Ohio Legislative Service Commission

Bill Analysis

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131st General Assembly
(As Introduced)

Reps. Lepore-Hagan and Bishoff, Antonio, Kuhns, Howse, Slesnick, Clyde, Fedor, Celebrezze, Sykes, G. Johnson, Sheehy, Phillips, Reece, Boyd

BILL SUMMARY

Health insurance coverage of contraceptives

- Enacts in the Revised Code a provision prohibiting a health insurer that covers prescription drugs and devices from limiting or excluding coverage of prescription contraceptive drugs or devices and any related outpatient services.

Access to contraceptives in pharmacies

- Requires a pharmacy that stocks contraceptives to ensure that the contraceptives are made available without delay when requested by its customers.

Sexual health education

- Eliminates the requirement that school districts emphasize sexual abstinence when providing venereal disease education, which the bill renames "sexually transmitted infection prevention education."

- Requires sexually transmitted infection prevention education to include HIV/AIDS prevention education.

- Creates an optional comprehensive sexual health education program for schools to use in fulfilling the requirement regarding sexually transmitted infection prevention education.

- Establishes standards for the mandatory HIV/AIDS prevention education and optional comprehensive sexual health education program.

- Permits a parent to request that his or her child not receive sexually transmitted infection prevention education, or if applicable, participate in the comprehensive sexual health education program.

- Requires schools to provide periodic training for personnel who teach the mandatory HIV/AIDS prevention education and, if applicable, the optional comprehensive sexual health education program.

Ohio Teen Pregnancy Prevention Task Force

- Creates the Ohio Teen Pregnancy Prevention Task Force and establishes the Task Force's duties and membership.

Standard of care for victims of sexual offenses

- Establishes a standard of care for certain hospitals to meet when caring for victims of sexual assault and requires that certain services and information on emergency contraception, sexually transmitted infections, and follow-up care be provided.

- Requires a hospital to comply with the standard of care for sexual assault victims without regard to the ability of a particular victim to pay for the care provided.

- Permits a victim who is a minor to consent to the services without requiring the hospital to notify the minor's parent or guardian.

- Authorizes an individual to file a complaint with the Department of Health if the individual believes a hospital has failed to comply with the bill's standard of care for victims of sexual assault.

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CONTENT AND OPERATION

Health insurance coverage of contraceptives

State requirement

The bill enacts in the Revised Code a provision prohibiting health insurers that provide coverage of prescription drugs and devices from limiting or excluding coverage for contraceptive drugs or devices approved by the United States Food and Drug Administration (FDA). If the insurer provides coverage of outpatient services, the bill further prohibits the insurer from limiting or excluding coverage for physician-directed outpatient services related to the provision of contraceptive drugs or devices.[1]

The following types of health insurance are subject to the bill's coverage requirement: an individual or group health insuring corporation policy, contract, or agreement; an individual or group sickness and accident insurance policy; and a public employee benefit plan.[2] The requirement applies to health insurance policies, contracts, agreements, and plans that are delivered, issued for delivery, renewed, established, or modified on or after the bill's effective date.[3]

The bill specifies that its required coverage of prescription contraceptive drugs or devices and the related outpatient services is subject to the same terms and conditions, including copayments and deductibles, that apply to similar coverage provided by the health insurer. The bill also specifies that the coverage requirement applies regardless of the existing law provisions under which new insurance mandates are not to be applied unless the Superintendent of Insurance determines the mandate can be applied fully and equally in all respects to employee benefit plans subject to regulation under the federal Employee and Retirement Income and Security Act (ERISA).[4] ERISA applies to

[1] R.C. 1751.68 and 3923.84; Section 3.

[2] R.C. 1751.68 and 3923.84.

[3] Section 3.

[4] R.C. 1751.68(B) and 3923.84(B).

employer sponsored health insurance plans under which the employer self insures. Because of federal preemption, states have little authority to regulate these plans. (See **COMMENT**.)

