

**As Reported by the Senate Medicaid, Health and Human Services  
Committee**

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**Sub. H. B. No. 366**

**Representative Sprague**

**Cosponsors: Representatives Buchy, Hood, Phillips, Ruhl, Smith, Antonio,  
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**Senators Tavares, Brown**

**—**

**A B I L L**

To amend sections 3712.03, 3712.04, and 3712.99 and	1
to enact section 3712.062 of the Revised Code to	2
require hospice care programs to establish	3
policies to prevent diversion of controlled	4
substances that contain opioids.	5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

<b>Section 1.</b> That sections 3712.03, 3712.04, and 3712.99 be	6
amended and section 3712.062 of the Revised Code be enacted to	7
read as follows:	8

<b>Sec. 3712.03.</b> (A) In accordance with Chapter 119. of the	9
Revised Code, the director of health shall adopt, and may amend	10

and rescind, rules: 11

(1) Providing for the licensing of persons or public agencies 12  
providing hospice care programs within this state by the 13  
department of health and for the suspension and revocation of 14  
licenses; 15

(2) Establishing a license fee and license renewal fee for 16  
hospice care programs, neither of which shall, except as provided 17  
in division (B) of this section, exceed six hundred dollars. The 18  
fees shall cover the three-year period during which an existing 19  
license is valid as provided in division (B) of section 3712.04 of 20  
the Revised Code. 21

(3) Establishing an inspection fee for hospice care programs 22  
not to exceed, except as provided in division (B) of this section, 23  
one thousand seven hundred fifty dollars; 24

(4) Establishing requirements for hospice care program 25  
facilities and services; 26

(5) Establishing procedures a hospice care program must 27  
follow while investigating a sign of suspected diversion of 28  
controlled substances containing opioids pursuant to division 29  
(B)(5) of section 3712.062 of the Revised Code; 30

(6) Establishing requirements for reporting to a local law 31  
enforcement agency pursuant to division (B)(6) of section 3712.062 32  
of the Revised Code the results of an investigation of suspected 33  
diversion; 34

(7) Providing for a waiver of the requirement for the 35  
provision of physical, occupational, or speech or language therapy 36  
contained in division (A)(2) of section 3712.01 of the Revised 37  
Code when the requirement would create a hardship because such 38  
therapy is not readily available in the geographic area served by 39  
the provider of a hospice care program; 40

~~(6)~~(8) Providing for the granting of licenses to provide 41  
hospice care programs to persons and public agencies that are 42  
accredited or certified to provide such programs by an entity 43  
whose standards for accreditation or certification equal or exceed 44  
those provided for licensure under this chapter and rules adopted 45  
under it; 46

~~(7)~~(9) Establishing interpretive guidelines for each rule 47  
adopted under this section. 48

(B) Subject to the approval of the controlling board, the 49  
director may establish fees in excess of the maximum amounts 50  
specified in this section, provided that the fees do not exceed 51  
those amounts by greater than fifty per cent. 52

(C) The department of health shall: 53

(1) Grant, suspend, and revoke licenses for hospice care 54  
programs in accordance with this chapter and rules adopted under 55  
it; 56

(2) Make such inspections as are necessary to determine 57  
whether hospice care program facilities and services meet the 58  
requirements of this chapter and rules adopted under it; and 59

(3) Implement and enforce provisions of this chapter and 60  
rules adopted under it as such provisions apply to hospice care 61  
programs. 62

**Sec. 3712.04.** (A) Every person or public agency that proposes 63  
to provide a hospice care program shall apply to the department of 64  
health for a license. Application shall be made on forms 65  
prescribed and provided by the department, shall include such 66  
information as the department requires, and shall be accompanied 67  
by the license fee established by rules of the director of health 68  
adopted under division (A) of section 3712.03 of the Revised Code. 69

The department shall grant a license to the applicant if the  
applicant is in compliance with this chapter and rules adopted  
under it.

(B) A license granted under this section shall be valid for  
three years. Application for renewal of a license shall be made at  
least ninety days before the expiration of the license in the same  
manner as for an initial license, except that, if the program  
provides hospice care and services in a hospice patient's home,  
the application for renewal shall include written evidence  
demonstrating that the applicant is in compliance with section  
3712.062 of the Revised Code. The department shall renew the  
license if the applicant meets the requirements of this chapter  
and rules adopted under it.

(C) Subject to Chapter 119. of the Revised Code, the  
department may suspend or revoke a license if the licensee made  
any material misrepresentation in the application for the license  
or no longer meets the requirements of this chapter or rules  
adopted under it.

(D) A hospital, nursing home, home for the aged, county  
medical care facility, or other health facility or agency that  
provides a hospice care program shall be licensed to provide a  
hospice care program under this section.

(E) A nursing home licensed under Chapter 3721. of the  
Revised Code that does not hold itself out to be a hospice, does  
not hold itself out as providing a hospice care program, does not  
use the term hospice to describe or refer to its activities or  
facilities, and that does not provide all of the services  
enumerated in division (A) of section 3712.01 of the Revised Code  
is not subject to the licensing provisions of this chapter.

