



Sub. H.B. 6

125th General Assembly

(As Reported by H. Homeland Security, Engineering, and Architectural Design)

Rep. J. Stewart

BILL SUMMARY

- Modifies the powers and duties of the Director of Health, Department of Health, Public Health Council, and local boards of health relative to the Director's general powers, agreements to sell services or exchange information, investigations, quarantine and isolation, vaccinations and immunizations, the public health laboratory, enforcement of rules and orders, and other public health matters.
- Defines "bioterrorism," "protected health information," and "surveillance."
- Requires the Public Health Council to adopt rules related to determining the capacity of trauma centers to respond to disasters, mass casualties, and bioterrorism.
- Makes information that is "protected health information" confidential and not subject to release except under specified conditions.
- Provides that during an investigation that the Director is conducting and that is not yet complete information is confidential and cannot be released except under specified conditions.
- Permits the release of information in summary, statistical, and aggregate form if that information does not identify a person and specifies that such information is a public record.
- Exempts specified records from the Public Records Law.
- Expands requirements under which specified health care entities must report information to the Department, establishes a criminal penalty for

failure to comply with certain of those requirements, and authorizes the Director to adopt fine structures by rule and impose fines.

TABLE OF CONTENTS

Overview and definitions.....	2
Bioterrorism.....	3
Protected health information.....	3
Surveillance.....	3
Changes in general powers of the Director of Health.....	4
Agreements to sell services or exchange information.....	4
Investigations; confidentiality of information.....	4
Quarantine and isolation; emergency actions by a health commissioner.....	5
Vaccinations and immunizations; other pharmaceutical agents.....	6
Public health laboratory.....	6
Duties of the Public Health Council.....	7
Enforcement of rules and orders; violations.....	7
Isolation orders.....	7
Violation of rules and orders prohibited.....	7
Penalty for violating rules and orders.....	7
Protected health information and confidentiality requirements.....	8
Information reporting requirements.....	9
Trauma centers.....	9
Health care providers.....	10
Out-of-state medical laboratories.....	10
Pharmacies and pharmacists.....	10
Poison prevention and treatment centers; other health-related entities.....	11
Penalties and fines.....	12
Failure to comply with reporting requirements.....	12
Penalty for violating reporting requirements.....	12
Reporting sick persons.....	12
Fines.....	12
Other provisions: renumbering and conforming changes.....	13

CONTENT AND OPERATION

Overview and definitions

The bill modifies the powers and duties of the Director of Health, the Department of Health, the Public Health Council, and boards of health with respect to their general powers with specific emphasis on changes that relate to the

ability to respond to bioterrorism. The bill introduces definitions that are instrumental in the changes the bill proposes, including the following.

Bioterrorism

(R.C. 3701.232(A)(1))

"**Bioterrorism**" means "the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of a microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, animal, plant, or other living organism as a means of influencing the conduct of government or intimidating or coercing a population."

Protected health information

(R.C. 3701.17(A)(1))

"**Protected health information**" means "information, in any form, including oral, written, electronic, visual, pictorial, or physical that describes an individual's past, present, or future physical or mental health status or condition, receipt of treatment, or care, or purchase of health products, if either of the following applies:

(a) The information reveals the identity of the individual who is the subject of the information.

(b) The information could be used to reveal the identity of the individual who is the subject of the information, either by using the information alone or with other information that is available to the predictable recipients of the information."

Surveillance

(R.C. 3701.072(A)(2))

"**Surveillance**" in the public health service means the systematic collection, analysis, interpretation, and dissemination of health data on an ongoing basis, to gain knowledge of the pattern of disease occurrence and potential in a community in order to control and prevent disease in the community.

Changes in general powers of the Director of Health

(R.C. 3701.03)

Under continuing law, the Director of Health, as chief executive officer of the Department of Health, is charged with administering health and sanitation laws and Department rules. Under the bill, the Director may designate employees of the Department and during a public health emergency, other individuals to administer the laws and rules on the Director's behalf.

The bill limits the actions the Director may take by specifying that the authority to take action does not authorize any action that prevents the fulfillment of duties or impairs the exercise of authority established by law for any other person or entity.

Agreements to sell services or exchange information

(R.C. 3701.04(B))

Continuing law authorizes the Director of Health to enter into agreements to sell Department of Health services to other departments, agencies, and institutions of this state. The bill expands this authority by permitting the Director to enter into agreements to sell Department services with other states and the United States.