Access to contraceptives in pharmacies

If a customer of a pharmacy requests a contraceptive that is in stock, the bill requires the pharmacy to ensure that the contraceptive is provided to the customer without delay.[5] The bill defines "contraception" or "contraceptive" as any drug or device approved by the FDA to prevent pregnancy.[6] Under the bill, "without delay" refers to a pharmacy providing contraception, providing a referral for contraception, ordering contraception, or transferring the prescription for contraception within the usual and customary timeframe at the pharmacy for doing the same with respect to other products.[7] A "product" is defined as a drug or device approved by the FDA.[8]

If a customer requests a contraceptive that is not in stock and the pharmacy in the normal course of business stocks contraception, the pharmacy must immediately inform the customer that the contraceptive is not in stock. Without delay, the pharmacy must offer the customer the following options:[9]

(1) If the customer prefers to obtain the contraceptive through a referral or transfer, the pharmacy must locate a pharmacy of the customer's choice or the closest pharmacy confirmed to have the contraceptive in stock, and refer the customer or transfer the prescription to that pharmacy.

(2) If the customer prefers to order the contraceptive through the pharmacy, the pharmacy must obtain the contraceptive under the pharmacy's standard procedure for expedited ordering of drug products and notify the customer when the contraceptive arrives.

The bill further requires the pharmacy to ensure that its employees, including persons employed by contract or any other form of agreement, do not do any of the following:[10]

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[5] R.C. 4729.43(B).

[6] R.C. 4729.43(A)(1).

[7] R.C. 4729.43(A)(5).

[8] R.C. 4729.43(A)(3).

[9] R.C. 4729.43(C).

[10] R.C. 4729.43(D).

--Intimidate, threaten, or harass customers in the delivery of services relating to a request for contraception;

--Interfere with or obstruct the delivery of services relating to a request for contraception;

--Intentionally misrepresent or deceive customers about the availability of contraception or its mechanism of action;

--Breach medical confidentiality with respect to a request for contraception or threaten to breach such confidentiality;

--Refuse to return a valid, lawful prescription for contraception on the customer's request.[11]

Exceptions

The bill specifies that its requirements regarding access to contraceptives in pharmacies do not prohibit a pharmacy from refusing to provide a contraceptive to a customer in any of the following circumstances:[12]

(1) If it is unlawful to dispense the contraceptive to the customer without a valid, lawful prescription and no such prescription is presented;

(2) If the customer is unable to pay for the contraceptive;

(3) If the pharmacy employee refuses to provide the contraceptive because, in the employee's professional judgment, a contraindication exists or providing the contraceptive is not in the best interest of the customer's health. The bill defines "professional judgment" as the use of professional knowledge and skills to form a clinical judgment in accordance with the prevailing standards of care.

Remedies and enforcement

In the case of a violation or alleged violation of the bill's provisions on access to contraceptives in pharmacies, the bill establishes the following remedies:

Complaints: The bill permits a person who believes that a violation has occurred to file a complaint with the State Board of Pharmacy. Not later than 30 days after receiving the complaint, the Board must investigate and determine whether a violation

[11] R.C. 4729.43(D).

[12] R.C. 4729.43(E).

occurred. If the Board determines a violation occurred, it may impose a fine of not more than $5,000 for each violation.[13]

Civil actions: The bill permits a person who has been injured by a violation to bring a civil action in a court of competent jurisdiction to recover damages for the person's injury, as well as costs and reasonable attorney's fees.[14]

Attorney General actions: If the Attorney General has cause to believe that a person or group of persons has been or may be injured by a violation, the bill authorizes the Attorney General to commence a civil action in a court of competent jurisdiction to compel compliance. In such an action, the court is permitted to award appropriate relief on a finding that a violation has occurred, including compensatory damages and punitive damages not exceeding $5,000 for each violation.[15]

State Board of Pharmacy disciplinary actions: If a pharmacist or pharmacy intern fails to comply with the bill's provisions on access to contraceptives in pharmacies, the bill permits the Board to use its existing authority to take disciplinary actions relative to the individual's license to practice pharmacy. Continuing law authorizes the Board to revoke, suspend, limit, place on probation, or refuse to grant or renew the identification card issued to the pharmacist or intern or impose a fine or forfeiture in a disciplinary action. Under the bill, the Board may take one *or more* of these actions, whereas current law does not specify that the Board may take more than one of these actions. As provided in existing law, the amount of the fine or forfeiture may not exceed any fine designated in the Revised Code for a similar offense or $500 if there is no designated fine.[16]

Sexual health education

Background

Current law requires each public school district to include venereal disease education as part of its health curriculum. A student must be excused from the instruction upon request of the student's parent. The instruction must emphasize that abstinence from sexual activity is the only 100% effective protection against unwanted pregnancy, sexually transmitted disease, and the sexual transmission of the AIDS virus. Furthermore, course materials and instruction must (1) stress that students should

[13] R.C. 4729.44(A).

