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Bill Analysis
Legislative Service Commission

S.B. 179

127th General Assembly
(As Introduced)

Sens. Morano, Fedor, D. Miller, Roberts, R. Miller, Smith, Sawyer, Cafaro, Mason

BILL SUMMARY

- Prohibits 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.
- Requires a pharmacy that stocks contraceptives to ensure that the contraceptives are made available without delay when requested by its customers.
- Requires the Department of Health to have materials published explaining emergency contraception and to provide copies to health care practitioners, hospitals, pharmacies, and other health care organizations.
- Establishes, in the case of victims of sexual assault treated in hospitals with organized emergency services, a standard of care that includes providing information on emergency contraception, offering to provide emergency contraception, assessing the risk of sexually transmitted diseases, and offering to provide treatment for the diseases.
- Retains the requirement for school instruction on venereal disease to emphasize the complete effectiveness of abstinence, but requires that equal attention be devoted to the benefits and effectiveness of contraception and condom use as a way to prevent unintended pregnancy and sexually transmitted disease.
- Replaces portions of the criteria used by the State Board of Education in adopting minimum education standards for venereal disease education with standards that (1) stress the value of abstinence without ignoring young people who are or have been sexually active, (2) encourage family

communication about sexuality, (3) teach contraception and condom use in a medically accurate manner, and (4) teach young people the skills necessary to make responsible decisions about sexual activity.

- Creates a teenage pregnancy prevention grant program in the Department of Health.
- Makes changes applicable to state fiscal year 2007 relative to the women's health services grant program, grants for abstinence-only education, and the federal Maternal and Child Health Block Grant.

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CONTENT AND OPERATION

Health insurance coverage of contraceptives

(R.C. 1751.661, 3923.602, and 3923.611; Section 8)

If a health insurer provides coverage of prescription drugs and devices, the bill prohibits the insurer from limiting or excluding coverage for contraceptive drugs or devices. The coverage requirement applies to prescription contraceptive drugs or devices that have been 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 outpatient services rendered by a health care professional that are related to the provision of contraceptive drugs or devices.

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. 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.

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).¹

Access to contraceptives in pharmacies

(R.C. 4729.43)

If a customer of a pharmacy requests a contraceptive that is in stock, the bill requires the pharmacy to ensure that the contraceptive² is provided to the customer without delay. 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.³

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:

(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

¹ ERISA applies to employer sponsored health insurance plans under which the employer self insures. Because of federal preemption, states have little authority to regulate these plans.

² The bill defines "contraception" or "contraceptive" as any drug or device approved by the FDA to prevent pregnancy.

³ A "product" is defined as a drug or device approved by the FDA.

Oclosest 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 direct employees or persons employed by contract or any other form of agreement, do not do any of the following:

--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.

Exceptions

(R.C. 4729.43(E))

The bill specifies that its requirements on 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:

(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 on the basis of "professional judgment," which the bill defines as the use of professional knowledge and skills to form a clinical judgment in accordance with the prevailing medical standards.

Remedies and enforcement

(R.C. 4729.16 and 4729.45)

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 occurred. If the Board determines a violation occurred, it must impose a fine of not more than \$5,000 for each violation.

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.

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 Attorney General is authorized by the bill to commence a civil action in a court of competent jurisdiction to compel compliance. In such 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.

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 State Board of Pharmacy to use its existing authority to take disciplinary actions relative to the individual's license to practice pharmacy. As specified in existing law, the Board may revoke, suspend, limit, place on probation, or refuse to grant or renew the identification card issued to the pharmacist or intern or impose a monetary penalty or forfeiture. 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.

Emergency contraception educational materials for health care providers

(R.C. 3701.135)

The bill requires the Department of Health to cause to be published materials explaining emergency contraception and to furnish copies of the materials to specified health care providers. The bill defines "emergency contraception" as any drug, drug regimen, or device approved by the FDA to prevent pregnancy after unprotected sexual intercourse or contraceptive failure.

