



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Audra Tidball

### **S.B. 177**

132nd General Assembly  
(As Introduced)

**Sens.** Lehner, Beagle, Coley, Thomas

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### **BILL SUMMARY**

- Establishes qualified immunity from civil liability related to performance of an operation or delivery of a baby by a volunteer health professional for a person who is indigent and uninsured.
  - Extends qualified immunity from civil liability to students enrolled in health care professional education programs who provide volunteer health care services to indigent and uninsured persons.
  - Causes an existing immunity that applies to volunteer health care services provided to Medicaid recipients in free clinics that is to end June 30, 2019, to continue after that date and apply regardless of where the services are performed.
  - Requires the Ohio Department of Health to prepare an annual report regarding the provision of volunteer health care services to indigent and uninsured persons.
  - Repeals current law establishing the Medical Liability Insurance Reimbursement Program.
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### **CONTENT AND OPERATION**

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

The bill creates a new qualified immunity from liability in damages for volunteer health care services provided to a person who is indigent and uninsured. The immunity applies to performance of an operation or delivery of a baby. "Indigent and uninsured" means a person's income is not more than 200% of the current federal poverty line and

the person does not have health insurance, is denied coverage, or is eligible for Medicaid or a Medicaid recipient.

Under existing law, health care providers, including health care professionals, health care workers, nonprofit health care referral organizations, and health care facilities or locations, that provide volunteer health care services to persons who are indigent and uninsured have a qualified immunity from civil liability. The immunity prevents them from being held liable in damages 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.<sup>1</sup>

The immunity is "qualified" because it does not apply in the case of willful or wanton misconduct by the provider. "Willful or wanton" is not defined in the bill, but the Ohio Supreme Court has held that willful misconduct implies an intentional deviation from a clear duty or rule of conduct, a deliberate purpose not to discharge a duty necessary to safety, or purposefully doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury; wanton misconduct is the failure to exercise any care toward those to whom a duty of care is owed in circumstances where there is great probability that harm will result.<sup>2</sup>

### **Informed consent**

In the case of a health care professional, to qualify for the immunity, the 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 in damages for injury caused by 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.

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<sup>1</sup> R.C. 2305.234.

<sup>2</sup> *Anderson v. Massillon*, 134 Ohio St.3d 380, 2012-Ohio-5711.



## **Operations and delivery of babies**

Under current law, except when health care services are necessary to preserve the life of the person in a medical emergency, the immunity does not apply to (1) an operation that requires the use of deep sedation or general anesthesia, is not typically performed in an office, or is beyond the scope of practice or education, training, and competence of the person who performs it, and (2) delivery of a baby or any other purposeful termination of a pregnancy.

Under the bill, the immunity applies to performing any operation and to delivering a baby.<sup>3</sup> The bill also extends the immunity to providing samples of medicine or other medical products.<sup>4</sup>

## **Student volunteers**

Under existing law, the immunity for volunteer health care services applies to "health care workers." The bill adds students enrolled in health care professional education programs to the definition of "health care worker," thereby extending the qualified immunity to students who provide volunteer health care services to indigent and uninsured patients.<sup>5</sup> Generally, current law maintained by the bill defines "health care worker" as a person, other than a health care professional, who provides medical, dental, or other health-related care as directed by an authorized health care professional. The term includes medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.

## **Persons eligible for Medicaid**

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, the immunity applies only until June 30, 2019, and only if the services are provided in a free clinic. The bill removes the reference to June 30, 2019, thereby making the immunity apply indefinitely. It also removes the free clinic restriction, thereby making the immunity apply to volunteer health care services provided regardless of whether the services are provided in a free clinic or elsewhere.<sup>6</sup>

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<sup>3</sup> R.C. 2305.234(F)(1).

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

<sup>5</sup> R.C. 2305.234(A)(6) and (C).

<sup>6</sup> R.C. 2305.234(A)(7) and (G)(3).



## **Location of services**

Regarding volunteer health care services provided by a nonprofit shelter or health care facility that has registered with the Ohio 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>7</sup>

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

The bill requires ODH to prepare an annual report on 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 each report to the General Assembly.

The bill requires all persons designated by ODH to submit information requested by ODH for 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 betrayal of a professional confidence. The furnished information may not be introduced into evidence in any civil action against the provider. 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>

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<sup>7</sup> R.C. 3701.071(B).

<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.



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>

### **Medical Liability Insurance Reimbursement Program**

The bill repeals the statute that establishes the Medical Liability Insurance Reimbursement Program. Enacted in 2005, the statute requires ODH to reimburse participating free clinics and federally qualified health center look-alikes up to 80% of the premiums the clinics pay for medical liability insurance coverage for clinic staff and volunteer health care professionals and workers, up to \$20,000. The statute provides that appropriations may be made to ODH from the General Revenue Fund for purposes of the program;<sup>12</sup> however, according to ODH, the Program is not in operation.<sup>13</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	08-10-17

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

<sup>12</sup> R.C. 2305.2341.

<sup>13</sup> Email from a representative of the Ohio Department of Health, April 18, 2016.

