



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Lisa Musielewicz

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(As Passed by the General Assembly)

Reps. LaTourette, Arndt, Schaffer, Schuring, Anielski, Antonio, Ashford, Barnes, Blessing, Boggs, Boyd, Brenner, Brown, Carfagna, Celebrezze, Cera, Clyde, Craig, Cupp, Dean, DeVitis, Edwards, Faber, Fedor, Galonski, Gavarone, Ginter, Green, Greenspan, Hagan, Hambley, Hill, Holmes, Howse, Huffman, Hughes, Ingram, Kick, Landis, Lang, Leland, Lepore-Hagan, Lipps, Manning, McColley, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Ramos, Reece, Reineke, Rezabek, Riedel, Rogers, Ryan, Scherer, Seitz, Sheehy, K. Smith, R. Smith, Sprague, Stein, M. Sweeney, Sykes, Thompson, West, Young, Rosenberger

Sens. Beagle, Burke, Coley, Eklund, Gardner, Hackett, Huffman, Kunze, Lehner, Manning, Oelslager, Peterson, Schiavoni, Tavares, Terhar, Thomas, Yuko

Effective date: March 20, 2019

ACT SUMMARY

Palliative care

- Creates the Palliative Care and Quality of Life Interdisciplinary Council to advise the Department of Health on matters related to palliative care initiatives.
- Establishes the Palliative Care Consumer and Professional Information and Education Program in the Department and requires the Department to publish on its website certain information regarding palliative care.
- Requires specified health care facilities and providers to establish a system for identifying patients or residents who could benefit from palliative care and to provide information on palliative care.
- Authorizes a hospice care program to provide palliative care to a patient who is not a hospice patient, but only if the care is provided on an inpatient and short-term basis and is medically necessary.

* This version updates the effective date.

- Exempts inpatient palliative care provided to patients with life-threatening illnesses from consideration under pain management clinic licensing requirements when the care is provided by a hospice care program to nonhospice patients or by any palliative care inpatient facility or unit that was not previously exempt.
- Specifies that Medicaid is not required to provide coverage of palliative care beyond that which is provided on the act's effective date.

Certificate of Need – relocation of beds

- Authorizes the Director of Health, through the Certificate of Need program, to approve relocation of certain county home beds or county nursing home beds to a long-term care facility in a contiguous county.

CONTENT AND OPERATION

PALLIATIVE CARE

Palliative Care and Quality of Life Interdisciplinary Council

The act creates the Palliative Care and Quality of Life Interdisciplinary Council and requires it to do all of the following:¹

(1) Consult with and advise the Director of Health on matters related to establishing, maintaining, operating, and evaluating palliative care initiatives in Ohio;

(2) Consult with the Department of Health about the Palliative Care Consumer and Professional Information and Education Program created by the act;

(3) Identify national organizations that have established standards of practice and best practice models for palliative care;

(4) Identify national and state initiatives aimed at integrating palliative care into the health care system and enhancing its use and development;

(5) Establish guidelines for health care facilities and providers to use in identifying patients who could benefit from palliative care;

(6) Prepare an annual report of recommendations for improving the provision of palliative care in Ohio, and submit each report by December 31 to the General Assembly, Governor, Director of Health, Director of Aging, Superintendent of

¹ R.C. 3701.36(B) and (E).



Insurance, Medicaid Director, and Executive Director of the Office of Health Transformation.

Membership

The Director of Health is charged with appointing the members of the Council.² Initial appointments must be made by June 18, 2019 (90 days after the act's effective date). The act limits the Council to 20 members and establishes the following criteria for appointments:

(1) The membership must include individuals with expertise in palliative care who represent the following:

--Patients;

--Family caregivers;

--Clergy or spiritual advisers;

--Health care professionals, including physicians, physician assistants, nurses, and pharmacists;

--Mental health professionals, including psychologists, professional counselors, social workers, and marriage and family therapists;

--Child life specialists;

--Exercise physiologists;

--Health insurers.

(2) The membership must include individuals who have worked with differing age groups and those who have experience or expertise in various palliative care delivery models.

(3) Employees of state agencies that administer palliative care programs or are otherwise concerned with palliative care delivery in Ohio may be included.