[14] R.C. 4729.44(B).

[15] R.C. 4729.44(C).

[16] R.C. 4729.16; conforming changes in R.C. 121.22, 4729.18, and 4729.35.

abstain from sexual activity until after marriage, (2) teach the potential physical, psychological, emotional, and social side effects of sexual activity outside of marriage, (3) teach that conceiving children out of wedlock is likely to have harmful consequences for the child, the child's parents, and society, (4) stress that sexually transmitted diseases are serious possible hazards of sexual activity, (5) advise students of the child support laws, (6) advise students of the circumstances in which sexual contact with a minor is a crime, and (7) emphasize adoption as an option for unintended pregnancies.[17]

Sexually transmitted infection prevention education

The bill requires public school districts' health education to include "sexually transmitted infection prevention education," rather than "venereal disease education." It specifies that the education must include HIV/AIDS prevention education (see "**Standards for the mandatory HIV/AIDS prevention education**" below).[18] Under the bill, "HIV/AIDS prevention education" means instruction on the nature of HIV/AIDS, methods of transmission, strategies to reduce the risk of human immunodeficiency virus (HIV) infection, and social and public health issues related to HIV/AIDS.[19] The bill retains the requirement that a student be excused from such instruction upon request of the student's parent.

The bill eliminates the current law components described above for venereal disease education. Instead, the bill specifies that sexually transmitted infection prevention education must stress abstinence but most not exclude other instruction and materials on contraceptive methods and infection reduction measures.[20]

The bill creates an optional comprehensive sexual health education program for public school districts to utilize to fulfill the requirement regarding sexually transmitted infection prevention education (see "**Standards for the optional comprehensive sexual health education program**" below).[21] Under the bill, "comprehensive sexual health education" means education regarding human development and sexuality, including education on sexual health, family planning, and sexually transmitted infections.[22] Regardless of whether a public school district utilizes the bill's comprehensive sexual health education program, the bill further emphasizes that any

[17] R.C. 3313.60(A)(5)(c) and 3313.6011; see also Ohio Administrative Code (O.A.C.) 3301-80-01.

[18] R.C. 3313.60(A)(5)(c).

[19] R.C. 3313.6011(A)(3).

[20] R.C. 3313.60(A)(5)(c).

[21] R.C. 3313.6011(B).

[22] R.C. 3313.6011(A)(2).

sexual education is to stress abstinence but not exclude other instruction and materials on contraceptive methods and infection reduction measures.[23]

In addition to public school districts, the bill's provisions also apply to community (charter) schools; public science, technology, engineering, and math (STEM) schools; educational service centers (ESCs), and college-preparatory boarding schools.[24]

Standards for the mandatory HIV/AIDS prevention education

The bill requires that all schools ensure that each student receive the mandatory HIV/AIDS prevention education at least once during the 7th-9th grades, and at least once during the 10th-12th grades, and from instructors trained in the appropriate courses.[25] Under the bill, "instructors trained in the appropriate courses" means instructors with knowledge of the most recent medically and scientifically accurate research on human sexuality, pregnancy, and sexually transmitted infections.[26] The bill requires that the HIV/AIDS prevention education accurately reflect the latest information and recommendations from the United States Surgeon General, the United States Centers for Disease Control and Prevention (CDC), and the National Academy of Sciences. The information must include all of the following:[27]

(1) Information on the nature of HIV/AIDS and its effects on the human body;

(2) Information on the manner in which HIV is and is not transmitted, including information on activities that present the highest risk of HIV infection;

(3) Discussion of methods to reduce the risk of HIV infection, which is to (a) emphasize that sexual abstinence, monogamy, and the avoidance of multiple sexual partners, and abstinence from intravenous drug use, are the most effective means for HIV/AIDS prevention, and (b) include statistics based on the latest medical information citing the success and failure rates of condoms and other contraceptives in preventing sexually transmitted HIV infection, as well as information on other methods that may reduce the risk of HIV transmission from intravenous drug use;

(4) Discussion of the public health issues associated with HIV/AIDS;

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[23] R.C. 3313.6011(G).

