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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 563
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Ghanbari

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SUMMARY

- Requires a local board of health or hospital that becomes aware of a patient's presumptive positive case for COVID-19 or another class A disease to promptly determine whether the patient was treated, handled, or transported by an emergency medical services (EMS) worker in the past 30 days.
- Requires the local board of health or hospital to promptly notify each affected EMS worker, as well as that worker's employer.
- Exempts that notification from the existing prohibition on release of protected health information and from the Public Records Law.
- Authorizes a notified EMS worker to request the results of any test used to confirm COVID-19 or another class A disease.
- Specifies that a local board of health or hospital may be sued for failure to comply with the notification requirement, but is immune from civil liability if it acted in good faith.
- Specifies that a hospital that knowingly fails to comply with the bill's requirements is guilty of a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.
- Declares an emergency.

DETAILED ANALYSIS

Infectious disease notification to EMS workers

The bill requires a local board of health or hospital that becomes aware of a patient's presumptive case for a contagious or infectious disease to promptly determine whether the

patient was treated, handled, or transported for medical care by an emergency medical services (EMS) worker in the 30 days prior to becoming aware of the presumptive positive case.¹ A “contagious or infectious” disease is defined to mean COVID-19 or any other disease classified as a class A disease under rules adopted by the Director of Health (see **“Background – existing disease reporting requirements”** below). A “presumptive positive case” means at least one specimen taken from the patient has tested positive for the virus, bacterium, or other microorganism that causes a contagious or infectious disease. An “emergency medical services worker” is a peace officer; an employee of an emergency medical services organization; a firefighter employed by a political subdivision; a volunteer firefighter, emergency operator, or rescue operator; or an employee of a private organization that renders rescue services, emergency medical services, or emergency medical transportation to accident victims and persons suffering serious illness or injury.²

If the patient was treated, handled, or transported by one or more EMS workers under those circumstances, the local board of health or hospital must promptly provide verbal notification of the presumptive positive case to each EMS worker involved with the patient’s treatment, handling, or transportation, as well as that worker’s employer.³

Subject to certain exceptions, a local board of health is prohibited under existing law from releasing protected health information without the consent of the individual to whom the information pertains. The bill provides that the verbal notification that local boards of health must make to EMS workers is an exception to this prohibition. It is worth noting that an existing exception authorizes the Director of Health to release protected health information if the Director determines that the release is necessary, based on the evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health. Information that is released pursuant to this existing exception may be released only to those persons or entities necessary to control, prevent, or mitigate disease.⁴

The bill also provides that any record of the verbal notification that local boards of health must make is not a public record.⁵

Request for notification of test results

The bill authorizes an EMS worker who received a verbal notification as described above to request to be notified of the results of any test performed on the patient, in accordance with a procedure provided for in existing law, to determine the presence of a contagious or infectious disease.⁶ Under that procedure, the EMS worker is to submit to the health care

¹ R.C. 3707.11(B) and 3727.80(B).

² R.C. 3707.11(A) and 3727.80(A).

³ R.C. 3707.11(B) and 3727.80(B).

⁴ R.C. 3701.17.

⁵ R.C. 149.43(A)(1)(nn).

⁶ R.C. 3707.11(C) and 3727.80(C).

facility or coroner that received the patient a written request to be notified of the test results. The request must include the worker's name, address, and telephone number; the worker's employer, or, in the case of a volunteer EMS worker, the entity for which the worker volunteers, and the individual's supervisor; and the date, time, location, and manner of the exposure. The request for notification is valid for ten days after it is made. If at the end of that ten-day period no test has been performed to determine the presence of a contagious or infectious disease, no diagnosis has been made, or the result of the test is negative, the health care facility or coroner must notify the EMS worker. The notification cannot include the name of the patient. If necessary, the request may be renewed in accordance with the same procedures and requirements as the original request.⁷

A health care facility or coroner that receives a written request for notification must give an oral notification of the presence of a contagious or infectious disease, or of a confirmed positive test result, if known, to the EMS worker who made the request and the worker's supervisor and to the infection control committee or other similar body within two days after determining the presence of a contagious or infectious disease or after a confirmed positive test result. A written notification must follow oral notification within three days. If a contagious or infectious disease is present, or the test results are confirmed positive, both the oral and written notification must include the name of the disease, its signs and symptoms, the date of exposure, the incubation period, the mode of transmission of the disease, the medical precautions necessary to prevent transmission to other persons, and the appropriate prophylaxis, treatment, and counseling for the disease. The notification cannot include the name of the patient.⁸

If the request is made by an EMS worker and the information is not available from the health care facility to which the request is made because the patient has been transferred from that health care facility, the facility must assist the worker in locating the patient and securing the requested information from the health care facility that treated or is treating the patient. If the patient has died, the health care facility must give the EMS worker the name and address of the coroner who received the patient.⁹

Penalties

Civil

A local board of health or hospital that knowingly fails to comply with the bill's verbal notification requirement may be sued by an EMS worker who was injured by the noncompliance, or that worker's representative, not later than one year after the cause of action accrues. Generally, the court may award a successful plaintiff compensatory and any

⁷ R.C. 3701.248(B)(1) and (2).

