



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 470

131st General Assembly
(As Reported by H. Health and Aging)

Rep. Schuring, Bishoff, Brown, T. Johnson

BILL SUMMARY

- Requires the Ohio Department of Health (ODH) to regulate palliative care facilities through a licensing process that is similar to ODH's licensure of hospice care programs and pediatric respite care programs.
 - Provides for the regulation of palliative care facilities by creating licensing procedures, requiring inspections, authorizing disciplinary actions, and requiring the Director of Health to adopt necessary rules.
 - Specifies that the provision of palliative care is not limited to palliative care facilities, hospice care programs, or pediatric respite care programs.
 - Permits a licensed hospice care program that operates an inpatient facility or unit to provide palliative care to any patient, rather than only hospice patients.
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CONTENT AND OPERATION

Regulation and licensure

The bill requires the Ohio Department of Health (ODH) to regulate palliative care facilities through a licensing process that is similar to ODH's licensure of hospice care programs and pediatric respite care programs.¹

Definitions

As defined by the bill, "palliative care" means treatment for a patient with a serious, chronic, or life-threatening illness directed at controlling pain, relieving other

¹ R.C. 3712.032.

symptoms, and enhancing the quality of life of the patient and the patient's family, particularly with psychosocial support and medical decision guidance, rather than treatment for the purpose of cure.²

The bill defines a "palliative care facility" as a facility operated by a person or public agency that provides palliative care 24 hours a day and seven days a week, the medical components of which are under the direction of a physician.³ The bill also defines a "palliative care patient" as a patient who has voluntarily requested and is receiving care from a person or public agency licensed to operate a palliative care facility.⁴ The bill specifies that a "hospice care program" or "pediatric respite care program" does not include a palliative care facility. As a result, a palliative care facility is not subject to the other programs' licensing requirements.⁵ The bill also states that it should not be interpreted to mean that palliative care can be provided only in a palliative care facility or as a component of a hospice care program or pediatric respite care program.⁶

Prohibitions against unlicensed activities

The bill prohibits a person or public agency from doing any of the following without a license:

- Holding itself out as operating a palliative care facility;
- Operating a palliative care facility.⁷

ODH must petition the court of common pleas of the county in which the prohibited activity is taking place for an order enjoining that person or public agency from conducting those activities without a license. Any person or public agency may request ODH to petition the court, and ODH must do so if it determines that the person or public agency named in the request is violating one or more of the prohibitions described above. The bill specifies that the court has jurisdiction to grant injunctive

² R.C. 3712.01(E).

³ R.C. 3712.01(M).

⁴ R.C. 3712.01(N).

⁵ R.C. 3712.01(A) and (J), 3712.03, not in the bill, 3712.031, not in the bill, and 3712.032.

⁶ R.C. 3712.01(E).

⁷ R.C. 3712.052(A).



relief upon a showing that the person or public agency named in the petition is conducting those activities without a license.⁸

Exemptions

The bill provides that the prohibitions against unlicensed activities described above do not apply to any of the following:

(1) A member of an interdisciplinary team or an employee of a licensed palliative care facility;⁹

(2) A hospital;

(3) A nursing home or residential care facility;

(4) A home health agency;

(5) A regional, state, or national nonprofit organization whose members are operators of palliative care facilities, individuals interested in palliative care facilities, or both, as long as the organization does not provide or represent that it operates a palliative care facility;¹⁰

(6) A person or government entity certified by the Ohio Department of Developmental Disabilities (ODODD) as a supported living provider;¹¹

(7) A residential facility licensed by ODODD;¹²

(8) A respite care home certified by a county board of developmental disabilities;

(9) A person providing respite care under a family support services program established by a county board of developmental disabilities;¹³

⁸ R.C. 3712.052(C).

⁹ R.C. 3712.052(A).

¹⁰ R.C. 3712.052(B).

¹¹ See R.C. 5123.161.

¹² See R.C. 5123.19.

¹³ See R.C. 5126.11.



