

I\_135\_0502-5

135th General Assembly  
Regular Session  
2023-2024

Sub. H. B. No. 73

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**A BILL**

To enact section 3792.06 of the Revised Code to  
authorize the prescribing of off-label  
medications and if prescribed, to generally  
require their dispensing and to name this act  
the Dave and Angie Patient and Health Provider  
Protection Act.

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

**Section 1.** That section 3792.06 of the Revised Code be  
enacted to read as follows:

**Sec. 3792.06.** (A) As used in this section:

(1) "Health-related licensing board" has the same meaning  
as in section 3719.062 of the Revised Code.

(2) "Hospital" has the same meaning as in section 3722.01  
of the Revised Code and includes a hospital owned or operated by  
the United States department of veterans affairs.

(3) "Identified" means that a hospital or inpatient  
facility pharmacist has determined that a patient's off-label



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drug is in the original manufacturer's packaging or is labeled 17  
from an outpatient retail pharmacy, has been approved by the 18  
prescriber for use, and is not outside of its beyond use date. 19

(4) "Inpatient facility" means either or both of the 20  
following: 21

(a) A skilled nursing facility as defined in section 22  
5165.01 of the Revised Code; 23

(b) A freestanding inpatient rehabilitation facility 24  
licensed under section 3702.30 of the Revised Code. 25

(5) "Off-label drug" means a drug that is both of the 26  
following: 27

(a) Approved by the United States food and drug 28  
administration to treat or prevent a disease, illness, or 29  
infection, but prescribed for or used by a patient to treat or 30  
prevent another disease, illness, or infection; 31

(b) Legal for use in this state. 32

(6) "Pharmacist" means an individual who holds a license 33  
issued under section 4729.08 of the Revised Code authorizing the 34  
individual to practice pharmacy. 35

(7) "Political subdivision" means a county, township, 36  
municipal corporation, school district, or other body corporate 37  
and politic responsible for governmental activities in a 38  
geographic area smaller than that of the state. "Political 39  
subdivision" also includes a board of health of a city or 40  
general health district. 41

(8) "Prescriber" has the same meaning as in section 42  
4729.01 of the Revised Code. 43

(9) "Public official" means any officer, employee, or duly authorized agent or representative of a state agency or political subdivision. 44  
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(10) "State agency" means any organized agency, board, body, commission, department, institution, office, or other entity established by the laws of the state for the exercise of any function of state government. "State agency" does not include a court. 47  
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(B) A prescriber may issue for a patient a prescription for any drug, including an off-label drug, if the prescriber has obtained the patient's informed consent or the consent of the person holding the patient's health care power of attorney. All of the following apply to the prescribing of an off-label drug under this division: 52  
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(1) The prescriber is not required to obtain a test result before issuing the prescription for the patient's use of the drug at home or for other outpatient treatment. 58  
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(2) The patient is not required to have had a positive screen for a particular disease, illness, or infection before the prescriber issues the prescription. 61  
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(3) The patient is not required to have been exposed to a disease, illness, or infection before the prescriber issues the prescription for the patient's prophylactic use of the drug. 64  
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(C) (1) A pharmacist shall dispense, and a hospital or inpatient facility shall allow the dispensing of, an off-label drug to a patient if a prescriber has issued for the patient a prescription for the drug as described in division (B) of this section, except if either of the following is the case: 67  
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(a) As provided in section 4743.10 of the Revised Code, 72

the pharmacist, hospital, or inpatient facility has a moral, 73  
ethical, or religious belief or conviction that conflicts with 74  
the drug's dispensing. 75

(b) The pharmacist has documented that the patient has a 76  
history of a life-threatening allergic reaction to the 77  
prescribed off-label drug or there is a life-threatening 78  
contraindication. 79

(2) When a pharmacist must dispense, or a hospital or 80  
inpatient facility must allow the dispensing of, an off-label 81  
drug for a patient pursuant to this section, but the pharmacist, 82  
hospital, or inpatient facility has an objective, good faith, 83  
and scientific objection to the administration or dosage of the 84  
drug for that patient, the pharmacist, hospital, or inpatient 85  
facility shall be immune from administrative or civil liability 86  
for any harm that may arise from the dispensing or use of the 87  
off-label drug starting from the date of dispensing, so long as 88  
both of the following are done: 89

(a) At the time of dispensing, the pharmacist, hospital, 90  
or inpatient facility documents in the patient's medical record 91  
the objective, good faith, and scientific objection, by stating 92  
with particularity the basis of that objection, which must be 93  
based on an individualized assessment of the patient and the 94  
off-label drug. 95

(b) The pharmacist submits to the board of pharmacy or the 96  
hospital or inpatient facility submits to the department of 97  
health the objective, good faith, and scientific objection by 98  
stating with particularity the basis of that objection, which 99  
must be based on an individualized assessment of the patient and 100  
the off-label drug. 101

(3) (a) In the case of a pharmacist who practices within a 102  
hospital's or inpatient facility's pharmacy and where an in- 103  
house treating prescriber issues for a hospital or facility 104  
patient a prescription for an off-label drug that is neither in 105  
stock nor listed on the hospital's or facility's formulary, the 106  
pharmacist must document in the patient's medical record that a 107  
good faith effort was made to find out if the drug is available 108  
from another hospital or inpatient facility or another 109  
distributor. If available, the drug must be offered to the 110  
patient at an upfront out-of-pocket cost to the patient. The 111  
hospital or inpatient facility may require payment prior to 112  
ordering the drug. 113