**Sec. 3712.062.** (A) Each hospice care program licensed under  
this chapter that provides hospice care and services in a hospice

patient's home shall establish a written policy establishing 102  
procedures to be followed in preventing the diversion of 103  
controlled substances containing opioids that are prescribed to 104  
its hospice patients. The policy shall include procedures for the 105  
disposal of any such drugs prescribed to a hospice patient as part 106  
of the patient's interdisciplinary plan of care that are 107  
relinquished to the program after the patient's death or that 108  
otherwise are no longer needed by the patient. The policy shall 109  
require that the disposal be documented by a program employee and 110  
conducted in any of the following ways: 111

(1) Performed by a program employee and witnessed by the 112  
patient or patient's family member; 113

(2) Performed by the patient or patient's family member and 114  
witnessed by a program employee; 115

(3) Performed by a program employee and witnessed by another 116  
program employee. 117

(B) As part of a hospice patient's interdisciplinary plan of 118  
care required by section 3712.06 of the Revised Code, each hospice 119  
care program that provides hospice care and services in the 120  
patient's home shall do all of the following: 121

(1) Before providing hospice care and services, distribute a 122  
copy of the written policy established under division (A) of this 123  
section to the patient and patient's family and discuss the 124  
procedures included in the policy with the patient and patient's 125  
family; 126

(2) Assess the patient, the patient's family, and the care 127  
environment for any risk factors associated with diversion; 128

(3) Maintain records of controlled substances containing 129  
opioids prescribed to the patient and included in the patient's 130  
interdisciplinary plan of care, including accurate counts of the 131

<u>numbers dispensed and used;</u>	132
<u>(4) Monitor the use and consumption of controlled substances</u>	133
<u>containing opioids prescribed to the patient and included in the</u>	134
<u>patient's interdisciplinary plan of care, including prescription</u>	135
<u>refills, for signs of diversion;</u>	136
<u>(5) Investigate any sign of suspected diversion in accordance</u>	137
<u>with rules adopted under division (A)(5) of section 3712.03 of the</u>	138
<u>Revised Code.</u>	139
<u>(6) Report the results of an investigation of suspected</u>	140
<u>diversion to the local law enforcement agency with jurisdiction</u>	141
<u>over the territory in which the hospice patient's home is located</u>	142
<u>in accordance with rules adopted under division (A)(6) of section</u>	143
<u>3712.03 of the Revised Code;</u>	144
<u>(7) Before providing hospice care and services, inform the</u>	145
<u>patient and the patient's family that the hospice care program</u>	146
<u>will dispose of any controlled substances containing opioids that</u>	147
<u>are no longer needed by the patient and were included in the</u>	148
<u>patient's interdisciplinary plan of care;</u>	149
<u>(8) After the patient's death or when no longer needed by the</u>	150
<u>patient, request, in writing, that the patient or patient's family</u>	151
<u>relinquish to the program for disposal any remaining controlled</u>	152
<u>substances containing opioids that were included in the patient's</u>	153
<u>interdisciplinary plan of care to the program;</u>	154
<u>(9) Report to the local law enforcement agency with</u>	155
<u>jurisdiction over the territory in which the hospice patient's</u>	156
<u>home is located the quantity and type of any remaining controlled</u>	157
<u>substances containing opioids that were included in the patient's</u>	158
<u>interdisciplinary plan of care and were not relinquished to the</u>	159
<u>program by the patient or patient's family.</u>	160
<u>(C) If a hospice care program complies with divisions (B)(8)</u>	161
<u>and (9) of this section, none of the following shall be liable in</u>	162

damages to any person or government entity in a civil action for 163  
injury, death, or loss to person or property that allegedly arises 164  
from an action or omission relative to this section unless the 165  
action or omission constitutes willful or wanton misconduct: the 166  
program; a program employee, officer, or director; or a prescriber 167  
of controlled substances containing opioids that were included in 168  
the patient's interdisciplinary plan of care. 169

(D) No person who receives a written request under division 170  
(B)(8) of this section shall fail to relinquish controlled 171  
substances containing opioids that were included in a patient's 172  
interdisciplinary plan of care. 173

(E) Following a report from a hospice program under division 174  
(B)(9) of this section, the local law enforcement agency with 175  
jurisdiction over the territory in which the hospice patient's 176  
home is located shall investigate and dispose of the remaining 177  
controlled substances containing opioids that were reported to the 178  
agency pursuant to division (B)(9) of this section. 179

(F) After a review of the written evidence submitted under 180  
division (B) of section 3712.04 of the Revised Code with an 181  
application for license renewal, if the department determines that 182  
the program is not in compliance with this section, the department 183  
may suspend the program's license for not more than six months and 184  
impose a fine not to exceed twenty thousand dollars. 185

(G) Not later than one year after the effective date of this 186  
section, the director of health shall adopt rules in accordance 187  
with Chapter 119. of the Revised Code establishing standards and 188  
procedures for the submission and review of the written evidence 189  
required by division (B) of section 3712.04 of the Revised Code 190  
for renewal of a hospice care program license. 191

**Sec. 3712.99.** (A) Any person who violates division (A) of 192  
section 3712.05 or division (A) of section 3712.051 of the Revised 193

Code is guilty of a misdemeanor of the second degree on a first 194  
offense; on each subsequent offense the person is guilty of a 195  
misdemeanor of the first degree. 196

(B) Any person who violates division (D) of section 3712.062 197  
of the Revised Code is guilty of a minor misdemeanor. 198

**Section 2.** That existing sections 3712.03, 3712.04, and 199  
3712.99 of the Revised Code are hereby repealed. 200

**Section 3.** Not later than one year after the effective date 201  
of this act, each hospice care program that holds a license under 202  
Chapter 3712. of the Revised Code on the act's effective date and 203  
that provides hospice care and services in a hospice patient's 204  
home shall submit to the Department of Health written evidence 205  
demonstrating that the program is in compliance with section 206  
3712.062 of the Revised Code, as enacted by this act. After a 207  
review of the evidence submitted, if the Department determines 208  
that the program is not in compliance with that section, the 209  
Department may suspend the program's license for not more than six 210  
months and impose a fine not to exceed twenty thousand dollars. 211