(125th General Assembly)
(Amended Substitute Senate Bill Number 86)

AN ACT

To amend sections 2305.234, 3701.071, 4715.42, and 4731.295 of the Revised Code and to amend Section 2 of Sub. H.B. 221 of the 124th General Assembly to extend immunity from liability for services provided by volunteer health care professionals and workers to additional health care facilities and locations and to nonprofit health care referral organizations, to provide additional requirements for the immunity of a health care professional, to increase the maximum allowable income of individuals who may be served by volunteers having immunity from liability, and to change the effective date of the drug repository statute to January 1, 2004.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2305.234, 3701.071, 4715.42, and 4731.295 of the Revised Code be amended to read as follows:

Sec. 2305.234. (A) As used in this section:

(1) "Chiropractic claim," "medical claim," and "optometric claim" have the same meanings as in section 2305.113 of the Revised Code.

(2) "Dental claim" has the same meaning as in section 2305.113 of the Revised Code, except that it does not include any claim arising out of a dental operation or any derivative claim for relief that arises out of a dental operation.

(3) "Governmental health care program" has the same meaning as in section 4731.65 of the Revised Code.

(4) "Health care facility or location" means 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.

(5) "Health care professional" means any of the following who provide

medical, dental, or other health-related diagnosis, care, or treatment:

(a) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(b) Registered nurses ~~, advanced practice nurses ,~~ and licensed practical nurses licensed under Chapter 4723. of the Revised Code and individuals who hold a certificate of authority issued under that chapter that authorizes the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(c) Physician assistants authorized to practice under Chapter 4730. of the Revised Code;

(d) Dentists and dental hygienists licensed under Chapter 4715. of the Revised Code;

(e) Physical therapists, physical therapist assistants, occupational therapists, and occupational therapy assistants licensed under Chapter 4755. of the Revised Code;

(f) Chiropractors licensed under Chapter 4734. of the Revised Code;

(g) Optometrists licensed under Chapter 4725. of the Revised Code;

(h) Podiatrists authorized under Chapter 4731. of the Revised Code to practice podiatry;

(i) Dietitians licensed under Chapter 4759. of the Revised Code;

(j) Pharmacists licensed under Chapter 4729. of the Revised Code;

(k) Emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic, certified under Chapter 4765. of the Revised Code;

(l) Respiratory care professionals licensed under Chapter 4761. of the Revised Code;

(m) Speech-language pathologists and audiologists licensed under Chapter 4753. of the Revised Code.

~~(5)~~(6) "Health care worker" means 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, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.

~~(6)~~(7) "Indigent and uninsured person" means a person who meets all of the following requirements:

(a) The person's income is not greater than ~~one~~ two hundred ~~fifty~~ per cent of the current poverty line as defined by the United States office of management and budget and revised in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.

9902, as amended.

(b) The person is not eligible to receive medical assistance under Chapter 5111., disability medical assistance under Chapter 5115. of the Revised Code, or assistance under any other governmental health care program.

(c) Either of the following applies:

(i) The person is not a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan.

(ii) The person is a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan, but the insurer, policy, contract, or plan denies coverage or is the subject of insolvency or bankruptcy proceedings in any jurisdiction.

~~(7)~~(8) "Nonprofit health care referral organization" means 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) "Operation" means any procedure that involves cutting or otherwise infiltrating human tissue by mechanical means, including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, or the removal of intraocular foreign bodies. "Operation" does not include the administration of medication by injection, unless the injection is administered in conjunction with a procedure infiltrating human tissue by mechanical means other than the administration of medicine by injection. "Operation" does not include routine dental restorative procedures, the scaling of teeth, or extractions of teeth that are not impacted.

~~(8) "Nonprofit shelter or health care facility" means a charitable nonprofit corporation organized and operated pursuant to Chapter 1702. of the Revised Code, or any charitable organization not organized and not operated for profit, that provides shelter, health care services, or shelter and health care services to indigent and uninsured persons, except that "shelter or health care facility" does not include a hospital as defined in section 3727.01 of the Revised Code, a facility licensed under Chapter 3721. of the Revised Code, or a medical facility that is operated for profit.~~

~~(9)~~(10) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons or government entities.