Copies of the materials must be provided to health care practitioners,⁴ hospitals, ambulatory surgical facilities, long-term care facilities, pharmacies, emergency medical facilities, and any other health care organization providing public health services. At a minimum, the materials must include the following information:

- (1) An explanation of the use, safety, efficacy, and availability of emergency contraception;
- (2) A recommendation regarding the use of emergency contraception in appropriate cases;
- (3) An explanation of how to obtain additional copies of the materials.

Standard of care for hospitals treating victims of sexual assault

(R.C. 2907.29 and 3727.11)

For Ohio hospitals that offer organized emergency services, the bill establishes a standard of care pertaining to victims of sexual assault or individuals believed to be such victims.⁵ The care must be provided without regard to the victim's ability to pay. Specifically, the following types of services must be provided:⁶

⁴ The bill provides for the following health care practitioners to receive the informational materials on emergency contraception: physicians, physician assistants, registered nurses, licensed practical nurses, pharmacists, paramedics and other emergency medical technicians, chiropractors, dentists, dental hygienists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, practitioners of limited branches of medicine (massage therapists, cosmetic therapists, mechanotherapists, and naprapaths), psychologists, independent social workers, social workers, social work assistants, professional clinical counselors, professional counselors, dietitians, respiratory care professionals, hearing aid dealers and fitters, speech language pathologists, audiologists, optometrists, and optical dispensers.

⁵ The bill defines "sexual assault" as the crimes of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, and sexual imposition. Any institution classified by the Public Health Council as a hospital is included in the standard of care requirement if it offers organized emergency services.

⁶ The bill includes statutory cross-references to coordinate its provisions with an existing law provision that requires hospitals with organized emergency services to inform victims of sexual assault of available venereal disease, pregnancy, medical, and psychiatric services (R.C. 2907.29).

Emergency contraception information: The hospital must provide the victim with medically and factually accurate, unbiased, and clear and concise written and oral information about emergency contraception. The bill specifies that the information must explain the following:

--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 medication for women age 18 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 taken 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.

Offer to provide emergency contraception: The hospital must promptly offer the victim emergency contraception and provide the emergency contraception if the victim accepts the offer.

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

--The available information regarding the sexual assault, as well as subsequent findings from the medical examinations and any tests conducted;

--The established standards of risk assessment, including consideration of any recommendations established by the United States Centers for Disease Control and Prevention (CDC), peer-reviewed clinical studies, and appropriate research using invitro and nonhuman primate models of infection;

Counseling on disease treatment: The hospital must provide the victim with counseling concerning the significantly prevalent sexually transmitted diseases 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. The hospital also must provide counseling on the bill's requirement that it offer and provide the treatment on request. The bill specifies that the counseling is to be provided by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife.

Offer to provide treatment: The hospital must offer to treat the victim for any sexually transmitted diseases to which the victim may have been exposed

during the assault. Further, the hospital must provide the treatment if the victim consents to be treated. The bill specifies that the treatment is to be provided regardless of the victim's ability to pay.

Consent by a minor

(R.C. 3727.11(C))

Under the bill, a minor is authorized to consent to an examination as a victim of sexual assault, regardless of any other provision of law. The consent is not subject to disaffirmance because of minority, and the consent of the minor's parent, parents, or guardian is not required. The bill specifies that the parent, parents, or guardian are not liable for payment for any services provided under the bill to the minor without their consent.

Effect of the hospital standard of care

(R.C. 3727.11(D))

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

(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.

Complaints, fines, and injunctions

(R.C. 3727.12)

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 for victims of sexual assault. The Department must investigate the complaint in a timely manner.

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

Educational standards regarding venereal disease

(R.C. 3313.6011(B))

Under current law, school instruction on venereal disease must emphasize abstinence from sexual activity as the only completely effective protection against unwanted pregnancy, sexually transmitted disease, and sexual transmission of a virus that causes acquired immunodeficiency syndrome (AIDS).

The bill retains the requirement that school instruction emphasize abstinence, but requires that equal attention be devoted to the benefits and effectiveness of contraception and condom use as a way to prevent unintended pregnancy, sexually transmitted disease, and sexual transmission of the AIDS virus.

