

## *Ohio Chapter of ACEP Legislative Report*

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### **Mid-Biennial Review**

The Legislature is in the middle of an unprecedented Mid-Biennial Review (MBR) process. The MBR is the idea of Governor Kasich. It is more extensive than a typical budget correction bill, but a little less comprehensive than the biennial budget. The legislation, House Bill 487, still weighs in at a hefty 2771 pages.

One provision Ohio ACEP is paying close attention to is a proposal to merge the State Board of EMS and the Medical Transportation Board into the "State Board of Emergency Medical and Transportation Services". The proposed composition of the new board would not have included an emergency physician member. Currently an emergency physician is part of the EMS Board make-up. It is critical that an emergency physician serves on the Board.

Ohio ACEP representatives have spoken with key House legislative members and with the Department of Public Safety to voice concerns. In response, ODPS has released a new proposed Board composition. In language shared with Ohio ACEP, the "State Board of Medical, Fire and Transportation Services" will be made up of 20 members, including an emergency physician who is actively involved with an emergency medical service organization. The revised language is expected to be included in the bill when amended in the House Finance Committee.

The bill also proposes to eliminate the Public Health Counsel which reviews rules through the Ohio Department of Health. If the Counsel is eliminated, ODH will review their own rules, but rules would still need to go through the JCARR process.

### **HB 427 – Designated Stroke Centers**

Representatives Barbara Boyd (D-Cleveland) and Randy Gardner (R-Bowling Green), have introduced House Bill 427 to designate primary stroke centers in Ohio. The legislation proposes to:

1. Replace the Council on Stroke Prevention and Education with the Stroke System of Care Task Force;
2. Provide for state recognition of hospitals that are primary stroke centers;
3. Require the establishment of protocols for emergency triage, treatment and transport of stroke patients; and
4. Require an Ohio Department of Health data registry and a statewide system for stroke response and treatment.

Ohio ACEP has a position of opposition to House Bill 427 for the following reasons:

- The bill allows for some direct financial benefit to the American Heart Association if adopted. The AHA is the lead supporter of the HB 427.
- Ohio EMS, Ohio Hospital Association, Ohio Fire Chiefs and Ohio ACEP have been meeting as concerned stakeholders. General agreement that the bill is too specific on stroke systems (allied groups prefer, if anything, 'time critical diagnoses' so law does not have to be changed too frequently and allows for more permissive language and directives by rule making process);
- The legislation is an enormous unfunded mandate on the ODH and hospitals with no proposal or mechanism for funding;
- Would require large and expensive data collection and reporting systems that duplicate some data already collected and reported in other places and ways (EMS, State Fire Chiefs, ODH Coverdell Stroke Registry, Ohio Hospital Association ;
- Heavy on data collection, and weak on translating data into improved patient care and patient outcomes;

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HB 427 is being considered before the House Health Committee. A sponsor hearing was held on February 15, 2012. At the proponent hearing on March 14, 2012, the committee heard testimony from Dr. Irene Katzan, physician-lead for the Ohio Coverdell Stroke Registry (OCSR) and director of the Neurological Institute Center for Outcomes Research and Evaluation; Dr. Michel Torbey, professor of neurology and neurosurgery medical director of the Stroke Center at the Ohio State University Medical Center; and Jim Bischoff, a heart survivor active with the American Heart Association

An interested party meeting was held on March 20, 2012. Representatives Boyd and Gardner seem committed to moving the legislation forward and asked that all stakeholders come together to reach consensus. Gardner was provided with a “critical diagnosis” model to consider. At the meeting the representative for the AHA admitted that if the primary stroke center designation was established, they intend to pursue other designations such as STEMI. The critical diagnosis model could eliminate the need to keep going back to the legislature.

### **HB 467 and SB 301 “Pill Mills: Part II”**

Representative/Dr. Terry Johnson (R – McDermott) and Senator David Burke (R – Marysville) have introduced House Bill 467 and Senate Bill 301 respectively. These bills are a follow-up to House Bill 93 which was enacted earlier this legislative session to crack down on the operation of pill mills.

The bill does the following:

- Modifies the professional disciplinary actions that may be taken by the State Board of Pharmacy, State Medical Board, and State Dental Board.
- Authorizes the Medical Board to inspect a pain management clinic or facility suspected of operating as a pain management clinic without a license.
- Expands the types of controlled substances that are not included in determining whether a prescriber has personally furnished a greater amount of controlled substances than allowed by law. (Specifically with regard to methadone)
- Changes the criteria for determining whether a facility is subject to licensure as a pain management clinic.
- Modifies the laws governing submission to and requests for information from the Ohio Automated Rx Reporting System (OARRS).

