



Ohio Legislative Service Commission

Bill Analysis

Michael J. O'Neill

H.B. 271

130th General Assembly
(As Introduced)

Rep. Becker

BILL SUMMARY

- Expands the existing civil immunity for harm that allegedly arises from an action or omission of certain volunteer health care volunteers and facilities in the provision of health care to an indigent and uninsured person.

CONTENT AND OPERATION

Qualified immunity for volunteer health care workers and facilities

Continuing law provides immunity from liability for harm that allegedly arises from an action or omission of certain health care volunteers and facilities in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, if certain criteria apply. These immunities are qualified – they are subject to certain exceptions.¹ These immunities are described more fully in "**Background**," below.

An "indigent and uninsured person" is a person who meets all of the following requirements:

- The person's income is not greater than 200% of the current federal poverty line.
- The person is not eligible for the Medicaid program or any other governmental health care program.

¹ R.C. 2305.234(B), (C), (D), and (E).

- Either (1) the person is not a covered individual under a health insurance or health care policy, contract, or plan, or (2) the person is such a covered individual but the insurer, policy, contract, or plan denies coverage or is the subject of insolvency or bankruptcy proceedings.²

Expansion of immunity

The bill expands the qualified immunity described above by eliminating the following exceptions to the immunity that are triggered when the health care professionals or health care workers involved are providing one of the following:

- Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order or a community control sanction imposed by a court as a result of the health care professional or health care worker having been convicted of a criminal offense;
- Performance of an operation to which any one of the following applies:
 - The operation requires the administration of deep sedation or general anesthesia.
 - The operation is a procedure that is not typically performed in an office.
 - The individual involved is a health care professional, and the operation is beyond the scope of practice or the education, training, and competence, as applicable, of the health care professional.
- Delivery of a baby.

The bill also eliminates a provision that retains the immunity, despite an exception applying, when the health care professional or health care worker provides medical, dental, or other health-related diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency.

The bill also eliminates a provision specifying that the qualified immunity does not grant immunity from civil liability to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location for actions that are outside the scope of authority of health care professionals or health care workers.

² R.C. 2305.234(A)(7).

Under continuing law, these immunities remain unavailable to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location if, at the time of an alleged harm, the health care professionals or health care workers involved are purposefully terminating a human pregnancy.³

Background

Health care professionals

Under continuing law, a health care professional who is a volunteer and complies with the criteria described below is not liable in damages for harm that allegedly arises from an action or omission of the volunteer in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct. This qualified immunity applies against any person or government entity in a civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim.

To qualify for this immunity, the health care professional must do all of the following prior to providing the diagnosis, care, or treatment:

- Determine, in good faith, that the indigent and uninsured person is mentally capable of giving informed consent to the provision of the diagnosis, care, or treatment and is not subject to duress or under undue influence;
- Inform the person of the provisions of the law providing the qualified immunity, including notifying the person that, by giving the informed consent, the person generally cannot hold the health care professional liable for damages, unless the action or omission of the health care professional constitutes willful or wanton misconduct;
- Obtain the informed consent of the person and a written waiver, signed by the person or by another individual on behalf of and in the presence of the person, that meets certain statutorily specified criteria.

Also, under continuing law, a physician or podiatrist who is not covered by medical malpractice insurance, but who meets the requirements for the qualified immunity, is not required to provide the patient with written notice of the physician's

³ R.C. 2305.234(F) and (G)(3), with conforming changes in R.C. 2305.234 and 2305.2341.

or podiatrist's lack of that insurance coverage prior to providing nonemergency professional services to the patient.⁴

A "health care professional" is any of the following people who provide medical, dental, or other health-related diagnosis, care, or treatment:

- Physicians;
- Registered nurses, licensed practical nurses, and individuals who hold a certificate of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;
- Physician assistants;
- Dentists and dental hygienists;
- Physical therapists, physical therapist assistants, occupational therapists, and occupational therapy assistants;
- Chiropractors, optometrists, podiatrists, dietitians, and pharmacists;
- Emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic;
- Respiratory care professionals;
- Speech-language pathologists and audiologists;
- Professional clinical counselors, professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists;
- Psychologists;
- Independent chemical dependency counselors, chemical dependency counselors III, chemical dependency counselors II, and chemical dependency counselors I.⁵

⁴ R.C. 2305.234(B).

⁵ R.C. 2305.234(A)(5).



Health care workers

Similarly, health care workers who are volunteers are generally not liable in damages for harm that allegedly arises from an action or omission of the health care worker in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct. This qualified immunity applies against any person or government entity in a civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim.⁶

A "health care worker" is a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities. The term includes medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.⁷

Nonprofit health care referral organizations

A nonprofit health care referral organization also is generally not liable in damages for harm that allegedly arises from an action or omission of the nonprofit health care referral organization in referring indigent and uninsured persons to (or arranging for the provision of) medical, dental, or other health-related diagnosis, care, or treatment by a health care professional or health care worker, unless the action or omission constitutes willful or wanton misconduct. This qualified immunity applies against any person or government entity in a civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim.⁸

A "nonprofit health care referral organization" is an entity that is not operated for profit and refers patients to, or arranges for the provision of, health-related diagnosis, care, or treatment by a health care professional or health care worker.⁹

Associated health care facility or location

Under continuing law, generally, a health care facility or location associated with a health care professional described above, a health care worker described above, or a nonprofit health care referral organization described above is not liable in damages for

⁶ R.C. 2305.234(C).

⁷ R.C. 2305.234(A)(6).

⁸ R.C. 2305.234(D).

⁹ R.C. 2305.234(A)(8).

harm that allegedly arises from an action or omission of the health care professional or worker or referral organization relative to the diagnosis, care, or treatment provided to an indigent and uninsured person on behalf of or at the health care facility or location, unless the action or omission constitutes willful or wanton misconduct. This qualified immunity applies against any person or government entity in a civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim.¹⁰

A "health care facility or location" is a hospital, clinic, ambulatory surgical facility, office of a health care professional or associated group of health care professionals, training institution for health care professionals, or any other place where medical, dental, or other health-related diagnosis, care, or treatment is provided to a person.¹¹

HISTORY

ACTION	DATE
Introduced	09-24-13

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¹⁰ R.C. 2305.234(E).

¹¹ R.C. 2305.234(A)(4).