[24] R.C. 3314.03(A)(11)(d), 3326.11, and 3328.24.

[25] R.C. 3313.6011(C).

[26] R.C. 3313.6011(A)(4).

[27] R.C. 3313.6011(C).

(5) Information on local resources for HIV testing and medical care;

(6) Instruction and materials that provide pupils with skills for negotiating intimate relationships and making and implementing responsible decisions about sexuality;

(7) Discussion about societal views on HIV/AIDS, including stereotypes and myths regarding persons with HIV/AIDS, which is to emphasize an understanding of the condition and its impact on people's lives;

(8) Instruction and materials that teach pupils to recognize unwanted physical and verbal sexual advances, not to make unwanted physical and verbal sexual advances, and how to effectively reject unwanted sexual advances;

(9) Instruction and materials that cover verbal, physical, and visual sexual harassment, including nonconsensual physical sexual contact and rape by an acquaintance or family member;

(10) Information and materials that emphasize personal accountability and respect for others and encourage youth to resist peer pressure.

Standards for the optional comprehensive sexual health education program

For schools that elect to offer the bill's comprehensive sexual health education program, the bill specifies that, beginning on the first day of August immediately following the bill's effective date, the comprehensive sexual health education must meet the following requirements:[28]

(1) Instruction and materials must be age-appropriate in that they teach concepts, information, and skills based on the students' social, cognitive, and emotional levels.

(2) All factual information taught in the program must be medically and scientifically accurate. That is, it must be verified or supported by research conducted in compliance with scientific methods and published in peer-reviewed journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the field, such as the CDC and the American College of Obstetricians and Gynecologists.

(3) Instruction and materials must be appropriate for use with all students, regardless of their gender, race, ethnic and cultural background, religion, disability, sexual orientation, or gender identity.

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[28] R.C. 3313.6011(B).

(4) Instruction and materials must not teach or promote religious doctrine.

(5) Instruction and materials must encourage students to communicate with their parents or guardians about sexuality.

(6) Instruction and materials must teach that abstinence is the only certain way to avoid pregnancy, sexually transmitted infections, and other associated health problems.

(7) Instruction and materials must teach that bearing children outside of a committed relationship is likely to have consequences for the child, the child's parents, and society.

(8) Instruction and materials must teach how, as young people, to effectively reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances.

(9) Instruction and materials must teach the importance of attaining self-sufficiency before engaging in sexual activity.

(10) Instruction and materials must stress abstinence but not exclude other instruction and materials on contraceptive methods and infection reduction measures.

(11) If age-appropriate, instruction and materials must provide information about the effectiveness and safety, including the health benefits and side effects, of all contraceptive methods in preventing unintended pregnancy and reducing the risk of sexually transmitted infections. Under the bill, "age-appropriate" means designed to teach concepts, information, and skills based on the social, cognitive, and emotional level of pupils.

(12) Instruction about sexually transmitted infections must begin no later than 7th grade and include information on (a) how sexually transmitted infections are and are not transmitted, (b) the effectiveness and methods of reducing the risk of contracting the infections, and (c) identification of local resources for testing and medical care for sexually transmitted infections and HIV.

(13) If age-appropriate, instruction and materials must provide students with skills for negotiating intimate relationships and making responsible decisions about sexuality.

(14) If age-appropriate, instruction and materials must discuss the possible emotional, physical, and psychological consequences of pre-adolescent and adolescent sexual activity and unintended pregnancy.

(15) Instruction and materials must teach students to recognize and effectively reject unwanted physical and verbal sexual advances and to not make unwanted sexual advances toward others. For this purpose, the instruction and materials must cover verbal, physical, and visual sexual harassment, including nonconsensual physical sexual contact and rape by an acquaintance or family member. Further, they must emphasize personal accountability and respect for others and encourage students to resist peer pressure.[29]

The bill expressly permits the use of outside speakers or prepared materials for any component of the comprehensive sexual health education program, as long as the speakers or materials comply with the program standards.

