



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 292**

131st General Assembly  
(As Introduced)

**Sens.** Lehner, Coley, Seitz, Brown, Yuko

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## **BILL SUMMARY**

- Modifies the qualified immunity from civil liability for volunteer health care services provided to indigent and uninsured persons.
- Repeals provisions exempting delivery of a baby and certain operations from the immunity provisions.
- Modifies the circumstances under which health care providers are immune from liability for volunteer health care services provided to people eligible for the Medicaid program and Medicaid recipients.
- Requires the Department of Health to prepare an annual report regarding the provision of volunteer health care services to indigent and uninsured persons.
- Permits certain health care professionals to satisfy a portion of their continuing education requirements by providing health care services to indigent and uninsured persons.

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## **CONTENT AND OPERATION**

### **Qualified immunity for volunteer health care services**

The bill modifies existing law that grants health care professionals, health care workers, nonprofit health care referral organizations, and health care facilities or locations qualified immunity from civil liability for any injury, death, or loss to person or property that arises from an action or omission during the provision of certain

volunteer health care services to indigent and uninsured persons.<sup>1</sup> This immunity does not apply in the case of willful or wanton misconduct. To qualify for immunity, a health care professional must do all of the following before providing health care services to an indigent and uninsured person:

(1) Determine, in good faith, that the person is mentally capable of giving informed consent to the provision of health care services and is not subject to duress or under undue influence;

(2) Inform the person that the health care professional cannot be held liable for the provision of health care services, unless the professional's action or omission constitutes willful and wanton misconduct;

(3) Obtain informed consent and a written waiver signed by the person, stating that the person is mentally capable of consent and that consent was given without duress or subject to undue influence.

Under current law, except when health care services are necessary to preserve the life of the person in a medical emergency, this immunity does not apply to (1) health care services provided pursuant to a community service work order entered by a court, (2) an operation that requires the use of deep sedation or general anesthesia, is not typically performed in an office, or is performed by a health care professional and is beyond the professional's scope of practice or education, training, and competence, and (3) delivery of a baby or any other purposeful termination of a pregnancy. The bill removes the existing exceptions to immunity for certain operations and for the delivery of a baby.<sup>2</sup> But it maintains an existing prohibition under which free clinics are prohibited from performing the types of operations for which immunity currently does not apply (i.e., those that require administration of deep sedation or general anesthesia, are not typically performed in an office, or are beyond the education, training, competence, or authority of the health care professional involved in the operation).<sup>3</sup>

Additionally, the bill modifies the circumstances under which immunity applies to volunteer health care services provided to people eligible for the Medicaid program and Medicaid recipients. Under current law, for those services, immunity applies only until June 30, 2019, and only if the services are provided in a free clinic. The bill

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<sup>1</sup> R.C. 2305.234. "Indigent and uninsured" means that the person's income is less than 200% of the current federal poverty line and that the person does not have health insurance, is denied coverage, or is eligible for Medicaid or a Medicaid recipient.

<sup>2</sup> R.C. 2305.234(F)(1).

<sup>3</sup> R.C. 2305.2341.

removes the reference to June 30, 2019, thereby making the immunity apply indefinitely to volunteer health care services provided to people eligible for the Medicaid program and Medicaid recipients. The bill also removes the free clinic restriction, thereby making the immunity apply to volunteer health care services provided to people eligible for the Medicaid program and Medicaid recipients regardless of whether the services are provided in a free clinic.<sup>4</sup>

Regarding volunteer health care services provided by a nonprofit shelter or health care facility that has registered with the Department of Health (ODH), the bill specifies that immunity extends to any alternate or temporary location that is used by the shelter or facility to facilitate the provision of health care services, including vehicles or other units used as part of a mobile health care program.<sup>5</sup>

The bill clarifies that immunity applies to services performed by students enrolled in health care professional education programs by expressly including them in the definition of "health care worker."<sup>6</sup> It consolidates references to "medical, dental, or other health related diagnosis, care, or treatment" by including the phrase in the definition of "health care services."<sup>7</sup>

## **Report on volunteer health care services**

The bill requires ODH to prepare an annual report regarding the provision of volunteer health care services to indigent and uninsured persons. The report must include information regarding the efficacy of access and treatment outcomes of the health care services provided. ODH must submit a copy of the report annually to the General Assembly.