(b) If the hospital or inpatient facility pharmacist is 114  
unable to obtain the off-label drug from another hospital, 115  
inpatient facility, or distributor or if the hospital, hospital 116  
pharmacist, inpatient facility, or pharmacist declines to fill 117  
the prescription for the reasons provided in section 4743.10 of 118  
the Revised Code, and the patient has access to the drug through 119  
a pharmacy outside the hospital or inpatient facility or has the 120  
drug available at home, then both of the following apply: 121

(i) The hospital or inpatient facility must permit that 122  
drug to be brought into the hospital or inpatient facility to be 123  
identified for the patient's use and administration within the 124  
hospital or inpatient facility. 125

(ii) When the hospital or inpatient facility or the 126  
patient's in-house treating prescriber or other in-house 127  
treating clinician is unwilling to administer the drug to the 128  
patient for reasons provided in section 4743.10 of the Revised 129  
Code, then another prescriber or prescriber's delegate may 130  
administer the drug. 131

(4) When a patient cannot be safely transported out of a 132  
hospital or inpatient facility and the patient or person holding 133  
the patient's health care power of attorney wishes to try an 134  
off-label drug to treat the patient's condition, but there is no 135  
in-house prescriber willing to prescribe the drug, then the 136  
patient's outpatient physician prescriber, after a prompt 137  
consultation with the patient's hospital or inpatient facility 138  
care team and a review of all of the patient's drugs, shall be 139  
allowed to immediately begin applying for temporary privileges 140  
with oversight, based on criteria within the hospital or 141  
inpatient facility medical staff bylaws. The temporary 142  
privileges approval process is not to exceed five days. If the 143  
outpatient physician prescriber does not meet the facility's 144  
medical staff bylaw requirements, then the denial shall be 145  
reported to the Ohio department of health. If the outpatient 146  
physician prescriber meets the facility's medical staff bylaw 147  
requirements, then he/she shall immediately be allowed to 148  
participate in the patient's care in the narrowed scope of 149  
practice regarding the administering and monitoring of the 150  
prescribed off-label drug within the hospital or inpatient 151  
facility until the patient is in a condition where the patient 152  
can be safely transported to a hospital or inpatient facility 153  
where the outpatient physician prescriber is credentialed. In 154  
such a case, all of the following apply: 155

(a) The patient may be required to pay out-of-pocket for 156  
the prescribed off-label drug before it is ordered. 157

(b) If the hospital or inpatient facility cannot obtain 158  
the off-label drug being prescribed by the outpatient physician 159  
prescriber, then the requirements of divisions (C) (3) (b) (i) and 160  
(ii) apply. 161

(c) The in-house pharmacist, hospital, or inpatient facility and the in-house physician responsible for the patient's care shall be immune from administrative and civil liability for any harm that may arise from the patient's use of the off-label drug prescribed by the outpatient physician prescriber starting from the date of dispensing. 162  
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(5) All of the following apply to the dispensing of an off-label drug under division (C) (1) or (2) of this section: 168  
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(a) The pharmacist is not required to obtain a test result before dispensing the drug for the patient's use at home or for other outpatient treatment. 170  
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(b) The patient is not required to have had a positive screen for a particular disease, illness, or infection before the pharmacist dispenses the drug. 173  
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(c) The patient is not required to have been exposed to a disease, illness, or infection before the pharmacist dispenses the drug for prophylactic use. 176  
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(6) Nothing in this section prevents a pharmacist from discussing a prescription with the prescriber who issued the prescription. 179  
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(D) A health-related licensing board, department of health, state board of pharmacy, or other state board or agency responsible for the licensure or regulation of health care professionals shall not consider any action taken by a prescriber or pharmacist or hospital or inpatient facility under this section to be unlawful, unethical, unauthorized, or unprofessional conduct and shall not pursue an administrative or disciplinary action against the prescriber, pharmacist, hospital, or facility, except in cases of recklessness or gross 182  
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negligence. 191

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state board of pharmacy, or other state board or agency 193  
responsible for the licensure or regulation of health care 194  
professionals shall not pursue an administrative or disciplinary 195  
action against a prescriber, pharmacist, or other licensed 196  
health care professional or hospital or inpatient facility for 197  
publicly or privately expressing a medical opinion that does not 198  
align with the opinions of the board or agency, a board of 199  
health of a city or general health district, or the department 200  
of health. 201

(E) A political subdivision, public official, or state 202  
agency shall not enforce any rule or order issued by a federal 203  
agency that prohibits issuing a prescription for or dispensing 204  
an off-label drug. 205

(F) At no time shall a patient in a hospital or inpatient 206  
facility be denied sufficient means of fluids or nutrition, 207  
unless that wish is clearly stated in the patient's end of life 208  
health directive, as that directive is defined by the patient or 209  
patient's health care power of attorney, or the denial is 210  
necessary for a medical procedure, including a diagnostic or 211  
surgical procedure, and then only for the shortest amount of 212  
time medically possible and with the informed consent of the 213  
patient or person holding the patient's health care power of 214  
attorney. 215

**Section 2.** This act shall be known as the Dave and Angie 216  
Patient and Health Provider Protection Act. 217