report**

The act specifies that program participants can be (1) law enforcement agencies, (2) registrants authorized by the federal Drug Enforcement Administration, and (3) other entities specified by the Board in rule. The act prohibits the Board from adopting rules that limit the authority of an entity to collect controlled substances in accordance with federal law.<sup>34</sup>

If the Board compiles data on the amount and type of drugs collected under the program, it must submit a report to the Governor and General Assembly. The act

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<sup>31</sup> R.C. 4729.553(B)(2)(f).

<sup>32</sup> R.C. 4729.553(D)(4) and (5).

<sup>33</sup> R.C. 4729.69(A)(1).

<sup>34</sup> R.C. 4729.69(A)(2) and (E)(4).



eliminates many of the detailed items that prior law required be included in the report. Instead, the act requires only that the total weight of drugs collected be included.<sup>35</sup>

### **Local laws**

The act specifies that an ordinance, resolution, or other law adopted by a municipal corporation or other political subdivision on or after March 22, 2019, 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.<sup>36</sup>

### **Public awareness**

The act requires the Board to make information about the program available on its website. The information must include (1) a description of the drugs eligible for collection and the options for collection, 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.

The act permits the Board to engage in other activities designed to promote public awareness of the drug take-back program.<sup>37</sup>

## **Licensure of drug manufacturers, wholesalers, and other distributors**

### **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 act requires the following to submit to a criminal records check:

- (1) The applicant;
- (2) Any person seeking to serve as the responsible person on the license;

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<sup>35</sup> R.C. 4729.69(F) and (G).

<sup>36</sup> R.C. 4729.69(J) and (E). Also Section 11(A)(1), establishing effective date of March 22, 2019.

<sup>37</sup> R.C. 4729.69I. Also Section 11(A)(2), establishing effective date of March 22, 2019.



- (3) Any person who has an ownership interest;
- (4) Any person who is a corporate officer.

The Board must adopt rules defining "responsible person" and specifying the persons with ownership interests and the corporate officers required to submit to the criminal records checks.<sup>38</sup>

### **Authorization to conduct criminal records checks**

The act 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;
- (8) Certified pharmacy technicians.

The Superintendent must review relevant information gathered, including sealed records, for those applicants, as well as pharmacists, pharmacy interns, operators of pain management clinic, and providers of office-based opioid treatment.<sup>39</sup>

### **Conviction reporting**

#### **By prosecutors**

In addition to those who are subject to reports under continuing law, the act generally requires a prosecutor to report to the Board when any of the following have been convicted of a violation of the Controlled Substances Law or Drug Offenses Law:

- (1) Outsourcing facilities;

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<sup>38</sup> R.C. 4729.53.

<sup>39</sup> R.C. 109.572(A)(9) and (B)(1). See also R.C. 4729.071, not in the act.

- (2) Third-party logistics providers;
- (3) Repackagers of dangerous drugs;
- (4) Pharmacy technician trainees;
- (5) Registered pharmacy technicians;
- (6) Certified pharmacy technicians.<sup>40</sup>

### **By courts**

Continuing provisions of the Drug Offenses Law also require courts to report certain convictions to regulatory or licensing boards and agencies.<sup>41</sup> The act requires courts to make reports of convictions involving the same additional persons listed above who must be reported to the Board by prosecutors.<sup>42</sup>

## **Terminal distributors of dangerous drugs**

### **Supervision of dangerous drugs**

The act specifies that, in addition to a pharmacist or prescriber, another person authorized by the Board may supervise the procurement for sale and distribution of dangerous drugs by a terminal distributor. Further, for purposes of providing proof of supervision and control of dangerous drugs as part of a terminal distributor's license application, the act permits proof of supervision by other persons authorized by the Board.<sup>43</sup>

### **Possession of controlled substances**

The act clarifies that a licensed terminal distributor may be in possession of controlled substances, which include drugs in schedules I through V. Prior to the act, the law referred only to possession of dangerous drugs (prescription drugs), which include drugs in schedules II through V, but exclude drugs in schedule I, as those drugs cannot be prescribed due to having no currently accepted medical use and a high

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<sup>40</sup> R.C. 3719.12.

<sup>41</sup> R.C. 2925.38, not in the act.

<sup>42</sup> R.C. 2925.01(W)(1), (14), and (15).

