As Introduced

136th General Assembly

Regular Session **H. B. No. 12**

2025-2026

Representatives Gross, Swearingen

Cosponsors: Representatives Barhorst, Fischer, Lorenz, Williams, Dean, Miller, K., Hall, T., Lear, King, Mullins, Creech, Ferguson, Click, Klopfenstein, Fowler Arthur, Pizzulli, Stephens, Mathews, T., Deeter, Demetriou, Newman, Teska, Ray, Miller, M., Claggett, Willis, Thomas, C., Schmidt, McClain, Thomas, D., Salvo, Workman, John, Richardson, Johnson, Holmes, Young, Mathews, A., Hiner

A BILL

To enact section 3792.08 of the Revised Code regarding prescribing, dispensing, and administering drugs and to name this act the Jeff, Dave, and Angie Patient Right to Try Act.

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

Section 1. That section 3792.08 of the Revised Code be enacted to read as follows:

Sec. 3792.08. (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) "In-house prescriber" means a prescriber who is employed or contracted by the hospital or inpatient facility

where a patient is being treated.

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

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

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

(5) "Off-label use" means the use of a drug that meets both of the following:

(a) The drug is approved by the United States food and drug administration to treat or prevent a disease, illness, or infection, but prescribed for or used by a patient to treat or prevent another disease, illness, or infection.

(b) The drug is legal for use in this state.

(6) "Patient's personal representative" has the same meaning as in section 3701.74 of the Revised Code.

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

(8) "Prescriber" has the same meaning as in section 4729.01 of the Revised Code, except it does not include a veterinarian licensed under Chapter 4741. of the Revised Code.

(9) "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.

(B) Except as otherwise provided in Chapters 4715., 4723., 4725., and 4730. of the Revised Code and in compliance with other state law regarding prescribing drugs, a prescriber may issue for a patient a prescription for any drug, including for off-label use, if the prescriber has obtained the informed consent of the patient or the patient's personal representative. Informed consent means communication between the patient or the patient's personal representative and the prescriber that results in the patient or the patient's personal representative authorizing, or agreeing to accept, a specific drug. The prescriber, as part of such communication, shall provide all of the following information to the patient or the patient's personal representative:

(1) The patient's diagnosis, if known;

(2) Information about the drug consistent with current law and practices for on-label use;

(3) Any other available information related to the risks and benefits of options pertaining to the drug's off-label uses, including the option of forgoing treatment with the drug;

(4) Any known financial conflicts of interest the prescriber may have regarding the recommended drug.

(C)(1) A pharmacist shall dispense, and a hospital, inpatient facility, or pharmacy shall allow the dispensing of a drug, including for off-label use, 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 in either of the following circumstances:

(a) As provided in section 4743.10 of the Revised Code, the pharmacist, hospital, inpatient facility, or pharmacy has a

moral, ethical, or religious belief or conviction that conflicts with the drug's dispensing.

(b) The pharmacist has documented that the patient has a history of a life-threatening allergic reaction to the prescribed drug or there is a life-threatening contraindication or life-threatening drug interaction for that patient.

(2) When neither exception in division (C)(1)(a) or (b) of this section applies and a pharmacist must dispense, or a hospital, inpatient facility, or pharmacy must allow the dispensing of, a drug, including for off-label use, for a patient pursuant to this section, but the pharmacist, hospital, inpatient facility, or pharmacy has an objective, good faith, and scientific objection to the administration or dosage of the drug for that patient or that patient's condition, then after explaining and discussing the objection with the prescriber, the pharmacist, hospital, inpatient facility, or pharmacy shall be immune from civil liability, professional discipline, and sanctions or fines imposed by a regulatory authority for any harm that may arise from the dispensing or use of the drug starting from the date of dispensing if, as soon as practicable and within twenty-four hours after dispensing, the pharmacist, hospital, inpatient facility, or pharmacy documents in the patient's medical record that the objection was explained and discussed with the prescriber before dispensing.

(3)(a) In the case of a pharmacist who practices within a hospital's or inpatient facility's pharmacy and where an in-house prescriber issues a prescription for a drug, including for off-label use, that is neither in stock nor listed on the hospital's or facility's formulary, the pharmacist must document in the patient's medical record that a good faith effort was

made to find out if the drug is available from another hospital or inpatient facility or another distributor located in the United States.

(b) If the hospital or inpatient facility pharmacist is unable to obtain the drug from another hospital, inpatient facility, or distributor, or if the hospital, inpatient facility, or pharmacist declines to dispense the prescription for the reasons provided in section 4743.10 of the Revised Code, and the patient has access to the drug through a pharmacy outside the hospital or inpatient facility or has the drug available at home, then both of the following apply:

(i) The hospital or inpatient facility must permit the drug to be brought into the hospital or inpatient facility to be identified for the patient's use. To be identified for the patient's use, the hospital or inpatient facility must determine that the drug was prescribed for the patient, is in the original manufacturer's packaging or is labeled from an outpatient retail pharmacy for the patient, has been approved by the prescriber for the patient's use, and is not outside of its beyond-use or expiration date. If the drug is able to be identified according to the hospital or inpatient facility's drug identification procedure, then the drug shall be administered to the patient in the hospital or inpatient facility.