Investigations; confidentiality of information

(R.C. 3701.14)

Continuing law requires the Director to inquire into the cause of disease, especially when contagious infectious, epidemic, or endemic and take prompt action to control and suppress the disease. The bill expands the provision by requiring the Director also to make inquiry "or investigate" both disease and also "illness," including pandemic conditions. The bill stipulates that any investigation or inquiry that is not yet complete is confidential during the course of that investigation and may not be released except under one of the following conditions:

(1) The confidential information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor, as defined in section 2935.01 of the Revised Code.

(2) The Director enters into a written agreement to share or exchange the information with a person or government entity and that agreement requires the person or entity to comply with the bill's confidentiality requirements.

(3) The 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. Information released pursuant to this division shall be limited to the release of the information to those persons necessary to control, prevent, or mitigate disease.

The bill also requires that except for information released under (3) above, any disclosure must be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. If this information has been released to you in other than a summary, statistical, or aggregate form, you shall make no further disclosure of this information without the specific, written, and informed release of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the release of information pursuant to this section."

The bill stipulates, however, that the bill's confidentiality requirements do not bar the release of information that is in summary, statistical, or aggregate form and that does not identify a person and that such information is a public document under the Ohio Open Records Law. Additionally, the bill specifies that the Director's authority to investigate disease, illness, and health conditions does not authorize the Director to conduct an independent criminal investigation without the consent of each local law enforcement agency with jurisdiction to conduct the criminal investigation.

With the exception of "protected health information," which is governed by the section of the bill that specifically addresses that type of information, the bill's confidentiality requirements apply during any investigation or inquiry the Director makes, notwithstanding any other provision of the Revised Code that establishes the manner or maintaining confidentiality or the release of information.

Quarantine and isolation; emergency actions by a health commissioner

(R.C. 3701.13 and 3707.34)

Continuing law grants the Department of Health "supreme authority" in matters of quarantine, which it may declare, modify, or abolish. Under the bill, this authority is changed to "ultimate" authority which is also granted in matters of "isolation," which the Department likewise may declare, modify, or abolish. The bill requires that, whenever possible, the Department work in cooperation with the health commissioner of a general or city health district.

In enforcing the law on quarantine and isolation, the bill authorizes the health commissioner appointed by a board of health of a general or city health district to act on behalf of the board if (1) circumstances make a meeting of the board impractical or impossible or (2) delaying action until a meeting of the board compromises the public health. The bill directs each board of health to adopt a policy, subject to the approval of the district advisory council or city council for city health districts not governed by an advisory council, specifying the actions that a health commissioner may take related to isolation and quarantine. The bill stipulates that any action a health commissioner takes in accordance with the board's policy is considered an action the board takes unless the board votes to nullify the commissioner's action.

Vaccinations and immunizations; other pharmaceutical agents

(R.C. 3701.13 and 3701.16)

Under continuing law, the Department of Health may approve means of immunization against diphtheria, rubella, tetanus, hepatitis B, and other specified diseases. The bill adds mumps to the list of specified diseases and allows the Department also to take actions necessary to encourage vaccination against any of the diseases.

The bill authorizes the Director of Health to purchase, store, and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies the Director deems advisable in the interest of preparing for or responding to a public health emergency. The bill stipulates that this *discretion* related to antibiotics and other agents and supplies does not relieve the Director of the *duty* under continuing law to make necessary arrangements for the production and distribution of diphtheria antitoxin.

Public health laboratory

(R.C. 3701.15 and 3701.22)

The Department of Health currently is required to maintain a "chemical and bacteriological" laboratory for the examination of public water supplies, diagnosis of diseases, and analysis of patient specimens and food samples. The bill modifies this requirement to:

- (1) Refer to the laboratory as a "public health" laboratory rather than a "chemical and bacteriological" laboratory;
- (2) Expand the duties of the laboratory to include the diagnosis of, screening for, or confirmation of diseases or pathogens and the performance of

biological, chemical, or radiological analyses or examinations as the Department deems necessary.

Duties of the Public Health Council

(R.C. 3701.06, 3701.34, 3701.35, and 3701.56)

Under current law, the Public Health Council must take evidence in appeals from the Director of Health's decisions in a matter that relates to the approval or disapproval of plans, locations, estimates of cost, or other matters coming before the Director for official action. The bill removes this requirement.

Current law also requires the Public Health Council to adopt sanitary rules for general application throughout Ohio, to be known as the "Sanitary Code." The bill removes references to the Sanitary Code and instead refers generally to "rules."

