



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 367

129th General Assembly  
(As Reported by H. Health and Aging)

**Reps.** Maag, Grossman, Murray, Fende, Antonio, Duffey, Hackett, Sears

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## BILL SUMMARY

- Requires the Department of Health to regulate pediatric respite care programs through a licensing process that is similar to the Department's existing licensure process for hospice care programs.
- Specifies that a pediatric respite care program provides services to patients under age 27 who have been diagnosed before age 18 with life-threatening diseases or conditions that shorten life expectancy.
- Establishes required components of a licensed pediatric respite care program.
- Provides for the regulation of pediatric respite care programs by creating licensing procedures, requiring inspections, authorizing disciplinary actions, and requiring the Director of Health to adopt necessary rules.

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## CONTENT AND OPERATION

### Regulation of pediatric respite care programs

The bill requires the Department of Health to regulate pediatric respite care programs through a licensing process that is similar to the Department's existing licensure of hospice care programs. The rules for licensing pediatric respite care programs, however, are to be adopted by the Director of Health rather than the Public Health Council.<sup>1</sup>

As defined by the bill, a pediatric respite care program is a program that provides inpatient respite care and related services only to pediatric respite care

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<sup>1</sup> R.C. 3712.03 and 3712.031(C).

patients and pediatric respite care patients' families in order to meet the physical, psychological, social, spiritual, and other special needs that are experienced during or leading up to the final stages of illness, dying, and bereavement. All of the following services may be provided by a pediatric respite care program:

- (1) Short-term inpatient care, including both palliative and respite care and procedures;
- (2) Nursing care by or under the supervision of a registered nurse;
- (3) Physician's services;
- (4) Medical social services by a social worker under the direction of a physician;
- (5) Medical supplies, including drugs and biologicals, and the use of medical appliances;
- (6) Counseling for pediatric respite care patients and pediatric respite care patients' families;
- (7) Bereavement services for respite care patients' families.<sup>2</sup>

The bill defines "pediatric respite care patient" as a patient who (1) is less than 27 years old, (2) has been diagnosed before age 18 with a life-threatening disease or condition that is expected to shorten the patient's life expectancy, regardless of whether the patient is terminally ill, and (3) has voluntarily requested and is receiving care from a licensed pediatric respite care program.<sup>3</sup> The bill defines "pediatric respite care patient's family" as a patient's family members, including a spouse, brother, sister, child, or parent, and any other relative or individual who has significant personal ties to the patient and who is designated as a member of the patient's family by mutual agreement of the patient, the relative or individual, and the patient's interdisciplinary team.<sup>4</sup> A patient's interdisciplinary team is a working unit composed of professional and lay persons that includes at least a physician, a registered nurse, a social worker, a member of the clergy or a counselor, and a volunteer.<sup>5</sup>

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<sup>2</sup> R.C. 3712.01(J).

<sup>3</sup> R.C. 3712.01(K).

<sup>4</sup> R.C. 3712.01(L).

<sup>5</sup> R.C. 3712.01(D).

## **Separate licensure**

The bill provides for separate licensure of pediatric respite care programs and hospice care programs. It specifies that the term "pediatric respite care program" does not include a hospice care program, and in a corresponding provision, it specifies that the term "hospice care program" does not include a pediatric respite care program. As a result, neither program is subject to the other program's licensing requirements.<sup>6</sup>

## **Required components of a pediatric respite care program**

Under the bill, any person or public agency licensed to provide a pediatric respite care program is required to do all of the following:

(1) Provide a planned and continuous pediatric respite care program (the medical components must be under the direction of a physician);

(2) Ensure that care is available 24 hours a day, 7 days a week;

(3) Establish an interdisciplinary plan of care for each pediatric respite care patient and the patient's family that is coordinated by one designated individual who must ensure that all components of the plan of care are addressed and implemented, addresses maintenance of patient-family participation in decision making, and is reviewed by the patient's attending physician and by the patient's interdisciplinary team immediately prior to or on admission to each session of respite care;

(4) Have an interdisciplinary team or teams that provide or supervise the provision of pediatric respite care program services and establish the policies governing the provision of the services;

(5) Maintain central clinical records on all pediatric respite care patients under its care.<sup>7</sup>

## **Contracting for the provision of one or more program components**

A provider of a pediatric respite care program may arrange for another person or public agency to furnish one or more of the above components pursuant to a written contract. If the provider contracts with a home health agency for this purpose, the contract for the care must include all of the following terms:

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<sup>6</sup> R.C. 3712.01(A), (B), and (J), 3712.03, and 3712.031.

<sup>7</sup> R.C. 3712.061(A).

(1) The provider must furnish a copy of the patient's interdisciplinary plan to the home health agency and must specify the care that is to be provided by the home health agency;

(2) The regimen described in the established plan of care must be continued while the patient receives care from the home health agency, subject to the patient's needs, and with approval of the coordinator of the interdisciplinary team;

(3) All care, treatment, and services furnished by the home health agency must be entered into the patient's medical record;

(4) The designated coordinator of the interdisciplinary team must ensure conformance with the established plan of care;

(5) A copy of the home health agency's medical record and discharge summary must be retained as part of the patient's medical record.<sup>8</sup>

### **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 providing a pediatric respite care program;

--Providing a pediatric respite care program;

--Using the term "pediatric respite care program" or any term containing "pediatric respite care" to describe or refer to a health program, facility, or agency.<sup>9</sup>

The Department 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 the Department to petition the court, and the Department 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 gives the court jurisdiction to grant injunctive relief upon a showing that the person or public agency named in the petition is conducting those activities without a license.<sup>10</sup>

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<sup>8</sup> R.C. 3712.061(B).