The bill requires all persons designated by ODH to submit information requested by ODH to prepare the report. All health care facilities or locations, health care professionals, health care workers, and nonprofit health care referral organizations must grant ODH access to all records related to volunteer health care services provided to indigent and uninsured persons.

The bill establishes that, in the absence of willful and wanton misconduct, a person is not liable for furnishing to ODH information regarding any patient the person examined or treated, and the person is not subject to professional disciplinary action for

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<sup>4</sup> R.C. 2305.234(A)(7) and (G)(3).

<sup>5</sup> R.C. 3701.071.

<sup>6</sup> R.C. 2305.234(A)(6).

<sup>7</sup> R.C. 2305.234, 2305.2341, 3701.071.

betrayal of a professional confidence. The furnished information may not be introduced into evidence in any civil action against the provider. Additionally, a person who furnishes information to ODH is not liable for the misuse or improper release of information by ODH or by any person.<sup>8</sup>

Under the bill, information reported to ODH that is protected health information may be released only in accordance with current law pertaining to the release of protected health information. Under current law, protected health information is information that reveals, or can be used to reveal, the identity of the subject of the information.<sup>9</sup> The bill permits information that does not identify an individual to be released in summary, statistical, or aggregate form.<sup>10</sup>

The bill requires the Director of Health to adopt rules to implement these provisions, including rules establishing standards and procedures for submitting information concerning volunteer health care services provided to indigent and uninsured persons.<sup>11</sup>

### **Continuing education for volunteer health care services**

The bill permits certain health care professionals to satisfy a portion of their continuing education requirements by providing health care services to indigent and uninsured persons. Under the bill, a licensing agency that licenses health care professionals must apply toward the satisfaction of a licensee's continuing education requirements the provision of health care services if the following conditions are satisfied:

- (1) The licensing agency requires licensees to complete continuing education as a condition of license renewal;
- (2) The health services are provided to an indigent and uninsured person;
- (3) The licensee provides the health services as a volunteer;
- (4) The licensee satisfies the requirements to qualify for immunity from liability for providing volunteer health care services to indigent and uninsured persons;

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<sup>8</sup> R.C. 3701.074.

<sup>9</sup> R.C. 3701.17, not in the bill.

<sup>10</sup> R.C. 3701.074.

<sup>11</sup> R.C. 3701.074.

(5) The health services provided are within the licensee's scope of authority.<sup>12</sup>

The bill requires licensing agencies to permit licensees to satisfy up to one-third of the licensee's continuing education requirement by providing volunteer health care services to indigent and uninsured persons. A licensing agency must permit licensees to earn continuing education at a rate of one credit hour for each sixty minutes spent providing volunteer health services.<sup>13</sup>

The bill specifies that these continuing education requirements apply to the following licensing agencies:

- (1) State Dental Board;
- (2) Board of Nursing;
- (3) State Board of Optometry;
- (4) Ohio Optical Dispensers Board;
- (5) State Board of Pharmacy;
- (6) State Medical Board;
- (7) State Board of Psychology;
- (8) State Chiropractic Board;
- (9) Hearing Aid Dealers and Fitters Licensing Board;
- (10) Board of Speech-language Pathology and Audiology;
- (11) Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board;
- (12) Counselor, Social Worker, and Marriage and Family Therapist Board;
- (13) Chemical Dependency Professionals Board;
- (14) Ohio Board of Dietetics;
- (15) Ohio Respiratory Care Board;
- (16) State Board of Emergency Medical Services;

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<sup>12</sup> R.C. 4745.04(B).

<sup>13</sup> R.C. 4745.04(C).

(17) State Board of Orthotics, Prosthetics, and Pedorthics;

(18) Any other licensing agency that considers its licensees to be health care professionals.<sup>14</sup>

The bill requires these licensing agencies to adopt rules to implement the continuing education provisions.<sup>15</sup>

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## HISTORY

### ACTION

### DATE

Introduced

03-10-16

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<sup>14</sup> R.C. 4745.04(A).

<sup>15</sup> R.C. 4745.04(D).