Enforcement of rules and orders; violations

Isolation orders

(R.C. 3701.56)

Continuing law delegates the enforcement of quarantine and sanitary rules to boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township. Under the bill, these entities and individuals also must enforce isolation orders.

Violation of rules and orders prohibited

(R.C. 3701.352)

Existing law prohibits the violation of any rule of the Public Health Council or Department of Health or any order the Director issues under Department of Health Law (R.C. Chapter 3701.). The bill expands the prohibition to include violations of: (1) rules the Director adopts, and (2) orders the Director issues under Department of Health laws to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event.

Penalty for violating rules and orders

(R.C. 3701.99)

Under current law, violating Public Health Council rules or the Director's orders is a minor misdemeanor on a first offense and a misdemeanor of the fourth

degree on each subsequent offense. Under the bill, a violation of the modified prohibition is a misdemeanor of the second degree.

Protected health information and confidentiality requirements

(R.C. 3701.17)

Under the bill, protected health information reported to or obtained by the Director of Health, the Department of Health, or a board of health of a city or general health district is confidential and cannot be released without the written consent of the individual who is the subject of the information unless one of the following applies:

(1) The release of the information is necessary to provide treatment to the individual and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the bill's confidentiality requirements.

(2) The release of the information is necessary to ensure the accuracy of the information and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the bill's confidentiality requirements.

(3) The information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.

(4) The 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. Information may be released pursuant to this division only to those persons or entities necessary to control, prevent, or mitigate disease.

The bill specifies that information that does not identify a person is not protected health information and may be released in summary, statistical, or aggregate form. The bill requires that upon request, the Director release information in a summary, statistical, or aggregate form that does not identify a person.

The bill also requires that except for information released pursuant to (4) above, any disclosure must be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. If this information has been released to you in other than a summary, statistical, or aggregate form, you shall make no further disclosure of this

information without the specific, written, and informed release of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the release of information pursuant to this section."

In addition to the bill's general requirements regarding confidentiality of protected health information, the bill requires that the confidentiality requirements apply to information that is released by a hospital or dispensary (R.C. 3701.07(A)), when specified diseases are reported (R.C. 3701.23(E)), when pharmacies and pharmacists report information (R.C. 3701.232(D)), when physicians report occupational illnesses (R.C. 3701.25(E)), and when physicians, building owners, and heads of families report specified illnesses (R.C. 3707.06(C)).

Information reporting requirements

Trauma centers

(R.C. 3701.072)

The bill requires the Public Health Council to adopt rules, in accordance with the Administrative Procedure Act, that require a trauma center to report information to the Director of Health describing the trauma center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. The rules may require the reporting of any information the Council considers necessary for an accurate description of a trauma center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. Information that a trauma center reports is not a public record under the Ohio Public Records Law.

Following a required review of the information that trauma centers provide, the Director may conduct an evaluation of a trauma center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. An evaluation conducted pursuant to the bill's provisions is not a public record under the Ohio Public Records Law. The bill also requires that upon request, the Department of Health shall provide a summary report of the Public Health Council's rules related to trauma centers.

"Trauma center" has the same meaning as in continuing law, R.C. Chapter 4765., the Division of Emergency Medical Services Law.

Health care providers

(R.C. 3701.23 and 3701.24(B))

Under continuing law, boards of health, health authorities or officials, and physicians in localities in which there are not health authorities or officials, must promptly report to the Department of Health the existence of specified contagious or infectious diseases. The bill expands the application of this requirement to "health care providers" (rather than physicians) in localities in which there are no health authorities or officials and to coroners and medical examiners. In addition, it requires the reporting of other illnesses, health conditions, or unusual infectious agents or biological toxins posing a risk of human fatality or disability, as specified by the Public Health Council. These reports are to be submitted, as required by statute or rule, on forms and in the manner the Director prescribes.

For purposes of the bill, **health care provider**" is defined as any person, business or other organization, or government entity that provides health care services to individuals.

Out-of-state medical laboratories

(R.C. 3701.231)

Under the bill, if a medical laboratory outside Ohio performs a test or other diagnostic or investigative analysis that results in information pertaining to an Ohio resident that must be reported by a health care provider under Ohio law, the entity using the laboratory must ensure that the laboratory complies with those reporting and confidentiality requirements and verify to the Director of Health that it complies with the requirements pursuant to procedures the Director establishes.

