



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 276

130th General Assembly

(As Reported by S. Medicaid, Health and Human Services)

**Sens.** Jones and Tavares, Brown

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## BILL SUMMARY

### Safe Sleep Education Program

- Requires the Ohio Department of Health (ODH) to establish the Safe Sleep Education Program, and specifies that it operate in a manner similar to the existing Shaken Baby Syndrome Education Program.
- Requires facilities and locations that must participate in the Safe Sleep Education Program and that have infants regularly sleeping at them to adopt an internal infant safe sleep policy.
- Requires the ODH Director to adopt a model internal safe sleep policy that facilities may use when implementing their own internal safe sleep policies.

### Infant safe sleep screening procedure

- Requires hospitals and freestanding birthing centers to implement an infant safe sleep screening procedure for the purpose of assessing whether an infant will have a safe crib, portable play yard, or other suitable place to sleep in once discharged from the facility to the infant's residence following birth.
- Requires the ODH Director to develop questions that a facility may use when implementing an infant safe sleep screening procedure.
- Subject to certain exceptions, (1) requires a facility to arrange for an infant's parent, guardian, or caregiver to obtain a safe crib, portable play yard, or other suitable sleeping place at no charge if the facility determines through screening that the infant is unlikely to have a suitable place to sleep, and (2) prohibits the infant from being discharged until that requirement is satisfied.

- Specifies the means by which a facility may comply with the crib/portable play yard requirement described above.
- Requires hospitals and freestanding birthing centers to report to ODH information concerning the facility's compliance with the crib/portable play yard requirement.
- Annually beginning July 1, 2015, requires the ODH Director to submit a report to the Governor and General Assembly summarizing the information that has been reported by facilities in the preceding 12 months.

## **Immunity**

- Grants qualified civil immunity to an entity or person, and specifies that an entity or person is not subject to criminal prosecution or professional disciplinary action, as applicable, for an act or omission associated with compliance with the bill.

## **Shaken Baby Syndrome Education Program**

- Makes technical and conforming changes to the statutes governing the Shaken Baby Syndrome Education Program, collectively known as "Claire's Law."

# **CONTENT AND OPERATION**

## **Safe Sleep Education Program**

### **Administration**

The bill requires the Ohio Department of Health (ODH) to establish the Safe Sleep Education Program.<sup>1</sup> The Program is to operate in a manner similar to the Shaken Baby Syndrome Education Program that ODH administers under current law with the modifications the bill makes to that Program.<sup>2</sup>

Under the Safe Sleep Education Program, ODH must do all of the following:<sup>3</sup>

--By not later than 60 days after the bill's effective date, develop educational materials that present readily comprehensible information on safe sleeping practices for infants and possible causes of sudden unexpected infant death;

<sup>1</sup> R.C. 3701.66(B).

<sup>2</sup> R.C. 3701.66(C) and (D).

<sup>3</sup> R.C. 3701.66(B).



--Make available on ODH's website in an easily accessible format the educational materials described above;

--Beginning in 2015, assess the effectiveness of the Program by evaluating reports submitted to ODH by child fatality review boards as required under current law.

Under the bill, the educational materials that ODH develops must minimize, to the extent possible, administrative or financial burdens on any of the entities or persons that are required to distribute the materials.<sup>4</sup> The materials must be distributed by entities and persons with and in the same manner as the Shaken Baby Syndrome materials are distributed. Specifically, the distribution must be made as follows:<sup>5</sup>

--By child birth educators and the staff of obstetricians' offices, to an expectant parent who uses their services;

--By the staff of pediatric physicians' offices, to an infant's parent, guardian, or other person responsible for the infant, including a foster caregiver, who uses their services;

--By the staff of the hospital or freestanding birthing center in which an infant is born, to the infant's parent, guardian, or other person responsible for the infant, including a foster caregiver, before the infant is discharged from the facility;

--By the staff of the existing Help Me Grow program, to an infant's parent, guardian, or other person responsible for the infant, including a foster caregiver, during home-visiting services;<sup>6</sup>

--By each child care facility operating in Ohio, to each of its employees;

--By a public children services agency (PCSA), when the PCSA has initial contact with an infant's parent, guardian, or other person responsible for the infant, including a foster caregiver.