Parental opt-out and inspection of instructional materials

At the start of each school year, each school must notify parents about the planned HIV/AIDS prevention education, comprehensive sexual health education, and any research on student health behaviors and health risks that the district or school intends to conduct that year. If a student enrolls after the start of the school year, the district or school must provide the parental notification at the time of enrollment. The notification must advise parents (1) that written and audio-visual instructional materials used in comprehensive sexual health education and HIV/AIDS prevention education are available for inspection, (2) whether instruction will be provided by school personnel or by outside consultants, (3) that parents may request a copy of the legal requirements pertaining to districts and schools that offer the program, and (4) that parents may request that their child not receive comprehensive sexual health education or HIV/AIDS prevention education.[30]

If a parent submits a written opt-out request, the student is excused from participation in the HIV/AIDS prevention or comprehensive sexual health education, but the student must be given an alternative educational activity while the health instruction is occurring. The bill prohibits imposing any type of disciplinary action, academic penalty, or other sanction on a student excused for this reason.[31]

HIV/AIDS prevention and sexual health education training

Under the bill, in consultation with the Department of Education, each school must provide periodic in-service training for personnel who teach HIV/AIDS

[29] R.C. 3313.6011(B).

[30] R.C. 3313.60(E).

[31] R.C. 3313.6011(E).

prevention and, if applicable, comprehensive sexual health education to enable them to learn about new developments in the scientific understanding of HIV/AIDS and sexual health. However, the training is voluntary for personnel who have demonstrated expertise in the field or have received training from the Ohio Department of Education or the CDC. Schools may provide the in-service training through regional planning, contract services, joint agreements with other districts and schools, or by hiring outside consultants, including entities that have developed multilingual curricula or curricula accessible to students with disabilities.[32]

State Board model program

If the State Board of Education adopts a model program for health education, it must conform to the bill's requirements for comprehensive sexual health education.[33] Under continuing law, however, any curricula in the area of health that are adopted or revised by the State Board must be approved by the General Assembly through passage of a concurrent resolution. Neither chamber may vote on a concurrent resolution until its education committee has held at least one public hearing on the health curricula.[34] It appears that this requirement for legislative approval would apply to a state model program incorporating the bill's provisions for HIV/AIDS prevention and comprehensive sexual health education.

Prohibition against waiver of the bill's requirements

Under continuing law, a school may apply for exemptions from statutes and administrative rules pertaining to education for the purpose of implementing an innovative education pilot program approved by the Superintendent of Public Instruction.[35] The bill expressly prohibits the state Superintendent from waiving any of the bill's requirements.[36]

Ohio Teen Pregnancy Prevention Task Force

The bill creates the Ohio Teen Pregnancy Prevention Task Force to do all of the following:[37]

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[32] R.C. 3313.6011(D).

[33] R.C. 3313.6011(F).

[34] R.C. 3301.0718, not in the bill.

[35] R.C. 3302.07, not in the bill.

[36] R.C. 3313.6011(H).

[37] R.C. 3701.049(E).

(1) Advise the Governor and General Assembly on strategies to prevent teen pregnancy in Ohio;

(2) Monitor and evaluate implementation of strategies to prevent teen pregnancy, identify barriers to implementing those strategies, and establish methods to overcome the barriers;

(3) Collect and maintain information regarding successful teen pregnancy prevention programs, research, and other relevant materials to guide the Governor and General Assembly in their efforts to reduce the number of teen pregnancies;

(4) Explore the establishment of a program within the Department of Health that would award grants to federally qualified health centers[38] to establish or expand teen pregnancy prevention programs;

(5) Collect information provided by local communities regarding successful teen pregnancy prevention programs;

(6) Perform any other duties specified by the Director of Health.