Pharmacies and pharmacists

(R.C. 3701.232)

The bill authorizes the Public Health Council to adopt rules, in accordance with the Administrative Procedure Act, that require a pharmacy or pharmacist to report significant changes in medication usage that may be caused by bioterrorism, epidemic or pandemic disease, or established or novel infectious agents or biological toxins posing a risk of human fatality or disability. Events that the rules may require reporting include the following:

- (1) An unexpected increase in the number of prescriptions for antibiotics;
- (2) An unexpected increase in the number of prescriptions for medication to treat fever or respiratory or gastrointestinal complaints;



(3) An unexpected increase in sales of, or the number of requests for information on, over-the-counter medication to treat fever or respiratory or gastrointestinal complaints;

(4) Any prescription for medication used to treat a disease that is relatively uncommon and may have been caused by bioterrorism.

Poison prevention and treatment centers; other health-related entities

(R.C. 3701.19 and 3701.201)

The bill requires the Public Health Council to adopt rules, in accordance with the Administrative Procedure Act, under which a poison prevention and treatment center or other health-related entity is required to report events that may be caused by bioterrorism, epidemic or pandemic disease, or established or novel infectious agents or biological or chemical toxins posing a risk of human fatality or disability. Events that the rules may require reporting include the following:

(1) An unexpected pattern or increase in the number of telephone inquiries or requests to provide information about poison prevention and treatment and available services;

(2) An unexpected pattern or increase in the number of requests to provide specialized treatment, consultation, information, and educational programs to health care professionals and the public;

(3) An unexpected pattern or increase in the number of requests for information on established or novel infectious agents or biological or chemical toxins posing a risk of human fatality or disability that is relatively uncommon and may have been caused by bioterrorism;

(4) Any other event specified in the rules adopted by the Public Health Council.

The bill requires each poison prevention and treatment center and other health-related entity to comply with any reporting requirement established in rules adopted under this provision.

Penalties and fines

Failure to comply with reporting requirements

(R.C. 3701.23(C), 3701.232(C), 3701.24(C), and 3701.25(B))

The bill prohibits any person from failing to comply with the reporting requirements applicable to boards of health, health authorities or officials, health care providers in localities in which there are no health authorities or officials, coroners and medical examiners, pharmacies and pharmacists, persons designated by Public Health Council rules to report certain AIDS related information, and physicians attending a patient suffering from specified diseases.

Penalty for violating reporting requirements

(R.C. 3701.99)

The bill makes a violation of the reporting requirements contained in the bill a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.

Reporting sick persons

(R.C. 3707.06)

Continuing law requires any physician attending persons suffering from cholera, plague, yellow fever, typhus fever, diphtheria, typhoid fever, or any other disease dangerous to the public health to report certain information to the health commissioner in the jurisdiction where the sick person is found. Continuing law also requires the owner of the building in which the sick person resides and the head of the sick person's family to notify the health commissioner. The bill prohibits all persons responsible for reporting from failure to comply with the requirement.

Fines

(R.C. 3701.571)

The bill permits the Director of Health to adopt rules pursuant to the Administrative Procedure Act that establish a graduated system of fines based on the scope and severity of violations and the history of compliance, not to exceed \$750 per incident, and in an adjudication under the Administrative Procedure Act, to impose a fine against any person who fails to comply with reporting requirements. The Director also may impose a fine against any poison prevention and treatment center or other health-related entity that fails to comply with the

bill's reporting requirement. On request of the Director, the Attorney General must bring and prosecute to judgment a civil action to collect any fine imposed under this provision that remains unpaid. All fines collected are to be deposited into the state treasury to the credit of the General Operations Fund. (Under current law (R.C. 3701.57) all fines or judgments collected by the Department of Health for specified violations, including violations of any orders or rules of the Department, are paid into the General Revenue Fund.)

Other provisions: renumbering and conforming changes

(R.C. 339.89, 3701.04(A)(5), 3701.06, 3701.13, 3701.14(B), 3701.146, 3701.161, 3701.162, 3701.221, 3701.241, 3701.501, 3701.99(E), 3707.38, 3715.02, 3901.46, 4736.01, and 6111.04; Sections 3 and 4)

The bill relocates (from R.C. 3701.14(B) to 3701.146) the existing provisions regarding actions the Director of Health and Public Health Council take with respect to tuberculosis. In addition, the bill renumbers several existing sections, makes corrections, and makes other conforming changes necessitated by its provisions.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-23-03	p. 73
Reported, H. Homeland Security, Engineering, & Architectural Design	---	---

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