



# Ohio Legislative Service Commission

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## Final Analysis

Laura Gengo

### **Am. Sub. S.B. 89** 128th General Assembly (As Passed by the General Assembly)

**Sens.** Morano, Fedor, Cafaro, Schiavoni, R. Miller, D. Miller, Kearney, Turner, Sawyer, Wilson, Wagoner, Gillmor, Schuring, Carey, Gibbs, Harris, Hughes, Niehaus, Patton, Schaffer, Strahorn, Smith

**Reps.** Bolon, Boose, Boyd, Brown, Carney, Celeste, Chandler, DeBose, DeGeeter, Dyer, Fende, Foley, Garland, Garrison, Goyal, Hackett, Hagan, Harris, Harwood, Koziura, Lehner, Letson, Luckie, Lundy, Mallory, Moran, Murray, Oelslager, Okey, Patten, Skindell, Slesnick, Stewart, Ujvagi, Weddington, B. Williams, S. Williams, Winburn, Yuko

**Effective date:** March 29, 2010

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## ACT SUMMARY

- Permits an out-of-state or federally employed advanced practice nurse with authority to prescribe drugs to obtain a certificate to prescribe in Ohio without completing an externship or, if the nurse's practice did not include the authority to prescribe controlled substances, by completing only a portion of the externship.
- Requires the Chancellor of the Ohio Board of Regents to establish within the Ohio Skills Bank a mechanism to facilitate communication, cooperation, and partnerships to meet regional and statewide nursing education needs.
- Sets the Drug Repository Program's handling fee at \$7.40 until December 31, 2010.

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## CONTENT AND OPERATION

### **Externship requirements for advanced practice nurses (APNs) seeking prescriptive authority**

(R.C. 4723.48, 4723.484(A), and 4723.50(B))

Under continuing law, an advanced practice nurse (APN) who is authorized to practice as a clinical nurse specialist, certified nurse-midwife, or certified nurse

practitioner may prescribe drugs and therapeutic devices, in collaboration with one or more physicians or podiatrists, by obtaining a certificate to prescribe through the Board of Nursing.<sup>1</sup> To obtain the certificate, an APN must first complete an externship.<sup>2</sup> The externship permits the APN to gain prescribing experience while being supervised by a physician in accordance with Board rules.

The Board's rules adopted prior to the act required that an externship consist of at least 1,500 but not more than 1,800 hours of supervised prescribing practice.<sup>3</sup> Of these hours, 500 had to be under direct supervision, which required that a supervising professional<sup>4</sup> be available on site. The remaining 1,000 to 1,300 hours could be under indirect supervision, which required that a physician provide timely reviews of the APN's prescribing practices and written prescriptions.

The act expresses in statute a portion of the Board's pre-existing rules pertaining to the length of the externship. Specifically, it requires that an APN seeking prescriptive authority complete at least 1,500 hours under supervision. The act eliminates a prior law provision specifying that an APN could not be required to participate in an externship longer than 1,800 hours.

### **Externship exemptions for out-of-state or federally employed APNs**

(R.C. 4723.482)

Under rules adopted by the Board prior to the act, an APN with prescriptive authority in another jurisdiction or employed by the United States government who was seeking prescriptive authority in Ohio could satisfy Ohio's externship requirement to complete at least 1,000 hours under indirect supervision by showing documentation that the APN's prescribing practice was overseen or supervised by a physician during the preceding three years.<sup>5</sup> Thus, the APN was required to complete only the portion of the externship consisting of at least 500 hours under direct supervision.

The act permits an out-of-state or federally employed APN to obtain prescriptive authority in Ohio without completing all or part of an externship, depending on

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<sup>1</sup> Certified registered nurse anesthetists are not eligible for prescriptive authority in Ohio.

<sup>2</sup> While participating in an externship, the APN practices under a certificate to prescribe that the Board issues as an "externship certificate" (R.C. 4723.48).

<sup>3</sup> Ohio Administrative Code 4723-09-04.

<sup>4</sup> Under the Board's rules adopted prior to the act, another APN with prescriptive authority could provide up to 200 of the 500 hours of direct supervision (O.A.C. 4723-9-04(B)(1)).

<sup>5</sup> O.A.C. 4723-09-04(C).

whether the APN is authorized to prescribe controlled substances in the other jurisdiction or as a federal employee.

**APNs authorized to prescribe controlled substances**

(R.C. 4723.48(B) and 4723.482(C))

The act exempts an out-of-state or federally employed APN from the requirement to complete an externship to obtain a certificate to prescribe if the APN meets the following requirements:

(1) Either (a) held, for a continuous period of at least one year during the three years immediately preceding the date of application for prescriptive authority in Ohio, valid authority issued by another jurisdiction to prescribe drugs and therapeutic devices, including at least some controlled substances, or (b) has been employed by the federal government for a continuous period of at least one year during the preceding three years with authority to prescribe drugs and therapeutic devices, including at least some controlled substances, in conjunction with the federal employment;

(2) Provides documentation that the prescribing component of the APN's practice was overseen or supervised by a licensed physician in the other jurisdiction or a licensed physician employed by the federal government;

(3) Completes a two-hour, Board-approved course in Ohio laws governing drugs and prescriptive authority;

(4) Holds a current, valid certificate of authority issued under Ohio law to practice as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(5) Pays the appropriate fee;

(6) Provides any additional information required by the Board.

The act requires the Board to issue a certificate to prescribe to each out-of-state or federally employed APN who meets the requirements described above.