⁸ R.C. 3701.248(C).

⁹ R.C. 3701.248(C).

equitable relief, including injunctive relief, that the court finds appropriate. The court also may award a successful plaintiff reasonable attorney's fees after a hearing to determine the amount of the fees. However, a local board of health or hospital that acts in good faith is immune from civil liability. These civil remedies are the only civil remedies a court may award.¹⁰

Criminal

A hospital that knowingly fails to comply with the bill's verbal notification requirement is guilty of a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.¹¹

Emergency clause

The bill declares that it is an emergency measure due to the ongoing COVID-19 pandemic and that its provisions are not subject to the referendum and go immediately into effect upon enactment.¹²

Background – existing disease reporting requirements

Under existing rules adopted by the Director of Health, a health care provider must immediately report a known or suspected case of a class A disease by telephone to the local board of health in which the patient resides, or, if the patient's residence is unknown, to the Ohio Department of Health (ODH).¹³ Similarly, the person in charge of a laboratory must immediately report a positive test result for a class A disease by telephone to the local board of health in which the patient resides, or, if the patient's residence is unknown, to ODH.¹⁴ Class A diseases are all of the following: anthrax; botulism, foodborne; cholera; diphtheria; influenza – A, novel virus infection; measles; meningococcal disease; Middle East Respiratory Syndrome (MERS); plague; rabies, human; rubella (not congenital); severe acute respiratory syndrome (SARS); smallpox; tularemia; viral hemorrhagic fever (VHF), including Ebola virus disease, Lassa fever, Marburg hemorrhagic fever, and Crimean-Congo hemorrhagic fever; and any unexpected pattern of cases, suspected cases, deaths or increased incidence of any other disease of major public health concern, because of the severity of disease or potential for epidemic spread, which may indicate a newly recognized infectious agent, outbreak, epidemic, related public health hazard or act of bioterrorism.¹⁵ On January 23, 2020, Director Acton declared COVID-19 to be a disease of major public concern. On March 14, 2020, the Director ordered that confirmed cases of COVID-19 be immediately reported as a Class A disease to the local health

¹⁰ R.C. 3707.111 and 3727.801.

¹¹ R.C. 3727.99.

¹² Section 3.

¹³ Ohio Administrative Code (O.A.C.) 3701-3-02(A), 3701-3-03, and 3701-3-05(A).

¹⁴ O.A.C. 3701-3-02(A), 3701-3-04, and 3701-3-05(A).

¹⁵ O.A.C. 3701-3-02(A).

district where the person resides or where the person is being treated if the person's residence is unknown or not in Ohio.¹⁶

COMMENT

On April 14, 2020, the Director of Health issued an order requiring local health departments to provide the name and address of individuals who test positive for COVID-19 to emergency dispatch agencies in that jurisdiction.¹⁷ The dispatch agencies are permitted to share this information only with first responders who are responding to or may be called to respond to the address of an individual who has tested positive for COVID-19.

The order requires that the information be used solely as necessary to control, mitigate, or prevent the spread of COVID-19 during an interaction between a first responder and the individual who has tested positive for COVID-19. The order states that unauthorized use of the information is subject to criminal penalties. It also requires that the information of an individual be "removed from the dispatch agency's system" once that person has recovered from COVID-19 and that all information be removed upon termination of the statewide public health emergency.

The order acknowledges that the information to be disclosed constitutes protected health information. As described above (see "**Infectious disease notification to EMS workers**"), existing Ohio law restricts the Department of Health's use of protected health information that it has obtained in most instances; however, it makes an exception to permit disclosure if "[t]he director determines the release of the information is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health."

The order remains in effect until the state of emergency declared by the Governor no longer exists or until the Director rescinds or modifies the order.

¹⁶ Ohio Department of Health, Amy Acton, M.D., MPH, Director, *In Re: Reporting Requirements for 2019 – Novel Coronavirus Under Ohio Revised Code 3701.14 and 3701.23*, available at https://coronavirus.ohio.gov/wps/wcm/connect/gov/b2581867-6e9d-433a-9eb6-1174eee07276/Director%27s+Journal+Entry+on+Updated+COVID-19+Reporting+Requirements.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-b2581867-6e9d-433a-9eb6-1174eee07276-n3Aa7UQ.

¹⁷ Ohio Department of Health, Amy Acton, M.D., MPH, Director, *Director's Order to Release Protected Health Information to Ohio's First Responders*, available at <https://coronavirus.ohio.gov/static/publicorders/Directors-Order-to-Release-Information-to-Ohios-First-Responders.pdf>.

HISTORY

Action	Date
Introduced	03-23-20