Not later than December 1 each year, the bill requires the Task Force to submit a report to the Governor and General Assembly that summarizes its findings and recommendations for changes to the laws regarding teen pregnancy. The initial report is also to include a comprehensive assessment of teen pregnancy in Ohio and make recommendations for reducing the number of teen pregnancies. Subsequent annual reports are to also evaluate the success of programs undertaken to reduce teen pregnancies and make additional recommendations as necessary.[39]

Administration of the Task Force

The bill requires the Task Force to commence its activities not later than 30 days after the bill's effective date.[40]

The Task Force is to consist of the following members:[41]

(1) The Director of Health or the Director's designee;

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[38] R.C. 3701.047, not in the bill.

[39] R.C. 3701.049(F).

[40] R.C. 3701.049(A).

[41] R.C. 3701.049(B).

(2) The Superintendent of Public Instruction or the Superintendent's designee;

(3) Two members of the House of Representatives, one appointed by the Speaker and one appointed by the Minority Leader;

(4) Two members of the Senate, one appointed by the President and one appointed by the Minority Leader;

(5) One member of the Commission on Minority Health;

(6) Two teens who reside in Ohio, appointed by the Director;

(7) Two parents who reside in Ohio and are the parents of teens who reside in Ohio, as appointed by the Director;

(8) Two teachers who reside in Ohio and are employed as classroom teachers in Ohio, as appointed by the Director;

(9) One representative of each of the following, appointed by the Director: community-based organizations that provide teen pregnancy prevention services, public health professionals, licensed medical practitioners, and school nurses.

The Director of Health or the Director's designee is to serve as chairperson of the Task Force and the Task Force is to convene at the call of the chairperson.[42] The bill requires the Task Force to hold meetings and maintain records of those meetings.[43]

All Task Force members are to serve without compensation, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties. The Department of Health is responsible for providing meeting space for the Task Force.[44]

Standard of care for victims of sexual assault

For Ohio hospitals that offer organized emergency services, the bill establishes a standard of care regarding the services to be provided to victims of sexual assault or individuals reported to be victims of sexual assault.[45] "Sexual assault" is defined by the bill as rape, sexual battery, unlawful sexual conduct with a minor, gross sexual

[42] R.C. 3701.049(D).

[43] R.C. 3701.049(E)(6).

[44] R.C. 3701.049(C).

[45] R.C. 3727.611(A) (primary) and 2907.29.

imposition, and sexual imposition.[46] The hospital must provide the services described below without regard to a victim's ability to pay.[47]

The bill specifies that the provisions establishing a standard of care for victims of sexual offenses and individuals reported to be such victims are to be known as the "Compassionate Assistance for Rape Emergencies Act."[48]

Emergency contraception

The hospital must provide a female victim or individual reported to be a victim who is, as determined by the hospital, of child-bearing age with medically and factually accurate, unbiased, and clear and concise written and oral information about emergency contraception.[49]

As used in the bill, "emergency contraception" means any drug, drug regimen, or device approved by the FDA and intended to prevent pregnancy after unprotected sexual intercourse or contraceptive failure.[50] The bill specifies that the information must explain the following:[51]

--That emergency contraception has been approved by the FDA for use by women of all ages with a prescription and as an over-the-counter product for women age 17 or older as a safe and effective means to prevent pregnancy after unprotected sexual intercourse or contraceptive failure if used in a timely manner;

--That emergency contraception is more effective the sooner it is used following unprotected sexual intercourse or contraceptive failure;

--That emergency contraception does not cause an abortion and studies have shown that it does not interrupt an established pregnancy.

The hospital must promptly offer the victim emergency contraception and provide the emergency contraception if the victim or individual accepts the offer.[52]

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[46] R.C. 3727.61(D).

[47] R.C. 3727.611(A).

[48] Section 5.

[49] R.C. 3727.611(B)(1).

[50] R.C. 3727.60(C).

[51] R.C. 3727.611(B)(1).

[52] R.C. 3727.611(B)(2).