(10) A person or government entity providing respite care under an ODODD-administered Medicaid waiver;¹⁴

(11) A hospice care program licensed by ODH;¹⁵

(12) A terminal care facility for the homeless that has entered into an agreement with a licensed hospice care program for the provision of hospice care services at the facility;¹⁶

(13) A pediatric respite care program licensed by ODH.¹⁷

Licensure process

Under the bill, every person or public agency that proposes to operate a palliative care facility must apply to ODH for a license. An applicant must provide required information on a form prescribed and provided by ODH and pay the required license fee established by rules to be adopted by the Director of Health. The fee cannot exceed \$600; however, with Controlling Board approval, the Director of Health may establish a fee that is up to 50% higher.¹⁸

ODH must grant a license to the applicant if the applicant is in compliance with the statutes and rules governing palliative care facilities. A license is valid for three years.¹⁹

License renewal

A licensed palliative care facility may renew its license by applying for renewal in the same manner as applying for initial licensure and providing a license renewal fee established in rules to be adopted by the Director of Health. The renewal fee cannot exceed \$600; however, with Controlling Board approval, the Director may establish a fee that is up to 50% higher.²⁰

¹⁴ See R.C. 5166.21.

¹⁵ See R.C. 3712.04.

¹⁶ See R.C. 3712.07.

¹⁷ See R.C. 3712.041.

¹⁸ R.C. 3721.032(A)(2).

¹⁹ R.C. 3721.032(C)(1) and 3721.042(A) and (B).

²⁰ R.C. 3721.032(A)(2).



An application for renewal must be made at least 90 days before the license expires. ODH must renew the license if the applicant is in compliance with the statutes and rules governing pediatric respite care programs.²¹

Inspections

ODH is required to make inspections as necessary, including those required by rules adopted under the bill, to determine whether palliative care facilities and services meet the requirements of the bill and the rules to be adopted under it.²² The rules must require a palliative care facility to be inspected as a condition of initial licensure and not less than every three years thereafter while the license is maintained (see "**Rulemaking**," below).²³ An inspection fee must be established by the Director of Health in rules. The fee cannot exceed \$1,750; however, with Controlling Board approval, the Director may establish a fee that is up to 50% higher.²⁴

Disciplinary actions

ODH may suspend or revoke a license of a palliative care facility if the license holder made any material misrepresentation in the license application or no longer meets the requirements of the bill or the rules to be adopted under it. ODH must comply with the Administrative Procedure Act (R.C. Chapter 119.) when taking disciplinary actions.²⁵

Rulemaking

Under the bill, the Director of Health must adopt, and may amend and rescind, rules in accordance with the Administrative Procedure Act that do all of the following:²⁶

(1) Provide for the licensing of persons or public agencies operating palliative care facilities and the suspension and revocation of those licenses;

(2) Establish a license fee, license renewal fee, and inspection fee in accordance with the maximum amounts described above;

²¹ R.C. 3712.042(B).

²² R.C. 3712.032(C)(2).

²³ R.C. 3712.032(B)(1).

²⁴ R.C. 3712.032(A)(3).

²⁵ R.C. 3712.032(C)(1) and 3712.042(C).

²⁶ R.C. 3712.032(A) and R.C. 3712.09(F).

(3) Establish requirements for palliative care facilities and services;

(4) Provide for the granting of licenses to persons and public agencies that are accredited or certified to operate palliative care facilities by an entity whose standards for accreditation or certification equal or exceed those provided for by the bill and the rules to be adopted under it;

(5) Establish metrics to measure the quality of care provided by palliative care facilities;

(6) Establish interpretive guidelines for the rules described above;

(7) Implement criminal background check requirements for applicants for employment with a palliative care facility who will be providing direct care to patients, including the circumstances under which a facility may employ a person who has been convicted of or pleaded guilty to specified offenses (such as certain sex and drug offenses) but meets personal character standards set by the Director.

The rules described in (1), above, must require a palliative care facility to be inspected as a condition of initial licensure and not less than every three years thereafter while the license is maintained.²⁷ The rules described in (3), above must:²⁸

--Be consistent with standards for the operation of palliative care facilities and the provision of palliative care services specified by the Center to Advance Palliative Care that is affiliated with the Icahn School of Medicine at Mount Sinai Medical Center in New York City, New York; and

--Specify the number of qualified staff, including physicians, registered nurses, social workers, and spiritual or other counselors, that must be on duty 24 hours a day and seven days a week. The number of staff specified must be based on the number of patients the facility is able to admit and patient acuity levels.