(ii) If the patient's in-house prescriber is not available to administer the identified drug, and the medical staff employed or contracted by the hospital or inpatient facility who are involved in the patient's care are, pursuant to section 4743.10 of the Revised Code, unwilling to administer the identified drug to the patient, then the patient's prescriber may designate a delegate pursuant to sections 4723.48, 4723.489,

4730.203, and 4731.053 of the Revised Code to administer the drug. Such a delegate must meet the hospital or inpatient facility's guidelines and accreditation standards for drug administration.

(4) When the patient's in-house prescriber is absent from the hospital or inpatient facility, the prescriber's orders for a drug, including for off-label use, shall not be modified or discontinued unless one of the following circumstances applies:

(a) The in-house prescriber is consulted and agrees to the modification or discontinuation;

(b) The patient or the patient's personal representative requests in writing to discontinue the drug or consents to the modification;

(c) In an emergency when there is not time to contact the in-house prescriber for consent or it is not possible to contact the in-house prescriber, the hospital or inpatient facility shall follow the hospital or inpatient facility's existing protocol for patient care.

(5) When there is a disagreement between the patient's in-house prescriber and other medical staff employed or contracted by the hospital or inpatient facility who are involved in the patient's care regarding whether to continue a drug, including for off-label use, the decision to continue the use of the drug shall be made by the patient or the patient's personal representative after discussing the risks and benefits of continuing the drug with the in-house prescriber and the other medical staff involved in the patient's care and giving informed consent.

(6) When a hospital or inpatient facility patient or a

patient's personal representative wishes to try a drug to treat a patient's condition, but there is no in-house prescriber willing to prescribe the drug, the hospital or inpatient facility shall not obstruct or intentionally delay the transfer of that patient to another hospital, inpatient facility, or hospice that is willing to accept and treat the patient, nor shall the hospital or inpatient facility prevent the patient's discharge if that is the wish of the patient or the patient's personal representative.

(7) Nothing in this section prevents a pharmacist from discussing a prescription or expressing any dosage recommendations or other concerns with the prescriber, the patient, or the patient's personal representative. The ultimate decision to accept a drug prescribed by the prescriber shall be made by the patient or the patient's personal representative.

(D)(1) In an outpatient pharmacy setting, if a drug is not covered by a patient's health benefit plan or the patient does not want to wait for prior authorization, the prescriber or pharmacist shall notify the patient of the option to pay for the drug out of pocket. The prescriber or pharmacist must notify the patient of the estimated out-of-pocket costs for the drug, and the pharmacist must offer the drug at an upfront, out-of-pocket cost to the patient.

(2) When a hospital or inpatient facility pharmacist has located a drug pursuant to division (C)(3)(a) of this section, but the drug is not covered by the patient's health benefit plan or the patient does not want to wait for prior authorization, the prescriber or pharmacist must notify the patient of the estimated out-of-pocket costs for the drug, and the pharmacist must offer the drug at an upfront, out-of-pocket cost to the

patient. The hospital or inpatient facility may require payment before ordering the drug.

(E) Except as provided in division (G) of this section, a health-related licensing board, the department of health, or another state agency responsible for the licensure or regulation of health care professionals or health care facilities shall not consider the action of prescribing, dispensing, or administering a drug to a consenting patient or with the informed consent of the patient's personal representative, including for off-label use, by a prescriber, pharmacist, hospital, inpatient facility, or pharmacy under this section to be unlawful, unethical, unauthorized, or unprofessional conduct and shall not pursue professional discipline or fines or other regulatory sanctions against the prescriber, pharmacist, hospital, facility, or pharmacy except in cases where prescribing, dispensing, or administering the drug to that patient was done with recklessness or gross negligence. The prescriber is not immune from civil liability if harm comes to the patient.

(F) Free speech is a protected right under the United States and Ohio Constitutions. Health care professionals are not exempt from constitutional protections. A health-related licensing board, the department of health, or other state agency responsible for the licensure or regulation of health care professionals shall neither infringe on free speech nor pursue or threaten to pursue professional discipline or fines or other regulatory sanctions against a prescriber, pharmacist, or other licensed health care professional for publicly or privately expressing an opinion regarding the safety, risks, benefits, or efficacy of a drug or other medical intervention because that opinion does not align with the opinions of the board, department, other state agency, a board of health of a city or

general health district, or other health authority. This division does not limit liability for a medical act that causes actual patient harm.

(G) Except for division (F) of this section, no portion of this section applies to, repeals, or supersedes existing law regarding prescribing, dispensing, or administering any of the following:

(1) Controlled substances, including opioids;

(2) Drugs subject to a United States food and drug administration risk evaluation and mitigation strategy;

(3) Cross-sex hormones or puberty-blocking drugs, as defined in section 3129.01 of the Revised Code, to be used in violation of section 3129.02 of the Revised Code;

(4) Abortifacients when prescribed, dispensed, or administered to patients who are known to be pregnant;

(5) Drugs that are known to be used for the intent or purpose of euthanasia.

Section 2. This act shall be known as the Jeff, Dave, and Angie Patient Right to Try Act.