Ohio ACEP is paying particular attention to the section that proposes to modify the OARRS submissions. Under HB 93, any prescriber who “personally furnishes” a controlled substance or danger drug is required to report that prescription to OARRS. The new legislation amends the information required to be reported to include “the identification of the owner of the drug furnished”. The section also allows for the information required to be submitted by the legislation to be submitted on behalf of the prescriber by the owner of the drug being personally furnished or by a delegate approved by that owner.

SB 301 has had a sponsor hearing before the Health, Human Services and Aging Committee. HB 467 has been referred to the House Health Committee, but there have been no hearings to date.

### **Tamper Resistant Opiate Substitution Legislation Introduced; Emergency Physician Testifies as Proponent**

Representatives Dr. Terry Johnson (R – McDermott) and Anne Gonzales (R – Westerville) have introduced legislation that would prohibit a pharmacist from substituting another drug for a tamper resistant opioid analgesic drug unless the substituted drug is also tamper resistant or consent is obtained from the prescribing health professional.

House Bill 373 has been referred to the House Health and Aging Committee. At the second hearing on the legislation, Christina Tulenko, M.D., J.D., the Medical Director of Emergency Medicine at Marion General Hospital, testified as a proponent. Dr. Tulenko testified that “tamper resistant formulas will help decrease the supply of the more commonly abused prescription narcotics and hopefully decrease the number of overdoses.”

Ohio ACEP’s is supportive of HB 373.

**Bill Would Allow Tactical EMT’s To Carry Fire Arms**

Representative Courtney Combs (R – Fairfield) introduced House Bill 288. The legislation will permit a "tactical emergency medical technician" to carry a fire arm in certain circumstances and extends to EMTs, assisting a SWAT team, the same civil immunity granted to political subdivision employees.

"Tactical emergency medical technician" means any of the following who is a volunteer providing medical assistance to a SWAT team at the request of the SWAT team:

- (a) A first responder, emergency medical service technician-basic, emergency medical service technician-intermediate, or emergency medical service technician-paramedic who is licensed under Chapter 4765 of the Revised Code;
- (b) A physician who holds a current, valid certificate issued under Chapter 4731 of the Revised Code;
- (c) A nurse who holds a current, valid license issued under Chapter 4723 of the Revised Code.

"Volunteer" means a person who provides assistance either for no compensation or for compensation that does not exceed the actual expenses incurred in providing the assistance or in training to provide the assistance.

HB 288 has been referred to the House Local Government Committee. At the second hearing on January 24, 2012 Chad Canupp and Jason Knollman MD., EMT-P/T , tactical medics with the Butler County Regional SWAT Team, gave testimony in support, saying that there is no liability protection for medical support volunteers on response teams like police officers enjoy.

Ohio ACEP has a neutral position on this legislation.

**Legislation Introduced to Require Patient Notification if a Physician is Terminated by a Healthcare Entity**

House Bill 417, introduced by Representative Cheryl Grossman (R – Grove City) would require a healthcare entity that terminates a physician's employment to send notice to the physician's patients or have the physician send the notice. The legislation permits a healthcare entity to require a physician to send notice of the physician's termination only if the entity provides the physician a list of the patients and their contact information. The notice is required to be sent to patients who have received services from the physician in the preceding two years.

The legislation is supported by the OSMA; however, Ohio ACEP is seeking clarification that physicians practicing in the emergency department are exempt from the notification requirement. There appears to be agreement on the proposed amendment and Ohio ACEP expects it to be included in the legislation before it is reported out of committee.

The bill is being considered by the House Commerce and Labor Committee and there have been two hearings.

**Legislation to Expand Physician Assistants Scope of Practice Reported Out of Committee; Proponent Testimony from ED Physician**

Representatives Anne Gonzales (R – Westerville) and Tom Letson (D – Warren) have introduced legislation that would expand the scope of practice for physician assistants in Ohio. HB 284 has been referred to the House Health and Aging Committee. There were six hearings on the bill. At the third hearing on November 16, 2011, written proponent testimony was submitted by Dr. James Sudimack. Dr. Sudimack is an emergency physician currently practicing with Team Health in Cleveland. Sudimack stated in his testimony that HB 284 would allow him to utilize PAs more and could decrease wait times for patients.

The bill was substituted at the fifth hearing on February 8, 2012. The committee accepted the sub-bill but did not report the bill out of committee because several Democrat members of the committee objected to a provision in the substitute bill that would restrict a PA's authority to fit or remove birth control devices. At the next hearing on February 15, 2012, the bill was reported out.