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<sup>4</sup> R.C. 3701.66(C).

<sup>5</sup> R.C. 3701.66(D).

<sup>6</sup> The Help Me Grow program is designed to ensure that Ohio's children receive a healthy birth and the resources to warrant a healthy and productive start in life. The program consists of three components: home visiting, early intervention, and infant hearing. (Ohio Department of Health, *Ohio Help Me Grow* (last visited May 27, 2014), available at <<http://www.helpmegrow.ohio.gov/aboutus/abouthelpmegrow.aspx>>.)

## **Internal infant safe sleep policy**

The bill requires each entity or person that must distribute the educational materials and has infants regularly sleeping at a facility or location under the entity's or person's control to adopt an internal infant safe sleep policy. The policy must specify when and to whom the educational materials are to be delivered to individuals working or volunteering at the facility or location and be consistent with the model internal safe sleep policy adopted by the ODH Director.<sup>7</sup>

### **Model internal safe sleep policy**

The bill requires the ODH Director to adopt a model internal infant safe sleep policy for use by entities and persons that must adopt an internal infant safe sleep policy. The policy must specify infant safe sleep practices, include images depicting safe sleep infant sleep practices, and specify sample content for an infant safe sleep education program that entities and persons may use when conducting new staff orientations.<sup>8</sup>

## **Infant safe sleep screening procedure**

### **Implementation**

The bill requires each hospital and freestanding birthing center to implement an infant safe sleep screening procedure. The purpose of the procedure is to determine whether there will be a safe crib, portable play yard, or other suitable sleeping place for each infant born at the hospital or freestanding birthing center to sleep in once the infant is discharged from the facility to the infant's residence following birth. The procedure must consist of questions that the facility's staff or volunteers must ask the infant's parent, guardian, or other person responsible for the infant regarding the infant's intended sleeping place and environment. The bill defines "other person responsible for the infant" to include a foster caregiver.<sup>9</sup>

### **Model questions developed by ODH Director**

The bill requires the ODH Director to develop questions that hospitals and freestanding birthing centers may use when implementing their infant safe sleep

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<sup>7</sup> R.C. 3701.66(E).

<sup>8</sup> R.C. 3701.66(F).

<sup>9</sup> R.C. 3701.67(A)(3).



screening procedures. When developing the questions, the Director may consult with persons and government entities that have expertise in infant safe sleep practices.<sup>10</sup>

### **Safe crib/portable play yard requirement**

If, prior to an infant's discharge from a facility to the infant's residence following birth, a hospital or freestanding birthing center determines through its infant safe sleep screening procedure that an infant is unlikely to have a safe crib, portable play yard, or other suitable sleeping place at the infant's residence, the bill generally prohibits the facility from discharging the infant until it arranges for the parent, guardian, or other person responsible for the infant to obtain one of those items at no charge to the individual. In meeting the safe crib/portable play yard requirement, the facility may do either of the following:<sup>11</sup>

--Collaborate with or obtain assistance from persons or government entities that are able to procure safe cribs, portable play yards, or other suitable sleeping places or provide money to purchase those items; or

--Refer the parent, guardian, or other person responsible for the infant to a site, designated by ODH's Bureau of Healthy Ohio for purposes of the "Cribs for Kids" component of the Violence and Injury Prevention Program the Bureau administers, at which a safe crib, portable play yard, or other suitable sleeping place may be obtained at no charge.

### **Exemptions**

The bill exempts from the safe crib/portable play yard requirement all of the following:<sup>12</sup>

(1) A hospital the ODH Director designates as a critical access hospital under continuing law.<sup>13</sup> (A "critical access hospital" (CAH) is a Medicare-certified hospital that (a) has not more than 25 inpatient beds, (b) maintains an annual average length of stay not exceeding 96 hours for acute inpatient care, (c) offers 24-hour, 7-day-a-week

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<sup>10</sup> R.C. 3701.67(B).

<sup>11</sup> R.C. 3701.67(C)(1).