<sup>43</sup> R.C. 4729.01(Q) and 4729.55(B).

potential for abuse.<sup>44</sup> It also clarifies that a laboratory, as a licensed terminal distributor, may possess schedule I controlled substances, as well as dangerous drugs.<sup>45</sup>

### **Occasional sales of commercially unavailable drugs**

The act authorizes a licensed terminal distributor 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 Board.<sup>46</sup>

### **Emergency medical service organization satellites**

The act establishes a reduced terminal distributor license fee of \$120 for an emergency medical service organization satellite. "Emergency medical service organization satellite" is described as a location where dangerous drugs are stored that is separate from, but associated with, the headquarters of an emergency medical service organization. Prior to the act, Ohio law did not distinguish between an emergency medical service organization and a satellite. Under the act, each must be separately licensed. The application requirements for a satellite must be specified in rules to be adopted by the Board.<sup>47</sup>

### **Applications for pharmacy technicians**

The act eliminates a requirement that an application for registration as a registered or certified pharmacy technician include an attestation from a pharmacy's responsible person that the applicant has met education and training requirements. Completion of education and training is still required, but the method of proving completion is no longer specified.<sup>48</sup>

### **Public records exclusion**

The act excludes from the Public Records Law various types of information concerning (1) Board employees and (2) medical directors or members of cooperating physician advisory boards of emergency medical service organizations. The excluded information includes:

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<sup>44</sup> R.C. 4729.55(B); R.C. 4729.01(F) (definition of "dangerous drug," not modified by the act); United States Drug Enforcement Administration, *Drug Scheduling*, available at <https://www.dea.gov/drug-scheduling>.

<sup>45</sup> R.C. 4729.01(BB).

<sup>46</sup> R.C. 4729.51(A)(4).

<sup>47</sup> R.C. 4729.54.

<sup>48</sup> R.C. 4729.90(B).



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

--Information compiled from referral to or participation in an employee assistance program;

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

--The individual's medical information;

--The name of any beneficiary of the individual's employment benefits;

--The identity and amount of the individual's charitable or employment benefit deductions;

--The following information concerning the individual's spouse, former spouse, or child: name, residential address, employer name and address, Social Security number, residential or emergency telephone number, bank account number, and credit or debit card number.<sup>49</sup>

## **Lawful prescriptions**

For the Controlled Substances Law and other drug laws administered by the Board, the act specifies that an individual's authority to possess a controlled substance through a prescription applies only if the prescription meets the following conditions:<sup>50</sup>

(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.

Similarly, the act modifies provisions in the Drug Offenses Law that specify when a person is authorized to possess drugs through a prescription. It does so by (1) listing the conditions that a prescription must meet, as described above, and (2) eliminating the definition of "legitimate prescription" that contained the same criteria.<sup>51</sup>

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<sup>49</sup> R.C. 149.43 and 149.45.

<sup>50</sup> R.C. 3719.09.

<sup>51</sup> R.C. 2925.01 and 2925.11.



## Board investigators

The act requires certain Board investigators to complete continuing professional training each year, as directed by the Ohio Peace Office Training Commission.<sup>52</sup>

The training requirement applies to Board employees designated by the Board's executive director<sup>53</sup> to investigate drug offenses, the Pure Food and Drug Law, Controlled Substances Law, Medical Marijuana Control Program, Pharmacy Law, and Home Medical Services Law.<sup>54</sup> The Board is permitted to apply to the Commission for reimbursement of the costs of the training.<sup>55</sup>

## Statutory updates, conforming changes

In addition to the changes described above, the act makes other changes in Ohio laws related to drugs and the Board. These changes involve removing obsolete provisions, coordinating various provisions, and other conforming or corrective provisions.<sup>56</sup>

## BOARDS OF HEALTH

### Credit card account use

#### Authorization

The act permits a board of health of a city or general health district to authorize an officer or employee of the board to use a credit card account held by the board. These accounts may include any credit card account that is bank-issued, store-issued, financial institution-issued, or financial depository-issued; any affinity credit card account; 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 act expressly excludes any procurement card account,

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<sup>52</sup> R.C. 109.71(A)(25), defining "peace officer."

<sup>53</sup> R.C. 4729.04, not in the act.

<sup>54</sup> R.C. 109.71(A)(25). See also R.C. 109.803(A), not in the act.

<sup>55</sup> R.C. 109.802(D), not in the act.

<sup>56</sup> 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.



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.<sup>57</sup>

### **Use policy**

The act requires adoption of a written policy for use of credit card accounts. The policy must address specified topics, including authorized users and expenses, a procedure for submitting itemized receipts, the account's maximum credit limit, and the actions or omissions that qualify as misuse of a credit card.<sup>58</sup>

### **Name on credit cards and checks**

The name of the board of health holding the credit card account must appear on each presentation instrument related to the account, including cards and checks.<sup>59</sup>

### **Review of account use**

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 must appoint a compliance officer to conduct the review discussed below. The compliance officer may not use the credit card account or authorize use by officers and employees. The fiscal officer is not eligible to be appointed as the compliance officer.