(4) At least two members must be physicians who are board-certified in hospice and palliative care.

² R.C. 3701.36(B), (C), and (D).



(5) At least one member must be an administrator of an Ohio hospital or hospital system or be a health care professional or mental health professional who treats patients as an employee or contractor of an Ohio hospital or hospital system.

(6) No more than two members may be employed by, practice at, or practice for, the same health care facility or provider.

(7) The Director must seek to include individuals who represent underserved areas of Ohio and to have all geographic areas of Ohio represented.

Administrative provisions

The act establishes the following provisions regarding Council members' terms of office, Council meetings, and other matters governing the Council's operation:³

--**Terms of office:** Members are to serve for three years. The act specifies procedures to be followed when a member's term expires or a vacancy occurs.

--**Meetings:** The Council must meet at the call of the Director, but not less than twice a year. Each year, the Council must select a chairperson and vice-chairperson. Their duties are to be established by the Council.

--**Compensation:** There is no compensation for serving as a member, except to the extent that serving is considered part of the member's regular employment duties.

--**Administrative support and funding:** The act requires the Department of Health to provide administrative support to the Council. At the Council's request, the Department must examine potential sources of funding to assist with any duties established by the act.

--**Sunset review:** The act exempts the Council from the law that generally requires agencies to undergo periodic evaluation by the Sunset Review Committee to determine the need for continued existence.⁴

Consumer and professional information

The act establishes the Palliative Care Consumer and Professional Information and Education Program in the Department of Health. The program's purpose is to maximize the effectiveness of palliative care initiatives in Ohio by ensuring that comprehensive and accurate information and education on palliative care is available to

³ R.C. 3701.36(D), (F), and (G).

⁴ See R.C. 101.82 to 101.87, not in the act.

health care facilities, other health care providers, and the public. The act authorizes the Department to develop other initiatives regarding palliative care and education as it considers appropriate. In implementing the program or other initiatives, the Department must consult with the Interdisciplinary Council.⁵

Website information

The act requires the Department to publish on its website information about palliative care, including:

- (1) Continuing education opportunities for health care professionals;
- (2) Information about palliative care delivery in a patient's home and in primary, secondary, and tertiary environments;
- (3) Best practices for palliative care delivery;
- (4) Consumer educational materials and referral information on palliative care, including hospice.

Duties of facilities and providers

The act requires certain health care facilities and providers to establish a system for identifying patients or residents who could benefit from palliative care. It also requires each of them to provide information on palliative care to those patients and residents. These requirements apply to: hospitals, ambulatory surgical facilities, nursing homes, residential care facilities, county or district homes, veterans' homes, home health agencies, hospice care programs, and pediatric respite care programs.⁶

Palliative care definition

The act defines "palliative care" as specialized care for a patient of any age diagnosed with a serious or life-threatening illness that is provided at any stage of the illness by an interdisciplinary team working in consultation with other health care professionals, including those who may be seeking to cure the illness, and that aims to do all of the following:⁷

- (1) Relieve the symptoms, stress, and suffering resulting from the illness;

⁵ R.C. 3701.361.

⁶ R.C. 3701.362.

⁷ R.C. 3701.36(A) and 3712.01(E); Section 3.



- (2) Improve the quality of life of the patient and the patient's family;
- (3) Address the patient's physical, emotional, social, and spiritual needs;
- (4) Facilitate patient autonomy, access to information, and medical decision making.

The act's definition of "palliative care" is a modification of a prior definition that was included in the hospice care licensing law. Its changes reflect an expanded description of the purposes of palliative care, the patient groups involved, and the relationship between palliative care providers and other health care professionals. Under prior law, "palliative care" was defined as treatment for a patient with a serious or life-threatening illness directed at controlling pain, relieving other symptoms, and enhancing the quality of life of the patient and the patient's family rather than treatment for the purpose of cure.⁸

Inpatient palliative care by hospice care programs

The act authorizes a hospice care program, in addition to providing palliative care to hospice patients, to provide palliative care to patients who are not hospice patients. The care may be provided to nonhospice patients only if the following conditions are met:⁹

- The care is provided in an inpatient facility or unit operated by the program;
- The care is provided to each patient on a short-term basis;
- The care is medically necessary for the patient receiving the care.

