

AN ACT

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

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

SECTION 1. That sections 3712.03, 3712.04, and 3712.99 be amended and section 3712.062 of the Revised Code be enacted to read as follows:

Sec. 3712.03. (A) In accordance with Chapter 119. of the Revised Code, the director of health shall adopt, and may amend and rescind, rules:

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

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

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

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

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

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

(7) Providing for a waiver of the requirement for the provision of physical, occupational, or speech or language therapy contained in division (A)(2) of section 3712.01 of the Revised Code when the requirement would

create a hardship because such therapy is not readily available in the geographic area served by the provider of a hospice care program;

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

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

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

(C) The department of health shall:

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

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

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

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

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

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

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

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

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

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

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

(3) Maintain records of controlled substances containing opioids prescribed to the patient and included in the patient's interdisciplinary plan

of care, including accurate counts of the numbers dispensed and used:

(4) Monitor the use and consumption of controlled substances containing opioids prescribed to the patient and included in the patient's interdisciplinary plan of care, including prescription refills, for signs of diversion;

(5) Investigate any sign of suspected diversion in accordance with rules adopted under division (A)(5) of section 3712.03 of the Revised Code.

(6) Report the results of an investigation of suspected diversion to the local law enforcement agency with jurisdiction over the territory in which the hospice patient's home is located in accordance with rules adopted under division (A)(6) of section 3712.03 of the Revised Code;

(7) Before providing hospice care and services, inform the patient and the patient's family that the hospice care program will dispose of any controlled substances containing opioids that are no longer needed by the patient and were included in the patient's interdisciplinary plan of care;

(8) After the patient's death or when no longer needed by the patient, request, in writing, that the patient or patient's family relinquish to the program for disposal any remaining controlled substances containing opioids that were included in the patient's interdisciplinary plan of care to the program;

(9) Report to the local law enforcement agency with jurisdiction over the territory in which the hospice patient's home is located the quantity and type of any remaining controlled substances containing opioids that were included in the patient's interdisciplinary plan of care and were not relinquished to the program by the patient or patient's family.

(C) If a hospice care program complies with divisions (B)(8) and (9) of this section, none of the following shall be liable in damages to any person or government entity in a civil action for injury, death, or loss to person or property that allegedly arises from an action or omission relative to this section unless the action or omission constitutes willful or wanton misconduct: the program; a program employee, officer, or director; or a prescriber of controlled substances containing opioids that were included in the patient's interdisciplinary plan of care.

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

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

reported to the agency pursuant to division (B)(9) of this section.

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

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

Sec. 3712.99. (A) Any person who violates division (A) of section 3712.05 or division (A) of section 3712.051 of the Revised Code is guilty of a misdemeanor of the second degree on a first offense; on each subsequent offense the person is guilty of a misdemeanor of the first degree.

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

SECTION 2. That existing sections 3712.03, 3712.04, and 3712.99 of the Revised Code are hereby repealed.

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 366

130th G.A.

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 _____