In the case of a female victim or an individual reported to be a victim of sexual assault who is, as determined by the hospital, of child-bearing age and who is pregnant or incapable of becoming pregnant, the bill specifies that a hospital is not required to provide information about emergency contraception, offer emergency contraception, or provide emergency contraception. If the hospital has a pregnancy test performed to confirm whether the victim or individual is pregnant, the hospital must have the test performed in such a manner that the results of the test are made available to the victim or individual during the initial visit to the hospital regarding the sexual assault.[53]

Sexually transmitted infection assessment, counseling, treatment

The hospital must promptly provide a female or male victim or individual reported to be a victim with an assessment of the victim's or individual's risk of contracting a sexually transmitted infection, including gonorrhea, chlamydia, syphilis, and hepatitis. The assessment is to be conducted by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or registered nurse. The assessment is to be based on the following:[54]

--The available information regarding the sexual assault;

--The established standards of risk assessment, including consideration of any recommendations established by the CDC, peer-reviewed clinical studies, and appropriate research using in vitro and nonhuman primate models of infection.

After conducting the assessment, the hospital must provide the victim or individual reported to be a victim with counseling concerning sexually transmitted infections and follow-up care. The counseling is to be provided in clear and concise language and conducted by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or registered nurse. Specifically, the counseling must discuss the significantly prevalent sexually transmitted infections for which effective post-exposure treatment exists and for which deferral of treatment would either significantly reduce treatment efficacy or pose substantial risk to the victim's or individual's health, including the infections for which prophylactic treatment is recommended based on guidelines from the CDC.[55]

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[53] R.C. 3727.611(E).

[54] R.C. 3727.611(C)(1).

[55] R.C. 3727.611(C)(2).

After providing the counseling, the hospital must offer treatment for sexually transmitted infections to the victim or individual reported to be a victim and provide the treatment if the victim or individual accepts the offer.[56]

Follow-up care counseling

Before the victim or individual reported to be a victim leaves the hospital, the hospital must also provide the victim with counseling on the physical and mental health benefits of seeking follow-up care from the victim's or individual's primary care physician or from another medical care provider capable of providing follow-up care to victims of sexual assault. The counseling is to include information on local organizations and relevant health providers capable of providing either follow-up medical care or other health services to victims of sexual assault. The counseling must be provided in clear and concise language and conducted by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or registered nurse.[57]

Victims who are minors

Under current law, a minor who is a victim of a sexual offense is authorized to consent to an examination conducted by a hospital, regardless of any other provision of law, in order to gather physical evidence. The consent is not subject to disaffirmance because of minority, and the consent of the minor's parent, parents, or guardian is not required, but the hospital must give written notice to the parent, parents, or guardian that an examination has taken place. The parent, parents, or guardian are not liable for payment for any services provided to the minor without their consent.[58]

In a manner similar to the current law, the bill authorizes a minor to consent to the services provided by a hospital under the bill's provisions. Specifically, the bill permits the minor to consent to the services, regardless of any other provision of law, and the consent is not subject to disaffirmance because of minority. The consent of the minor's parent, parents, or guardian is not required for the services. However, unlike existing law, the bill does not require the hospital to notify a parent or guardian that services have been provided to the minor and does not specify that the parent or guardian is not liable for payment for any services provided to the minor without the consent of the parent or guardian.

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[56] R.C. 3727.611(C)(3).

[57] R.C. 3727.611(C)(4).

[58] R.C. 2907.29.

The bill specifies that any services provided under the bill to a minor are to be provided at the discretion of the treating physician and in accordance with CDC guidelines.[59]

Effect of the hospital standard of care

The bill specifies that its provisions on the standard of care in hospitals for victims or individuals reported to be victims of sexual assault are not to be construed to mean any of the following:[60]

(1) That a hospital is required to provide treatment if the treatment goes against recommendations established by the CDC;

(2) That a victim or an individual reported to be a victim of sexual assault is required to submit to testing or treatment;

(3) That a hospital is prohibited from seeking reimbursement for the costs of services provided from the victim's or individual's health insurance or Medicaid, if applicable. The bill specifies, however, that the hospital continues to be subject to the existing prohibition on billing a victim or individual or the victim's or individual's insurer for costs incurred in performing a medical examination for purposes of gathering physical evidence for possible prosecution. Payments for such examinations are made by the Attorney General through the state treasury's Reparations Fund.