**APNs not authorized to prescribe controlled substances**

(R.C. 4723.482(D), 4723.484(B), and 4723.50(B))

In the case of an out-of-state or federally employed APN whose prescriptive authority does or did not extend to controlled substances, the act exempts the APN from part of the externship in a manner similar to the Board's rules adopted prior to the

act. Specifically, the act requires the APN to complete only the part of the externship consisting of 500 hours of the externship under supervision.<sup>6</sup> To qualify for this partial exemption, the act requires the APN to meet the following requirements:

(1) Either (a) have held, for a continuous period of at least one year during the three years immediately preceding the date of application for prescriptive authority in Ohio, valid authority issued by another jurisdiction to prescribe drugs and therapeutic devices (excluding controlled substances), or (b) has been employed by the federal government for a continuous period of at least one year during the preceding three years with authority to prescribe drugs and therapeutic devices (excluding controlled substances) in conjunction with the federal employment;

(2) Provides documentation that the prescribing component of the APN's practice was overseen or supervised by a licensed physician in the other jurisdiction or a licensed physician employed by the federal government;

(3) Holds a current, valid certificate of authority issued under Ohio law to practice as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(4) Pays the appropriate fee;

(5) Provides any additional information required by the Board.

As part of successfully completing the externship requirement, the act requires that these APNs also complete a two-hour, Board-approved course in Ohio laws governing drugs and prescriptive authority.

### **Rule revisions**

(R.C. 4723.50(B); Section 3)

The act requires the Board to amend its rules to reflect the act's changes regarding prescriptive authority for out-of-state and federally employed APNs.<sup>7</sup> Until the rules are amended, the Board is prohibited from enforcing any rule that is inconsistent with the act.

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<sup>6</sup> While completing the 500 hours, the APN is to practice under an externship certificate.

<sup>7</sup> The act specifies that the Board's amendment of these rules is not subject to the continuing law provision under which rules pertaining to APN prescriptive authority must be adopted according to recommendations made by the Committee on Prescriptive Governance (*see* R.C. 4723.50(A)).

## Technical changes

To conform with its other changes, the act includes technical and other nonsubstantive changes in the following sections: R.C. 4723.01(K), 4723.06(A)(14) and (15), 4723.48(A), 4723.482(A), 4723.484, 4723.485, 4723.486, and 4723.50(A).

## Nursing education programs--partnerships and cooperation

(R.C. 3333.29)

As part of the Governor Ted Strickland's TurnAround Ohio plan, the Ohio Skills Bank was created to support regional partnerships in analyzing regional skill shortages in key industries and to devise solutions to address the shortages through workforce education, training, and portable credentialing.<sup>8</sup>

The act requires the Chancellor of the Ohio Board of Regents to establish within the Ohio Skills Bank a mechanism to facilitate communication, cooperation, and partnerships among state institutions of higher education<sup>9</sup> with nursing education programs and between state institutions of higher education and hospitals in Ohio to meet regional and statewide nursing education needs.

## Drug Repository Program

(Section 4)

Under continuing law,<sup>10</sup> the State Board of Pharmacy governs the Drug Repository Program under which donated drugs are collected and dispensed to Ohio residents who meet eligibility standards established by the Board. The drugs must be donated at a participating pharmacy, hospital, or nonprofit clinic. The Board is required to adopt rules establishing a formula to determine the amount of a handling fee that pharmacies, hospitals, and nonprofit clinics may charge to drug recipients to cover restocking and dispensing costs. Under the rules adopted prior to the act, the handling fee could not exceed 200% of the Medicaid professional dispensing fee.<sup>11</sup>

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<sup>8</sup> Community Research Partners, *The Ohio Skills Bank: Powering Skill Growth...Region by Region*, November 2007 (last visited March 29, 2010), available at <[http://jfs.ohio.gov/rfp/R89150877/Appx9.1\\_Ohio%20Skills%20Bank%20Initiative%20DesignAttach.pdf](http://jfs.ohio.gov/rfp/R89150877/Appx9.1_Ohio%20Skills%20Bank%20Initiative%20DesignAttach.pdf)>.

<sup>9</sup> The act defines a "state institution of higher education" as any state university or college, community college, state community college, university branch, or technical college.

<sup>10</sup> R.C. 3715.87, 3715.871, and 3715.873 (not in the act).

<sup>11</sup> O.A.C. 4729-35-09. Under Am. Sub. H.B. 1 of the 128th General Assembly, the biennial appropriations act, the Medicaid dispensing fee was reduced to \$1.80 (from \$3.70, as specified in O.A.C. 5101:3-9-05) for

The act sets the program's handling fee at \$7.40 for the period beginning on the act's effective date and ending on the later of December 31, 2010, or the date on which the Board revises the handling fee formula. The act permits the Board, on or after January 1, 2011, to either (1) set the handling fee according to the formula previously established by rule or (2) revise the formula, in consultation with the Director of Health,<sup>12</sup> by amending the rule accordingly.

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## HISTORY

ACTION	DATE
Introduced	04-01-09
Reported, S. Health, Human Services, & Aging	06-30-09
Passed Senate (32-0)	07-13-09
Reported, H. Health	11-24-09
Passed House (75-23)	12-16-09
Senate concurred in House amendments (32-0)	12-17-09

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the period January 1, 2010, to June 30, 2011 (Section 309.30.76). Because the Drug Repository Program's handling fee was based on the Medicaid dispensing fee, the amount that could be charged as a handling fee under the program was also reduced.

<sup>12</sup> Under continuing law, the Board's rules governing the Drug Repository Program must be adopted in consultation with the Director of Health (R.C. 3715.873).