<sup>12</sup> R.C. 3701.67(C)(1) and (2).

<sup>13</sup> R.C. 3701.073, not in the bill.



emergency care, and (d) is located in a rural area, at least 35 miles away from any other hospital or CAH.<sup>14</sup>)

(2) A hospital that is not a critical access hospital and has been identified by the ODH Director as not being served by a "Cribs for Kids" site (see "**Identification of facilities not served by a Cribs for Kids site**," below); or

(3) Any hospital otherwise subject to the safe crib/portable play yard requirement if funds for the "Cribs for Kids" component of the Bureau of Healthy Ohio's Violence and Injury Prevention Program have been exhausted.

If the circumstance described in (3) above exists, the bill requires the facility to make a good faith effort to satisfy the requirement by using the facility's own resources or by collaborating with or obtaining assistance from another person or government entity.<sup>15</sup>

### **Identification of facilities not served by a Cribs for Kids site**

Associated with the exemption to the safe crib/portable play yard requirement described in (2), above, the bill requires the ODH Director to identify, not less than annually, the facilities in Ohio that meet the criteria for that exemption and to notify those that do so.<sup>16</sup>

### **Reporting requirement**

The bill requires hospitals when they register annually with ODH under continuing law,<sup>17</sup> and freestanding birthing centers when they renew their licenses with ODH under continuing law,<sup>18</sup> to report all of the following information associated with compliance with the bill in a manner ODH prescribes:<sup>19</sup>

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<sup>14</sup> U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA) – Health Information Technology, *What Are Critical Access Hospitals (CAH)?* (last visited May 28, 2014), available at <<http://www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Introduction/critical.html>>.

<sup>15</sup> R.C. 3701.67(C)(2).

<sup>16</sup> R.C. 3701.67(D).

<sup>17</sup> R.C. 3701.07(A), not in the bill.

<sup>18</sup> Rules adopted under R.C. 3702.30, not in the bill, that are codified in O.A.C. 3701-83-04(B).

<sup>19</sup> R.C. 3701.67(E).



(1) The number of safe cribs, portable play yards, or other suitable places to sleep that the facility obtained and distributed by using its own resources since the last time the facility reported this information to ODH;

(2) The number of safe cribs, portable play yards, or other suitable places to sleep that the facility obtained and distributed by collaborating with or obtaining assistance from another person or government entity since the last time the facility reported this information to ODH;

(3) The number of referrals to a "Cribs for Kids" site that the facility made since the last time the facility reported this information to ODH;

(4) Demographic information specified by the ODH Director regarding individuals to whom (a) safe cribs, portable play yards, or other suitable sleeping places were distributed and (b) referrals to "Cribs for Kids" sites were made.

(5) In the case of a critical access hospital or a hospital meeting the exemption for hospitals not served by a "Cribs for Kids" site, demographic information specified by the ODH Director regarding each parent, guardian, or other person responsible for an infant determined through an infant safe sleep screening procedure as unlikely to have a safe crib, portable play yard, or other suitable sleeping place at the infant's residence; and

(6) Any other information collected by the facility regarding infant sleep environments and intended infant sleep environments that the ODH Director determines is appropriate.

### **Written report prepared by the ODH Director**

The bill requires the ODH Director, not later than July 1 of each year beginning in 2015, to prepare a written report summarizing the information described above that ODH has collected in the preceding 12 months from hospitals and freestanding birthing centers. The bill requires the report to be submitted to the Governor and the General Assembly.<sup>20</sup>

## **Immunity**

### **From civil liability**

The bill grants qualified immunity from liability in a civil action as follows:

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<sup>20</sup> R.C. 3701.67(F).