Substitute House Bill 284 includes the following provision:

1. Includes PAs in the medical home model.
2. Allows PAs to determine death in certain settings and circumstances. However, the PA would not be permitted to complete any portion of the death certificate and must notify the person's attending physicians of the death within a reasonable period of time (and within 24 hours).
3. Includes PA to direct EMS provider services in an ED.
4. Allows a PA to insert or remove chest tubes.
5. Allows a PA to prescribe PT and order OT.
6. Expand PA prescriptive authority to include schedule II controlled substances if certain conditions apply. The PA would be prohibited from personally furnishing the schedule II drugs.
7. Allows a PA to provide services during an emergency or disaster outside the supervision of the physician with whom they have the supervisory agreement, but the designated medical director is permitted to supervise a PA practicing during an emergency or disaster.
8. Places restrictions on when PAs may fit, insert and remove birth control devices

**Legislation To Allow Paramedics to Administer Vaccines Passes Senate Committee.**

House Bill 244 has been introduced by Representatives Anne Gonzales (R – Westerville) and Kristina Roegner (R – Hudson). HB 244 would permit the medical director or cooperating physician advisory board of each emergency medical service organization to authorize one or more emergency medical technicians-paramedic within the organization to administer immunizations for influenza to either of the following:

1. A full-time paid firefighter, part-time paid firefighter, or volunteer firefighter;
2. An emergency medical technician-basic, emergency medical technician-intermediate, or paramedic.

EMS organizations would be required to establish written protocols and training that a paramedic must follow when administering the immunization.

The legislation was considered in the House Health and Aging Committee. The bill was given four hearings.

At the second hearing on September 21, 2011, Dr. David Keseg gave proponent testimony. Dr. Keseg stated that HB 244 “will help protect the public from being exposed to the flu through emergency responders; help keep the emergency medical services (EMS) workforce in service during influenza season; and will save money from municipal budgets from work-related expenses from the flu.”

The bill was amended at the third hearing on November 16, 2011 to require reporting to local boards of health or the state immunization registry of immunizations administered by paramedics. HB 244 was reported out of committee on December 7, 2011. The bill passed the House of Representatives by a vote of 91-0 on January 24, 2012.

HB 244 was then considered by the Senate Health, Human Services and Aging Committee, where Dr. Keseg gave testimony similar to what he presented in the House. The committee favorably reported the bill on March 28, 2012. The bill now awaits a Senate floor vote.

**Bills to Expand Nurses Prescriptive Authority Signed Into Law: Effective June 8, 2012**

For the third session, this time in the Senate, Scott Oelslager (R – North Canton) introduced Senate Bill 83. SB 83 allows advanced practice nurses (APN) to prescribe schedule II controlled substances. The bill also modified the course of study required to become an APN including expanding instruction that is specific to schedule II controlled substances. Senator Oelslager is sponsoring this bill with Senator Charleta Tavares (D – Columbus).

SB 83 was considered by the Senate Health, Human Services and Aging Committee. There were seven hearings on the legislation. At the hearings on June 15, 2011 and June 22, 2011 amendments were accepted and at the June 22<sup>nd</sup> hearing the committee favorably reported out the bill. The Ohio Senate passed the legislation on June 28, 2011 by a vote of 32-1. Senator Kris Jordan was the lone “no” vote.

The legislation was then considered by the House Health and Aging Committee. There were four hearings on the bill. The legislation was amended at the December 14, 2011 hearing and substituted and reported out January 25, 2012 hearing. The OSMA is neutral on the legislation as passed by the House.

The legislation passed the Ohio House on February 14, 2012 by a vote of 91-3. The Senate concurred with the House changes on February 15, 2012 and the bill was signed by the Governor on March 9, 2012.

The bill as enacted does the following:

- Eliminates restrictions on the authority of an APN to prescribe schedule II controlled substances, but only when the drugs are prescribed from specified locations.
- Provides immunity from civil liability, criminal prosecution, and professional disciplinary action to a pharmacist who relies in good faith on the APN's prescription.
- Prohibits an APN from prescribing schedule II controlled substances in a convenience care clinic.
- Eliminates a provision prohibiting an APN from prescribing schedule II controlled substances in collaboration with a podiatrist.
- Requires an APN applying for a certificate to prescribe to complete at least 45 contact hours in advanced pharmacology and related topics, of which at least 36 hours (instead of 30) must be instruction in such areas as the use of drugs in maintaining health.
- Requires that the course of study include instruction specific to schedule II controlled substances.
- Permits the Board of Nursing to take professional disciplinary action against a nurse or dialysis technician who self-administers any schedule I controlled substance.

When prescribing from a location that is not one of those specified below, the APN remains subject to the following three restrictions in continuing law: (1) the patient must have a terminal condition, (2) the APN's collaborating physician must have initially prescribed the drug for the patient, and (3) the prescription must be for an amount that does not exceed the amount necessary for the patient's use in a single 24- hour period.

