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1_ _th General Assembly
Regular Session
20_ _-20_ _

. B. No.

A BILL

To enact section 2317.431 of the Revised Code to permit healthcare practitioners and providers who, under certain circumstances, disclose and apologize for medical errors, and pay compensation to affected patients, to avoid adverse administrative action.

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

Section 2317.431 A) For purposes of this section:

(1) "Health care practitioner" has the same meaning as in section 4769.01 of the Revised Code and including professionals regulated by Chapters 4760, 4762, 4766, 4778, 4779 of the Revised Code.

(2) "Health care provider" has the same meaning as in division (B)(5) of section 2317.02 of the Revised Code.

(3) "Algorithm" means a structured process to guide a manager or other person through evaluation of a medical error and to determine if the behavior surrounding the error was or was not reckless.

(4) "Licensing agency" means the board authorized by Chapters 4715, 4723, 4725, 4729, 4730, 4731, 4732, 4734, 4747, 4753, 4755, 4757, 4759, 4760, 4761, 4762, 4765, 4766, 4778, and 4779 of the Revised Code to issue a license to engage in a specific profession, occupation, or occupational activity.

(5) "Medical error" means causing discomfort, pain, suffering, injury, or death as the result of the unanticipated outcome of medical care.

(6) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a victim.

(7) "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

(8) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

B) No licensing agency with jurisdiction over health care practitioners or providers shall take any adverse administrative action against a practitioner or provider for commission of a medical error, including limiting, revoking, or suspending an individual's certificate to practice, refusing to register an individual, refusing to reinstate a certificate, or reprimanding or placing on probation the holder of a certificate to practice if the health care practitioner or provider:

1) Discloses to the patient, or if not practicable, a relative or representative of the patient, the commission of a medical error that resulted in unintended and unanticipated negative medical outcomes;

2) Apologizes to the patient, or if not practicable, a relative or representative of the patient, in a meeting occurring between the a health care provider and the alleged victim, and the apology is acknowledged in writing;

3) Compensates the patient for losses suffered in an amount the practitioner or provider and the patient, or if not practicable, a relative or representative of the patient, agree is fair and reasonable, unless the parties agree that compensation is unwarranted or unwanted;

4) Has not been the subject of two or more previous claims involving an apology in the previous 10-year period; and

(5) Did not act in a reckless manner as determined by algorithm; however, a licensing agency may consider disclosure, apology, and payment of compensation under this section for reckless medical errors as a mitigating factor in determining any sanctions.

C) If an individual has more than two claims involving any statements, affirmations, gestures, or conduct expressing guilt, made in connection with an apology in a ten-year period, all claims may be considered by the licensing agency when taking disciplinary action.

(D) No person shall falsify the document described in division (B)(2). Any person who is found to have falsified the document is subject to civil liability for three times the amount of the patient's actual economic damages.

EXECUTIVE SUMMARY

This legislation implements the “Sorry Works” program available at www.sorryworks.net. Under the proposal, health care providers who disclose medical error to patients and apologize for resulting injury, as well as pay compensation, are protected from administrative discipline. If a provider falsifies documents as part of the process, is reckless, or commits two or more medical errors in a 10-year period, the administrative protection does not apply.

The legislation utilizes the current definitions of health care provider and practitioners in Ohio law. “Health care provider” is described in Chapter 2317 as a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner. “Health care practitioner” is defined by existing Revised Code section 4769.01 and includes:

- A dentist or dental hygienist licensed under Chapter 4715. of the Revised Code;
- A registered or licensed practical nurse under Chapter 4723. of the Revised Code;
- An optometrist licensed under Chapter 4725. of the Revised Code;
- A dispensing optician, spectacle dispensing optician, contact lens dispensing optician, or spectacle-contact lens dispensing optician licensed under Chapter 4725. of the Revised Code;
- A pharmacist licensed under Chapter 4729. of the Revised Code;
- A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry;
- A physician assistant authorized under Chapter 4730. of the Revised Code to practice as a physician assistant;
- A practitioner of a limited branch of medicine issued a certificate under Chapter 4731. of the Revised Code;
- A psychologist licensed under Chapter 4732. of the Revised Code;
- A chiropractor licensed under Chapter 4734. of the Revised Code;
- A hearing aid dealer or fitter licensed under Chapter 4747. of the Revised Code;
- A speech-language pathologist or audiologist licensed under Chapter 4753. of the Revised Code;
- An occupational therapist or physical therapist licensed under Chapter 4755. of the Revised Code;
- A professional clinical counselor, professional counselor, social worker, or independent social worker licensed, or a social work assistant registered, under Chapter 4757. of the Revised Code;
- A dietitian licensed under Chapter 4759. of the Revised Code;
- A respiratory care professional licensed under Chapter 4761. of the Revised Code;
- An emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic certified under Chapter 4765. of the Revised Code.
- The legislation also includes anesthesiology assistants under Chapter 4760, acupuncturists under Chapter 4762, medical transportation professionals under Chapter 4766, Genetic Counselors under Chapter 4778. and orthotists, prosthetists, and pedorthists under Chapter 4779.