--To an entity or person required to distribute Shaken Baby Syndrome or safe sleep educational materials, unless the entity's or person's act or omission associated with the distribution constitutes willful or wanton misconduct;<sup>21</sup> and

--To a facility, and any employee, contractor, or volunteer of a facility, required to implement an infant safe sleep screening procedure unless the facility's or person's act or omission associated with procedure implementation constitutes willful or wanton misconduct.<sup>22</sup> (The bill defines a "contractor" as a person who provides personal services pursuant to a contract.<sup>23</sup>)

### **From criminal prosecution**

The bill specifies that all of the following are not subject to criminal prosecution:

--An entity or person required to distribute Shaken Baby Syndrome or safe sleep educational materials;<sup>24</sup> and

--A facility, and any employee, contractor, or volunteer of a facility, required to implement an infant safe sleep screening procedure.<sup>25</sup>

### **From professional disciplinary action**

To the extent a person is regulated under Title 47 of the Revised Code (which includes the regulation of most healthcare professionals), the bill specifies that the person is not subject to professional disciplinary action under that title for an act or omission associated with distributing Shaken Baby Syndrome and safe sleep educational materials or implementing an infant safe sleep screening procedure.

### **Preservation of existing immunity**

The bill specifies that its provisions do not eliminate, limit, or reduce any other immunity or defense that the entities or persons described above may be entitled to under the existing Political Subdivision Sovereign Immunity (PSSI) Law.<sup>26</sup> Under the PSSI Law, both of the following are the case:

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<sup>21</sup> R.C. 3701.64(C) and 3701.66(D).

<sup>22</sup> R.C. 3701.67(G).

<sup>23</sup> R.C. 3701.67(A)(1).

<sup>24</sup> R.C. 3701.64(C) and 3701.66(D).

<sup>25</sup> R.C. 3701.67(G).

<sup>26</sup> R.C. 3701.64(C), 3701.66(D), and 3701.67(G).



--A political subdivision is not generally liable for damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental function or proprietary function.<sup>27</sup> (Counties, townships, and municipal corporations are, among other entities, political subdivisions. Thus, hospitals operated by political subdivisions would be covered by the PSSI Law.)

--An employee of a political subdivision is immune from liability unless (1) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (2) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (3) civil liability is expressly imposed upon the employee by a section of the Revised Code.<sup>28</sup>

The PSSI Law specifies that civil liability is not to be construed to exist under another Revised Code section merely because that section imposes a responsibility or mandatory duty on an employee, provides for a criminal penalty, uses the term "shall" in a provision pertaining to an employee or because of a general authorization in that section that an employee may sue and be sued.<sup>29</sup>

## **Shaken Baby Syndrome Education Program**

The bill makes technical and conforming changes to the statutes governing the Shaken Baby Syndrome Education Program, known collectively as "Claire's Law." In particular, the bill:

--Requires the ODH Director to develop educational materials for the Program that, to the extent possible, minimize administrative or financial burdens on the entities and persons that must distribute the materials,<sup>30</sup> in contrast to current law, which prohibits the Director from developing educational materials that will impose an administrative or financial burden on the distributors;<sup>31</sup>

--Specifies that staff of a pediatrician's office, hospital, freestanding birthing center, or the Help Me Grow program may distribute the program's educational

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<sup>27</sup> R.C. 2744.02(A)(1).

<sup>28</sup> R.C. 2744.03(A)(6).

<sup>29</sup> R.C. 2744.03(A)(6)(c).

<sup>30</sup> R.C. 3701.63(C).

<sup>31</sup> R.C. 3701.63(C).



materials to an infant's guardian or other person responsible for the infant, including a foster caregiver, if that individual uses the facility's services in lieu of a parent;<sup>32</sup>

--Adds PCSAs to the list of entities and persons that must distribute the Program's educational materials, and specifies that PCSAs must distribute the materials when the PCSA has initial contact with an infant's parent, guardian, or other person responsible for the infant, including a foster caregiver;<sup>33</sup>

--Updates the definition of "maternity unit" to correspond with changes that were made by subsequent enactments.<sup>34</sup>

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## HISTORY

ACTION	DATE
Introduced	02-12-14
Reported, S. Medicaid, Health & Human Services	05-28-14

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<sup>32</sup> R.C. 3701.64(B)(2).

<sup>33</sup> R.C. 3701.64(B)(6).

<sup>34</sup> R.C. 3701.63(A)(6); see Sub. H.B. 331 of the 127th General Assembly.