Complaints, fines, and injunctions

In addition to other remedies under common law, the bill authorizes an individual to file a complaint with the Department of Health if the individual believes a hospital has failed to comply with the bill's standard of care in hospitals for victims or individuals reported to be victims of sexual assault. The Department must investigate the complaint in a timely manner.[61]

If the Department determines that a violation has occurred, it must impose a civil penalty of not less than $10,000 for each violation. The penalty is to be imposed pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.). If the hospital has previously committed a violation, the Department may ask the Attorney General to bring an action for injunctive relief. On filing an appropriate petition in a court of competent jurisdiction, the court may conduct a hearing. If it is

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[59] R.C. 3727.611(D).

[60] R.C. 3727.611(F).

[61] R.C. 3727.612.

demonstrated in the proceedings that the hospital failed to provide the care or services, the court must grant a temporary or permanent injunction enjoining the hospital's operation.[62]

COMMENT

Under Section 2713 of the federal Patient Protection and Affordable Care Act (ACA),[63] most private health plans must provide coverage for a range of preventive services and may not impose cost-sharing (such as copayments, deductibles, or co-insurance) on patients receiving these services. FDA-approved contraceptives and related services are among the preventive services that generally must be covered.[64] The federal contraception mandate took effect August 1, 2012.

There are a few exceptions to the contraception mandate. First, small businesses – companies with less than 50 employees – do not have to provide any coverage. Second, plans sponsored by houses of worship are exempt. Third, employer-sponsored plans that have essentially had the same costs and benefits since before March 23, 2010 are "grandfathered" and exempt from the contraception mandate and most other ACA requirements. In 2016, approximately 23% of covered workers are enrolled in a grandfathered plan.[65]

Finally, religiously affiliated nonprofit organizations (such as universities and hospitals) and closely held for profit employers that object to contraceptives on religious grounds are eligible for an accommodation. Under the accommodation, an eligible employer does not have to contract, arrange, pay, or refer their employees for contraceptive coverage. Instead, the health carrier used by the employer must notify the policyholders about the available accommodation and, if an accommodation is sought, must provide separate coverage of contraceptives, at no cost, to the policyholders.[66]

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[62] R.C. 3727.612.

[63] 42 United States Code (U.S.C.) 300gg-13.

[64] U.S. Department of Health and Human Services, *Women's Preventive Service Guidelines*, available at <http://www.hrsa.gov/womensguidelines/>.

[65] Kaiser Family Foundation, Health Research and Educational Trust, *Employer Health Benefits 2016 Annual Survey*, p. 230 (September 14, 2016), available at <http://kff.org/health-costs/report/2016-employer-health-benefits-survey/>.

[66] 45 C.F.R. 147.131. *See also* Kaiser Family Foundation, *Private Insurance Coverage of Contraception*, available at <http://kff.org/womens-health-policy/issue-brief/private-insurance-coverage-of-contraception/>.

A series of lawsuits were filed by nonprofit religiously affiliated employers claiming that the accommodation violates their religious beliefs by making them complicit in the provision of contraceptive coverage to their employees. Nine federal appellate courts have heard challenges to the accommodation, with eight ruling that the nonprofits were not substantially burdened by the accommodation. One court ruled that the accommodation violates the federal Religious Freedom Restoration Act. On May 16, 2016, the U.S. Supreme Court issued a decision in a case that consolidated seven of these appeals. The Court sent the cases back to the lower courts with instructions to the parties to resolve the matter. It directed the lower courts to re-hear the cases and issue new decisions.[67]

In July of 2016, the U.S. departments of Health and Human Services, Labor, and Treasury issued a Request for Information (RFI) inviting public comments on whether there are alternative methods by which nonprofit religiously affiliated or closely held for profit employers that object to providing contraceptive coverage on religious grounds could obtain accommodations.[68]

HISTORY

ACTION	DATE
Introduced	03-24-15

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[67] Kaiser Family Foundation, *How Does Where You Work Affect Your Insurance Coverage?*, available at <http://kff.org/womens-health-policy/fact-sheet/how-does-where-you-work-affect-your-contraceptive-coverage/>.

[68] Kaiser Family Foundation, *How Does Where You Work Affect Your Insurance Coverage?*, available at <http://kff.org/womens-health-policy/fact-sheet/how-does-where-you-work-affect-your-contraceptive-coverage/>.