Hospice care program law extended to palliative care facilities

The bill otherwise provides for palliative care facilities to be subject to the same requirements as hospice care and pediatric respite care programs. The issues addressed in the laws made applicable to palliative care facilities include the following:

²⁷ R.C. 3712.032(A)(1), (B)(1), and (D)(2).

²⁸ R.C. 3712.032(B)(2).



--Required criminal records checks for applicants for employment with a palliative care facility who will be providing direct care to patients;²⁹

--Permission to request criminal records checks for applicants for employment with a palliative care facility who will not be providing direct care to patients;³⁰

--Requirements and responsibilities related to a patient's durable power of attorney for health care;³¹

--Requirements and responsibilities related to a patient's do-not-resuscitate order;³²

--Provisions holding a palliative care facility liable for a physician's failure to obtain informed consent before a medical procedure only if the physician is employed by the facility;³³

--Prohibitions related to assisted suicide.³⁴

The bill also makes a number of changes to conform the licensing system of palliative care facilities to the licensing system of hospice care and pediatric respite care programs.³⁵

Hospice care program law extended to health care professionals

In addition to extending hospice care and pediatric respite care requirements to palliative care facilities, the bill provides that certain licensed health professionals providing care to palliative care patients be subject to the same laws governing the care of hospice patients by these professionals. The issues addressed in the laws made applicable to licensed health professionals caring for palliative care patients include the following:

²⁹ R.C. 3712.09.

³⁰ R.C. 109.57.

³¹ R.C. 1337.11.

³² R.C. 2133.01.

³³ R.C. 2317.54.

³⁴ R.C. 3795.01.

³⁵ R.C. 140.01, 3701.881, 3721.01, 3963.01, 4719.01, 4752.02, and 5119.34.



--Provisions authorizing a nurse or physician assistant to determine and pronounce an individual's death;

--Provisions authorizing a clinical nurse specialist, certified nurse-midwife, certified nurse practitioner, or physician assistant to issue to a patient a prescription for a schedule II controlled substance;

--Provisions related to a review of patient information in the drug database established and maintained by the State Board of Pharmacy (OARRS);

--Provisions related to the delivery of non-self-injectable cancer drugs by a pharmacist or pharmacy intern;

--Requirements governing notice to patients of the termination of a physician's employment.³⁶

Provision of palliative care by inpatient hospice facilities and units

The bill permits a licensed hospice care program that operates an inpatient facility or unit to provide palliative care to any patient, notwithstanding any provision of Ohio law governing hospice care programs that limits such programs to providing services to hospice patients.³⁷ Under existing law not modified by the bill, a "hospice patient" is a patient, other than a pediatric respite care patient, who has been diagnosed as terminally ill, has an anticipated life expectancy of six months or less, and has voluntarily requested and is receiving care from a licensed hospice care program.³⁸ Accordingly, under the bill, a patient who does not meet the criteria to be a hospice patient may receive palliative care from a hospice care program. The bill does not, however, affect Medicaid or Medicare payments for palliative care provided to hospice patients. Medicaid and Medicare will pay for hospice services (including palliative care provided to a hospice patient³⁹) only if an individual elects hospice care in a written statement.⁴⁰

³⁶ R.C. 4723.36, 4723.481, 4723.487, 4729.43, 4730.202, 4730.411, 4730.53, 4731.055, and 4731.228.

³⁷ R.C. 3712.063.

³⁸ R.C. 3712.01(B).

³⁹ Under existing ODH rules, short-term inpatient care, including palliative care, may be provided to hospice patients. *See* O.A.C. 3701-19-01(I)(7).

⁴⁰ O.A.C. 5160-56-02(C)(1); Hospice Election Requirements, Medicare Benefit Policy Manual (CMS Pub. 100-02), Chapter 9, §§10, 20.2.1, and 40.1.3.1, available at <http://www.cgsmedicare.com/hhh/coverage/coverage_guidelines/election_requirements.html>.

HISTORY

ACTION

DATE

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Reported, H. Health & Aging

02-17-16
05-18-16

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