~~(10)~~(11) "Volunteer" means an individual who provides any medical,

dental, or other health-care related diagnosis, care, or treatment without the expectation of receiving and without receipt of any compensation or other form of remuneration from an indigent and uninsured person, another person on behalf of an indigent and uninsured person, any ~~shelter or~~ health care facility or location, any nonprofit health care referral organization, or any other person or government entity.

~~(11)~~(12) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(B)(1) Subject to divisions ~~(E)~~(F) and ~~(F)~~(G)(3) of this section, a health care professional who is a volunteer and complies with division (B)(2) of this section is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer in the provision ~~at a nonprofit shelter or health care facility~~ to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, including the provision of samples of medicine and other medical products, unless the action or omission constitutes willful or wanton misconduct.

(2) To qualify for the immunity described in division (B)(1) of this section, a health care professional shall do all of the following prior to providing diagnosis, care, or treatment:

(a) 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;

(b) Inform the person of the provisions of this section, including notifying the person that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot hold the health care professional liable for damages in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, unless the action or omission of the health care professional constitutes willful or wanton misconduct;

(c) 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 states that the person is mentally competent to give informed consent and, without being subject to duress or under undue influence, gives informed consent to the provision of the diagnosis, care, or treatment subject to the provisions of this section. A written waiver under division (B)(2)(c) of this section shall state clearly and in conspicuous type

that the person or other individual who signs the waiver is signing it with full knowledge that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot bring a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, against the health care professional unless the action or omission of the health care professional constitutes willful or wanton misconduct.

(3) A physician or podiatrist who is not covered by medical malpractice insurance, but complies with division (B)(2) of this section, is not required to comply with division (A) of section 4731.143 of the Revised Code.

(C) Subject to divisions ~~(E)~~(F) and ~~(F)~~(G)(3) of this section, health care workers who are volunteers are not liable in damages to any person or government entity in a tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care worker in the provision ~~at a nonprofit shelter or health care facility~~ 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.

(D) Subject to divisions (F) and (G)(3) of this section, a nonprofit health care referral organization is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property 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 described in division (B)(1) of this section or a health care worker described in division (C) of this section, unless the action or omission constitutes willful or wanton misconduct.

(E) Subject to divisions ~~(E)~~(F) and ~~(F)~~(G)(3) of this section and to the extent that the registration requirements of section 3701.071 of the Revised Code apply, a ~~nonprofit shelter or~~ health care facility or location associated with a health care professional described in division (B)(1) of this section ~~or~~, a health care worker described in division (C) of this section, or a nonprofit health care referral organization described in division (D) of this section is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health

care professional or worker ~~in providing for~~ or nonprofit health care referral organization relative to the ~~shelter or facility~~ medical, dental, or other health-related 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.

~~(E)~~(F)(1) Except as provided in division ~~(E)~~(F)(2) of this section, the immunities provided by divisions (B), (C), ~~and~~ (D), and (E) of this section are not available to ~~an individual or to a nonprofit shelter~~ 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 injury, death, or loss to person or property, the ~~individuals~~ health care professionals or health care workers involved are providing one of the following:

(a) Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court under division (B) of section 2951.02 of the Revised Code or imposed by a court as a community control sanction;

(b) Performance of an operation;

(c) Delivery of a baby.

(2) Division ~~(E)~~(F)(1) of this section does not apply ~~to an individual who provides, or a nonprofit shelter or health care facility at which the individual~~ when a 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.

~~(F)~~(G)(1) This section does not create a new cause of action or substantive legal right against a health care professional, health care worker, nonprofit health care referral organization, or ~~nonprofit shelter or~~ health care facility or location.

(2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which ~~an individual or~~ a ~~nonprofit shelter~~ health care professional, health care worker, nonprofit health care referral organization, or health care facility or location may be entitled in connection with the provision of emergency or other medical, dental, or other health-related diagnosis, care, or treatment.