The act specifies that the provision of palliative care to nonhospice patients is considered a component of the activities authorized by the hospice care program's license. Under prior law, the activities that were subject to hospice licensure and regulation were limited to the care provided to hospice patients. To be considered a hospice patient, an individual must be terminally ill and have a life expectancy of six months or less.¹⁰

⁸ R.C. 3712.01(E).

⁹ R.C. 3712.10(A).

¹⁰ R.C. 3712.01(A) and (B).

The Director of Health must adopt rules governing a hospice care program's provision of palliative care to nonhospice patients. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).¹¹

The act specifies that nothing in the law governing hospice care programs precludes an entity that holds a license for a program, including a program that exercises the authority to provide palliative care to nonhospice patients, from owning, being owned by, or otherwise being affiliated with an entity that provides palliative care to nonhospice patients.¹²

The act relocates a provision prohibiting the hospice care licensing law from being interpreted as meaning that palliative care may be provided only by or as a component of a hospice care program or pediatric respite care program.¹³

Medicaid coverage

The act specifies that it does not alter Medicaid coverage of palliative care. Specifically, the act states that it does not require Medicaid to cover palliative care or any other health care service that constitutes palliative care, regardless of how the service is designated by a Medicaid provider or the program, in an amount, duration, or scope that exceeds the coverage that exists on the act's effective date.¹⁴

Inpatient palliative care exempt from pain management clinic licensure

Under continuing law, certain providers of pain management services must be licensed by the State Board of Pharmacy as pain management clinics. There are a number of exemptions from the licensure requirement, including one that applies to hospice care programs.¹⁵

The act exempts, with limitations, both of the following from pain management clinic licensure:

¹¹ R.C. 3712.10(B).

¹² R.C. 3712.10(C).

¹³ R.C. 3712.01(E) relocated, in part, to 3712.11.

¹⁴ Section 3.

¹⁵ R.C. 4729.552, not in the act, and 4731.054.



--A hospice care program with respect to palliative care provided in an inpatient facility or unit to nonhospice patients, as authorized by the act;¹⁶

--A palliative care inpatient facility or unit that does not admit hospice patients and is not otherwise excluded from licensure as a pain management clinic.¹⁷

The act's exemptions apply only in the case of palliative care patients who have a life-threatening illness. As a result, any palliative care patient with an illness that is serious, but not life-threatening, is counted when determining whether a pain management clinic license must be obtained.¹⁸

CERTIFICATE OF NEED

Relocation of beds from county homes

The act authorizes the Director of Health to issue a certificate of need (CON) under which beds can be relocated from a long-term care facility that is a county home or county nursing home to a long-term care facility in a contiguous county.¹⁹

Under the CON law, a "reviewable activity" related to a long-term care facility can be conducted only through a CON issued by the Director.²⁰ One of the activities that is reviewable is the relocation of beds to a facility in another county. The Director is authorized to accept a CON application for an increase in beds in an existing nursing home if certain conditions are met, including the condition that the proposed increase be attributable solely to relocation of licensed nursing home beds from an existing nursing home to another existing nursing home in a contiguous county.²¹

Under former law, the provision authorizing CONs for bed relocation did not apply to county homes and county nursing homes that provide long-term care, because they generally are not licensed as nursing homes. The act applies the provision to all long-term care facilities, rather than only nursing homes, thereby covering any county home or county nursing home that is Medicare-certified as a skilled nursing facility or Medicaid-certified as a nursing facility.

¹⁶ R.C. 4731.054(A)(6)(b)(vi). See also R.C. 3712.10 and conforming changes in R.C. 4731.054(A)(6)(b)(v).

¹⁷ R.C. 4731.054(A)(6)(b)(vii).

¹⁸ See R.C. 3712.01(E).

¹⁹ R.C. 3702.594.

²⁰ R.C. 3702.511 and 3702.53, not in the act.

²¹ R.C. 3702.594.



HISTORY

ACTION	DATE
Introduced	06-22-17
Reported, H. Aging & Long Term Care	10-26-17
Passed House (91-0)	11-29-17
Reported, S. Health, Human Services & Medicaid	11-28-18
Passed Senate (29-0)	12-06-18
House concurred in Senate amendments (93-0)	12-12-18