<sup>9</sup> R.C. 3712.051(A).

<sup>10</sup> R.C. 3712.051(C).

## Exemptions from licensure

The bill specifies that the prohibitions described above do not apply to any of the following:

- (1) A member of an interdisciplinary team or an employee of a licensed pediatric respite care program;<sup>11</sup>
- (2) A hospital;
- (3) A home providing nursing care;
- (4) A home health agency, if it provides services under contract with a licensed pediatric respite care facility;
- (5) A regional, state, or national nonprofit organization whose members are providers of pediatric respite care programs, individuals interested in pediatric respite care programs, or both, as long as the organization does not provide or represent that it provides pediatric respite care programs.<sup>12</sup>

## Licensure process

Every person or public agency that proposes to provide a pediatric respite care program must apply to the Department for a license. An application for a license for a pediatric respite care program consists of both of the following:

- (1) Application form – an applicant must provide required information on a form prescribed and provided by the Department.
- (2) Fees – an applicant must pay the required license fee established by rules to be adopted by the Director of Health. This fee cannot exceed \$600 without Controlling Board approval. The maximum fee approved by the Controlling Board cannot exceed \$900.<sup>13</sup>

The Department must grant a license to the applicant if the applicant is in compliance with the statutes and rules governing pediatric respite care programs. A license is valid for three years.<sup>14</sup>

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<sup>11</sup> R.C. 3712.051(A).

<sup>12</sup> R.C. 3712.051(B).

<sup>13</sup> R.C. 3721.031(A)(2).

<sup>14</sup> R.C. 3721.031(C)(1) and 3721.041(A) and (B).

## License renewal

A licensed pediatric respite care program 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. This renewal fee cannot exceed \$600 without Controlling Board approval. The maximum fee approved by the Controlling Board cannot exceed \$900.<sup>15</sup> An application for renewal must be made at least 90 days prior to the expiration of the license. The Department must renew the license if the applicant is in compliance with the statutes and rules governing pediatric respite care programs.<sup>16</sup>

## Inspections

The Department is required to make inspections as necessary to determine whether pediatric respite care program facilities and services meet the requirements of the bill and the rules adopted under it.<sup>17</sup> An inspection fee must be established by the Director of Health in those rules. This fee cannot exceed \$1,750 without Controlling Board approval. The maximum fee approved by the Controlling Board cannot exceed \$2,625.<sup>18</sup>

## Disciplinary actions

The Department may suspend or revoke a license of a pediatric respite care program if the license holder made any material representation in the application for the license or no longer meets the requirements of the bill or the rules adopted under it. The Department must comply with the Administrative Procedure Act (R.C. Chapter 119.) when taking disciplinary actions.<sup>19</sup>

## Rulemaking

The Director of Health is required to adopt, and permitted to amend and rescind, rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Provide for licensure of pediatric respite care programs and suspension and revocation of those licenses;

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<sup>15</sup> R.C. 3721.031(A)(2).

<sup>16</sup> R.C. 3712.041(B).

<sup>17</sup> R.C. 3712.031(C)(2).

<sup>18</sup> R.C. 3712.031(A)(3).

<sup>19</sup> R.C. 3712.031(C)(1) and 3712.041(C).

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

(3) Establish requirements for pediatric respite care program facilities and services;

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

(5) Establish interpretive guidelines for the rules described above;<sup>20</sup>

(6) Implement criminal background check requirements for applicants for employment with a pediatric respite care program who will be providing direct care to pediatric respite care patients, including the circumstances under which a program 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.<sup>21</sup>

### **Existing law extended to pediatric respite care programs**

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

--Required criminal background checks for applicants for employment with a pediatric respite care program who will be providing direct care to pediatric respite care patients;<sup>22</sup>

--Permission to request criminal background checks for applicants for employment with a pediatric respite care program who will not be providing direct care to pediatric respite care patients;<sup>23</sup>

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<sup>20</sup> R.C. 3712.031(A) and (B).

<sup>21</sup> R.C. 3712.09(F)(2).

<sup>22</sup> R.C. 3712.09.

<sup>23</sup> R.C. 109.57.

--Requirements and responsibilities related to a patient's durable power of attorney for health care;<sup>24</sup>

--Requirements and responsibilities related to a patient's do-not-resuscitate order;<sup>25</sup>

--Provisions holding a pediatric respite care program liable for a physician's failure to obtain informed consent before a medical procedure only if the physician is an employee of the program;<sup>26</sup>

--Prohibitions related to assisted suicide.<sup>27</sup>

The bill also makes a number of changes to conform the licensing system of pediatric respite care programs to the licensing system of hospice care programs.<sup>28</sup>

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## HISTORY

ACTION	DATE
Introduced	11-01-11
Reported, H. Health & Aging	03-14-12

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<sup>24</sup> R.C. 1337.11.

<sup>25</sup> R.C. 2133.01.

<sup>26</sup> R.C. 2317.54.

<sup>27</sup> R.C. 3795.01.

<sup>28</sup> R.C. 3701.881, 3721.01, 3963.01, 4719.01, 4752.02, 5119.70, and 5119.71.