(3) This section does not grant an immunity from tort or other civil liability to ~~an individual or~~ a ~~nonprofit shelter~~ 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.

(4) This section does not affect any legal responsibility of a health care

professional ~~or,~~ health care worker, or nonprofit health care referral organization to comply with any applicable law of this state or rule of an agency of this state.

(5) This section does not affect any legal responsibility of a ~~nonprofit shelter or~~ health care facility or location to comply with any applicable law of this state, rule of an agency of this state, or local code, ordinance, or regulation that pertains to or regulates building, housing, air pollution, water pollution, sanitation, health, fire, zoning, or safety.

Sec. 3701.071. (A) As used in this section~~, "nonprofit~~:

(1) "Indigent and uninsured person" has the same meaning as in section 2305.234 of the Revised Code.

(2) "Nonprofit shelter or health care facility" ~~has the same meaning as in section 2305.234 of the Revised Code~~ means a charitable nonprofit corporation organized and operated pursuant to Chapter 1702. of the Revised Code, or any charitable organization not organized and not operated for profit, that provides shelter, health care services, or shelter and health care services to indigent and uninsured persons. "Nonprofit shelter or health care facility" does not include a hospital, as defined in section 3727.01 of the Revised Code, a facility licensed under Chapter 3721. of the Revised Code, or a medical facility that is operated for profit.

(B) A nonprofit shelter or health care facility operating in this state shall register on the first day of January each year with the department of health. The immunity provided by division ~~(D)~~(E) of section 2305.234 of the Revised Code is not available to a nonprofit shelter or health care facility until the shelter or facility registers with the department in accordance with this section.

(C) A nonprofit shelter or health care facility operating in this state shall keep records of all patients who receive medical, dental, or other health-related diagnosis, care, or treatment at the shelter or facility. The department of health shall monitor the quality of care provided to patients at nonprofit shelters or health care facilities. The monitoring program may be conducted by contracting with another entity or through any other method authorized by law. The department may solicit and accept funds from private sources to fund the monitoring program.

Sec. 4715.42. (A)(1) As used in this section, "indigent and uninsured person~~,~~" ~~"nonprofit shelter or health care facility,"~~ and "operation" have the same meanings as in section 2305.234 of the Revised Code.

(2) For the purposes of this section, a person shall be considered retired from practice if the person's license has been surrendered or allowed to expire with the intention of ceasing to practice as a dentist or dental

hygienist for remuneration.

(B) The state dental board may issue, without examination, a volunteer's certificate to a person who is retired from practice so that the person may provide dental services to indigent and uninsured persons ~~at nonprofit shelters or health care facilities~~.

(C) An application for a volunteer's certificate shall include all of the following:

(1) A copy of the applicant's degree from dental college or dental hygiene school.

(2) One of the following, as applicable:

(a) A copy of the applicant's most recent license to practice dentistry or dental hygiene issued by a jurisdiction in the United States that licenses persons to practice dentistry or dental hygiene.

(b) A copy of the applicant's most recent license equivalent to a license to practice dentistry or dental hygiene in one or more branches of the United States armed services that the United States government issued.

(3) Evidence of one of the following, as applicable:

(a) The applicant has maintained for at least ten years prior to retirement full licensure in good standing in any jurisdiction in the United States that licenses persons to practice dentistry or dental hygiene.

(b) The applicant has practiced as a dentist or dental hygienist in good standing for at least ten years prior to retirement in one or more branches of the United States armed services.

(4) A notarized statement from the applicant, on a form prescribed by the board, that the applicant will not accept any form of remuneration for any dental services rendered while in possession of a volunteer's certificate.

(D) The holder of a volunteer's certificate may provide dental services ~~only on the premises of a nonprofit shelter or health care facility and~~ only to indigent and uninsured persons. The holder shall not accept any form of remuneration for providing dental services while in possession of the certificate. Except in a dental emergency, the holder shall not perform any operation. The board may revoke a volunteer's certificate on receiving proof satisfactory to the board that the holder has engaged in practice in this state outside the scope of the holder's certificate or that there are grounds for action against the person under section 4715.30 of the Revised Code.