The locations from which the act authorizes an APN to prescribe a schedule II controlled substance without being subject to the three restrictions are the following:

1. A hospital registered with the Department of Health;
2. An entity owned or controlled, in whole or in part, by a hospital or by an entity that owns or controls, in whole or in part, one or more hospitals;
3. A health care facility operated by the Department of Mental Health or Department of Developmental Disabilities;
4. A nursing home licensed by the Department of Health or a political subdivision;
5. A county home or district home that is certified under the Medicare or Medicaid program;
6. A hospice care program;
7. A community mental health agency;
8. An ambulatory surgical facility;
9. A freestanding birthing center;
10. A federally qualified health center or a federally qualified health center look-alike;
11. A health care office or facility operated by a board of health or an authority having the duties of a board of health;
12. A site where a medical practice is operated, but only if the practice is comprised of one or more physicians who are also owners of the practice, the practice is organized to provide direct patient care, and the APN providing services at the site has a standard care arrangement and collaborates with at least one of the physician owners who practices primarily at that site. (Entering into a standard care arrangement and practicing in collaboration are requirements of ongoing law governing the practice of APNs.)

**Ohio ACEP’s “Access to Care” Legislation Stalls in Senate Committee**

Senators Kevin Bacon (R – Minerva Park) and Cliff Hite (R – Findlay) introduced Senate Bill 129 which is the re-introduction of last General Assembly’s Senate Bill 86. The legislation would grant qualified civil immunity, using the reckless disregard standard, to a physician who provides emergency medical services, first-aid treatment, or other emergency professional care in compliance with the federal Emergency Medical Treatment and Active Labor Act (EMTALA). The legislation also grants qualified civil immunity, using the willful and wonton standard from emergency medical services needed as a result of a disaster.

The following Senate members have signed on as co-sponsors of the legislation:

- Senator Karen Gillmor (R – Tiffin) (*resigned*)
- Senator Kris Jordan (R – Powell)
- Senator Peggy Lehner (R – Kettering)
- Senator Larry Obhof (R – Montville Township)
- Senator Tim Schaffer (R – Lancaster)
- Senator Jimmy Stewart (R – Albany) (*resigned*)
- Senator Chris Widener (R – Springfield)

SB 129 was referred to the Senate Judiciary Committee on Civil Justice. Senators Bacon and Hite gave sponsor testimony on March 30, 2011. (The Senate Committees have since been restructured and the Criminal and Civil Justice Committees have been combined into the Senate Judiciary Committee, where SB 129 now sits for consideration.)

On April 13, 2011 the legislation was given a proponent hearing. Testifying on the legislation was:

- Dr. Gary Katz, Ohio ACEP President;
- Michael Frank, JD, MD;
- Dr. Mark Dean, representing the OSMA; and
- John Gilchrist, representing the Ohio State Association of Nurse Anesthetists

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Also in attendance were members of the Ohio ACEP Board of Directors and members of the 2011 Leadership Development Class. The hearing was held in conjunction with Ohio ACEP Leadership Development and Advocacy Day held in Columbus.

The committee had many questions for the Dr. Katz and Dr. Frank. The questions focused on the scope of EMTALA: when does the “emergency” end? Who is covered under the EMTALA mandate in the emergency departments? What is the hospital responsibility vs. the physician responsibility? The witnesses did a great job explaining the EMTALA mandate that emergency physicians must work under. They also did a good job of keeping the focus of their argument on increasing access to emergency care to Ohioans.

A third hearing was held on May 4, 2011. Testimony was given in opposition to the legislation by:

- Gerald Leeseberg, Past President of the Franklin County Trial Lawyers Association;
- Michael Shroge, attorney;
- Dr. Samuel Kiehl, OSU Medical Center, Ohio ACEP member and former Ohio ACEP Board member; and
- Paul Grieco, a Cleveland attorney who delivered testimony prepared by Ohio Association for Justice President Dennis Mulvihill, who was unable to attend at the last minute.

In his testimony Kiehl said: *“it is my opinion that the proposed legislation will have an unfair negative impact on patients and give emergency physicians the right to provide poor care to patients without accountability to patients for harm they have caused them.”* Dr. Kiehl did testify that there is indeed a shortage of specialists providing on-call service, there is a shortage of board certified ED physicians, and that EMTALA does have a unique impact on the practice environment for emergency medicine. However, he stated that SB 129 would not help solve these problems.

The opponents and the committee also focused on the “affidavit of merit” requirement already in statute. This requires a physician to review the evidence of a claim and certify that the claim has “merit” to go forward.

### **How to Contact Your Lobbyists**

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