Ohio Legislative Service Commission

Bill Analysis

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S.B. 283

129th General Assembly
(As Introduced)

Sens. Turner, Sawyer, Tavares, Cafaro, Brown, Kearney, Schiavoni, Skindell, Smith, Gentile

BILL SUMMARY

- Establishes a hospital standard of care for victims of sexual assault by requiring each hospital with organized emergency services to provide certain services and information on emergency contraception, sexually transmitted infections, and follow-up care.
- Requires that a hospital comply with the bill's standard of care without regard to the ability of a particular victim to pay for the services provided.
- Permits a victim who is a minor to consent to 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.

CONTENT AND OPERATION

Hospital 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.[1] "Sexual assault" is defined by the bill as rape, sexual battery, unlawful sexual conduct

[1] R.C. 3727.601(A) (primary) and 2907.29.

with a minor, gross sexual imposition, and sexual imposition.[2] The services described below are to be provided without regard to a victim's ability to pay.[3]

Services for victims who are female and of child-bearing age

Emergency contraception

The bill requires a hospital to do to all of the following with respect to a victim of sexual assault who is female and, as determined by the hospital, is of child-bearing age: (1) provide the victim with information about emergency contraception, as described below, (2) promptly offer the victim emergency contraception, and (3) if the victim accepts the offer, promptly provide to the victim emergency contraception.[4] The bill specifies that a hospital is not subject to these requirements if the hospital is aware that the victim is incapable of becoming pregnant or is pregnant.[5]

The bill defines "emergency contraception" as any drug, drug regimen, or device intended to prevent pregnancy after unprotected sexual intercourse or contraceptive failure.[6]

Information

When providing emergency contraception information under the bill, a hospital is required to provide information that is medically and factually accurate and unbiased. The information is to be provided in clear and concise language in both written and oral formats. The information must explain all of the following:[7]

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

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

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[2] R.C. 3727.60(D).

[3] R.C. 3727.601(A).

[4] R.C. 3727.601(B).

[5] R.C. 3727.601(E).

[6] R.C. 3727.60(A) to (C).

[7] R.C. 3727.601(B)(1).

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

Services for victims regardless of age or gender

The bill requires a hospital to provide certain services to a victim of sexual assault who is female, regardless of whether she is of child-bearing age, and to a victim of sexual assault who is male.[8]

Sexually transmitted infection assessment, counseling, treatment

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

--Available information regarding the sexual assault;

--Established standards of risk assessment, including consideration of any recommendations established by the federal Centers for Disease Control and Prevention (CDC), peer-reviewed clinical studies, and appropriate research using invitro and nonhuman primate models of infection.[9]

After conducting the assessment, the hospital must provide the victim with counseling concerning sexually transmitted infections. The counseling is to be provided in clear and concise language by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife. The counseling must address 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 health, including the infections for which prophylactic treatment is recommended based on guidelines from the CDC.[10]

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[8] R.C. 3727.601(C).

[9] R.C. 3727.601(C)(1).

[10] R.C. 3727.601(C)(2).

After providing the counseling, the hospital must offer treatment for sexually transmitted infections to the victim and provide the treatment if the victim accepts the offer.[11]

Follow-up care counseling

Before the victim leaves, the hospital must provide the victim with counseling on the physical and mental health benefits of seeking follow-up care from the victim's primary care physician or 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 by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife.[12]

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.[13]

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. Unlike existing law, however, the bill does not require the hospital to notify a parent or guardian that services have been provided to the minor. As under existing law, the bill specifies 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.[14]

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[11] R.C. 3727.601(C)(3).

[12] R.C. 3727.601(C)(4).

[13] R.C. 2907.29.

[14] R.C. 3727.601(D).

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.[15]

Effect of the hospital standard of care

The bill specifies that its provisions regarding the standard of care in hospitals for victims of sexual assault are not to be construed to mean any of the following:[16]

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

(2) That 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 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 the victim'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.[17]

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 of sexual assault. The Department must investigate the complaint in a timely manner.[18]

If the Department determines that a violation has occurred, it must impose a civil penalty of not less than $10,000 for each violation. 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 must conduct a hearing. If it is demonstrated in the proceedings

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[15] R.C. 3727.601(D).

[16] R.C. 3727.601(F).

[17] R.C. 2907.28.

[18] R.C. 3727.602.

that the hospital failed to provide the care or services, the court must grant a temporary or permanent injunction enjoining the hospital's operation.[19]

Title

The bill specifies that it is to be known as the "Compassionate Assistance for Rape Emergencies Act."[20]

HISTORY

ACTION	DATE
Introduced	01-18-12

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[19] R.C. 3727.602.

[20] Section 3.