(E)(1) A volunteer's certificate shall be valid for a period of three years, and may be renewed upon the application of the holder, unless the certificate was previously revoked under division (D) of this section. The board shall maintain a register of all persons who hold volunteer's certificates. The board shall not charge a fee for issuing or renewing a certificate pursuant to

this section.

(2) To be eligible for renewal of a volunteer's certificate, the holder of the certificate shall certify to the board completion of sixty hours of continuing dental education that meets the requirements of section 4715.141 of the Revised Code and the rules adopted under that section, or completion of eighteen hours of continuing dental hygiene education that meets the requirements of section 4715.25 of the Revised Code and the rules adopted under that section, as the case may be. The board may not renew a certificate if the holder has not complied with the appropriate continuing education requirements. ~~The nonprofit shelter or health care facility in~~ Any entity for which the holder provides dental services may pay for or reimburse the holder for any costs incurred in obtaining the required continuing education credits.

(3) The board shall issue to each person who qualifies under this section for a volunteer's certificate a wallet certificate and a wall certificate that state that the certificate holder is authorized to provide dental services pursuant to the laws of this state. The holder shall keep the wallet certificate on the holder's person while providing dental services and shall display the wall certificate prominently ~~in the nonprofit shelter or health care facility~~ at the location where the holder primarily practices.

(4) The holder of a volunteer's certificate issued pursuant to this section is subject to the immunity provisions in section 2305.234 of the Revised Code.

(F) The board shall adopt rules in accordance with Chapter 119. of the Revised Code to administer and enforce this section.

Sec. 4731.295. (A)(1) As used in this section, "indigent and uninsured person~~,~~" ~~"nonprofit shelter or health care facility,"~~ and "operation" have the same meanings as in section 2305.234 of the Revised Code.

(2) For the purposes of this section, a person shall be considered retired from practice if the person's license or certificate has expired with the person's intention of ceasing to practice medicine and surgery or osteopathic medicine and surgery for remuneration.

(B) The state medical board may issue, without examination, a volunteer's certificate to a person who is retired from practice so that the person may provide medical services to indigent and uninsured persons ~~at nonprofit shelters or health care facilities~~. The board shall deny issuance of a volunteer's certificate to a person who is not qualified under this section to hold a volunteer's certificate.

(C) An application for a volunteer's certificate shall include all of the following:

(1) A copy of the applicant's degree of medicine or osteopathic medicine.

(2) One of the following, as applicable:

(a) A copy of the applicant's most recent license or certificate authorizing the practice of medicine and surgery or osteopathic medicine and surgery issued by a jurisdiction in the United States that licenses persons to practice medicine and surgery or osteopathic medicine and surgery.

(b) A copy of the applicant's most recent license equivalent to a license to practice medicine and surgery or osteopathic medicine and surgery in one or more branches of the United States armed services that the United States government issued.

(3) Evidence of one of the following, as applicable:

(a) That the applicant has maintained for at least ten years prior to retirement full licensure in good standing in any jurisdiction in the United States that licenses persons to practice medicine and surgery or osteopathic medicine and surgery.

(b) That the applicant has practiced for at least ten years prior to retirement in good standing as a doctor of medicine and surgery or osteopathic medicine and surgery in one or more of the branches of the United States armed services.

(4) A notarized statement from the applicant, on a form prescribed by the board, that the applicant will not accept any form of remuneration for any medical services rendered while in possession of a volunteer's certificate.

(D) The holder of a volunteer's certificate may provide medical services ~~only on the premises of a nonprofit shelter or health care facility and~~ only to indigent and uninsured persons. The holder shall not accept any form of remuneration for providing medical services while in possession of the certificate. Except in a medical emergency, the holder shall not perform any operation or deliver babies. The board may revoke a volunteer's certificate on receiving proof satisfactory to the board that the holder has engaged in practice in this state outside the scope of the certificate.