At least quarterly, the compliance officer and the board must review the number of cards and accounts issued, the number that are active, and the expiration dates and credit limits.<sup>60</sup>

### **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 authorized users. The officer or employee is liable in person and upon any official bond given to the board to reimburse the health district's health fund the amount for which the officer or employee does not provide itemized receipts in accordance with the board's credit card policy.<sup>61</sup>

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<sup>57</sup> R.C. 3709.42(A)(2).

<sup>58</sup> R.C. 3709.42(B).

<sup>59</sup> R.C. 3709.42(C).

<sup>60</sup> R.C. 3709.42(D) and (E).

<sup>61</sup> R.C. 3709.42(F).



## **Misuse**

The act 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 pre-existing 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.<sup>62</sup>

## **Rewards**

The fiscal officer or the officer's designee annually must file a report with the board of health detailing all rewards received from use of the board's credit card account.<sup>63</sup>

## **Selection of board titles**

The act 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."<sup>64</sup>

# **STATE MEDICAL BOARD**

## **Maintaining supervision agreement information online**

The act eliminates a requirement that the State Medical Board maintain on its website the name of each supervising physician authorized to grant prescriptive authority to a physician assistant.<sup>65</sup> This corresponds with another enactment, H.B. 111 of the 132nd General Assembly, which eliminated the requirement to submit supervision agreements between physicians and physician assistants to the Board for review.

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<sup>62</sup> R.C. 3709.42(G). See also R.C. 2913.21, not in the act.

<sup>63</sup> R.C. 3907.42(H).

<sup>64</sup> R.C. 3709.01 and 3709.011.

<sup>65</sup> R.C. 4730.51 (repealed). See also R.C. 4731.071, not in the act, which requires the Board publish on its website a directory of license holders, including physician assistants.



# STATE BOARD OF EMERGENCY MEDICAL, FIRE, AND TRANSPORTATION SERVICES

## Data sharing

The act revises the circumstances under which the State Board of Emergency Medical, Fire, and Transportation Services is authorized to release identifying information from: (1) the Emergency Medical Services Incidence Reporting System and (2) the State Trauma Registry.<sup>66</sup> In general, continuing law prohibits the Board from making public any information it receives that identifies or would tend to identify specific providers or recipients of emergency medical services or trauma care.

### Emergency Medical Services Incidence Reporting System

With respect to the Emergency Medical Services Incidence Reporting System, the act does all of the following:

--Maintains the Board's authority to transmit directly to the National Emergency Medical Services Information System any data that may identify specific providers of emergency medical services;

--Also permits the Board to transmit to the national system any data that may identify specific recipients of the providers' services;

--Authorizes the Board to transmit the same types of identifying data to other entities that administer electronic information systems used for research and monitoring.

### State Trauma Registry

With respect to the State Trauma Registry, prior law did not permit the Board to release any identifying data to other entities. The act, however, grants the Board authority to transmit data from the Trauma Registry in a manner comparable to the Board's authority to transmit data from the Incidence Reporting System.

Under the act, data from the Trauma Registry that may identify specific recipients or providers of trauma care can be transmitted by the Board directly to the National Trauma Data Bank or other entities that administer information systems used for research and monitoring. As with data transmitted from the Incidence Reporting System, the Board and the entity receiving the Trauma Registry data must enter into a written contract, the Board must transmit data only in accordance with the contract, the recipient must use the data solely for inclusion in its information system, and the

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<sup>66</sup> R.C. 4765.06.



recipient must not disclose the data in a way that could identify a specific trauma care recipient or provider.

## DEPARTMENT OF MEDICAID

### Criminal records checks of Medicaid provider employees

The act permits certain types of Medicaid providers to choose to employ persons who otherwise could not be employed because of specified criminal records check requirements. If a Medicaid provider chooses to employ such a person, the provider cannot submit any Medicaid claims for any services the person provides.<sup>67</sup>

The act's provision takes effect March 22, 2019; however, another enactment modifies the provision effective April 5, 2019. For more information regarding the modifications, see pages 13-14 of the final analysis for H.B. 420, at <https://www.legislature.ohio.gov/download?key=11102&format=pdf>.

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### 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	12-12-18
Passed House (87-0)	12-13-18
Senate concurred in House amendments (32-0)	12-13-18

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<sup>67</sup> R.C. 5164.34(C)(3), (D)(3), (I), and (K)(4)(d).