(E)(1) A volunteer's certificate shall be valid for a period of three years, unless earlier revoked under division (D) of this section or pursuant to section 4731.22 of the Revised Code. A volunteer's certificate may be renewed upon the application of the holder. The board shall maintain a register of all persons who hold volunteer's certificates. The board shall not charge a fee for issuing or renewing a certificate pursuant to this section.

(2) To be eligible for renewal of a volunteer's certificate the holder of

the certificate shall certify to the board completion of one hundred fifty hours of continuing medical education that meets the requirements of section 4731.281 of the Revised Code regarding certification by private associations and approval by the board. The board may not renew a certificate if the holder has not complied with the continuing medical education requirements. ~~The nonprofit shelter or health care facility in~~ Any entity for which the holder provides medical services may pay for or reimburse the holder for any costs incurred in obtaining the required continuing medical education credits.

(3) The board shall issue to each person who qualifies under this section for a volunteer's certificate a wallet certificate and a wall certificate that state that the certificate holder is authorized to provide medical services pursuant to the laws of this state. The holder shall keep the wallet certificate on the holder's person while providing medical services and shall display the wall certificate prominently ~~in the nonprofit shelter or health care facility~~ at the location where the holder primarily practices.

(4) The holder of a volunteer's certificate issued pursuant to this section is subject to the immunity provisions in section 2305.234 of the Revised Code.

(F) The board shall adopt rules in accordance with Chapter 119. of the Revised Code to administer and enforce this section.

SECTION 2. That existing sections 2305.234, 3701.071, 4715.42, and 4731.295 of the Revised Code are hereby repealed.

SECTION 3. (A) As used in this section, "health care professional," "health care worker," "indigent and uninsured person," "nonprofit health care referral organization," and "volunteer" have the same meanings as in section 2305.234 of the Revised Code, as amended by this act.

(B) The Ohio Medical Malpractice Commission created by Section 4 of Am. Sub. S.B. 281 of the 124th General Assembly shall have the following duties, in addition to the other duties provided by law for the Commission:

(1) To study the affordability and availability of medical malpractice insurance for health care professionals and health care workers who are volunteers and for nonprofit health care referral organizations;

(2) To study the feasibility of whether the state of Ohio should provide catastrophic claims coverage, or an insurance pool of any kind, for health care professionals and health care workers to utilize as volunteers in providing medical, dental, or other health-related diagnosis, care, or

treatment to indigent and uninsured persons;

(3) To study the feasibility of whether the state of Ohio should create a fund to provide compensation to indigent and uninsured persons who receive medical, dental, or other health-related diagnosis, care, or treatment from health care professionals or health care workers who are volunteers, for any injury, death, or loss to person or property as a result of the negligence or other misconduct by those health care professionals or workers;

(4) To study whether the Good Samaritan laws of other states offer approaches that are materially different from the Ohio Good Samaritan Law as amended by this act, as contained in section 2305.234 of the Revised Code.

(C) The Commission shall submit a report of its findings regarding all of the matters provided in division (B) of this section to the members of the General Assembly not later than two years after the effective date of this act.

(D) The Department of Insurance shall provide any technical, professional, and clerical employees that are necessary for the Commission to perform its duties under this section.

SECTION 4. That Section 2 of Sub. H.B. 221 of the 124th General Assembly be amended to read as follows:

Sec. 2. Sections 3715.87, 3715.871, and 3715.872 of the Revised Code as enacted by ~~this act~~ Sub. H.B. 221 of the 124th General Assembly shall take effect ~~one year after the effective date of this section~~ on January 1, 2004.

SECTION 5. That existing Section 2 of Sub. H.B. 221 of the 124th General Assembly is hereby repealed.

SECTION 6. Sections 1, 2, 3, 4, 5, 6, and 10 of this act shall take effect ninety days after the effective date of this act.

SECTION 7. Section 2305.234 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 95 and Am. Sub. S.B. 51 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____