Minimum standards by the State Board of Education

(R.C. 3313.6011(C))

In adopting minimum education standards for schools, the State Board of Education must require course material and instruction on venereal disease to do all of the following:

- (1) Stress that students should refrain from sexual activity until after marriage;
- (2) Teach the potential physical, psychological, emotional, and social side effects of participating in 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 laws pertaining to financial responsibility of parents to children born in and out of wedlock;

(6) Advise students of the circumstances under which it is criminal to have sexual contact with a person under age 16.

In place of the requirements specified in (1) to (3) above, the bill provides that the Board's minimum standards must require the course material and instruction to do the following:

--Stress the value of abstinence without ignoring the young people who have engaged in or are engaging in sexual activity;

--Encourage family communication between parent and child about sexuality;

--Teach contraception and condom use in a medically accurate manner that discusses both the health benefits and effectiveness rates in realistic use;

--Teach young people the skills necessary to make responsible decisions about sexual activity, including how to avoid receiving or making unwanted verbal, physical, and sexual advances.

Grants for teenage pregnancy prevention

(R.C. 3701.047)

The bill requires the Department of Health to establish a program to award grants to public and private entities to establish or expand teenage pregnancy prevention programs and authorizes the Public Health Council to adopt rules for implementation of the program.

To be eligible for the grant program, an applicant must meet the following requirements:

(1) Replicate or substantially incorporate elements of one or more teenage pregnancy prevention programs;⁷

(2) Demonstrate that the applicant will pay at least 25% of the cost of the program from funds derived from non-federal sources;

⁷ The program must have been proven to delay sexual intercourse or sexual activity, increase contraceptive use without increasing sexual activity, or reduce teenage pregnancy based on qualified scientific research. The program must also use one or more of the following strategies to prevent teenage pregnancy: encouraging teenagers to delay sexual activity, sex and HIV education, interventions for sexually active teenagers, preventive health services, youth development programs, serving learning programs, or outreach or media programs.

(3) Demonstrate that the grant funds will supplement, not supplant, funds that would otherwise be available to the entity for teenage prevention programs;

(4) Meet any other requirements established by the Public Health Council in rule.

A program is ineligible to receive grants if it is designated as an abstinence-only program or is determined by the Department to be an abstinence-only program.

Priority for grant awards

The Department must give priority in awarding grants to applicants who serve one or more of the following communities:

(1) Communities with teenage pregnancy or birth rates higher than the state average, or with rising teenage pregnancy or birth rates;

(2) Communities with underserved or at-risk populations higher than the state average;

(3) Communities located in areas where the applicant may take advantage of other resources and coordinate with other programs serving youth, such as workforce development or after-school programs.

The Department is prohibited from denying priority status to any of the following: a statewide or local not-for-profit coalition working to prevent teenage pregnancy; a state, local, or tribal agency; a public or private school; an entity that provides after-school programs; or a community or faith-based group.

Program evaluation

The bill requires the Department to evaluate at least 10% of grant programs each year. Each grant recipient must provide all information requested by the Department for purposes of the evaluation. A report of the evaluation detailing the effectiveness of grants issued must be submitted to the General Assembly not later than December 31 of each year.

COMMENT

The bill makes changes to certain grant programs administered by or through the Department of Health, including the women's health services grant program, grants for abstinence-only education, and the Maternal and Child Health Block Grant. The appropriation earmarks for these programs are scheduled to expire June 30, 2007, with the end of the state fiscal year. At that time, the bill's

provisions regarding the permitted use of the grants will become obsolete. (*See* R.C. 3701.046 (repealed); Section 206.42.03 (repealed); and Section 206.42.09 of Am. Sub. H.B. 66 of the 126th General Assembly.)

The pending biennial appropriations act, Am. Sub. H.B. 119 of the 127th General Assembly has new appropriation earmarks for the grant programs. The bill's provisions on the permitted use of grants, such as the provisions on family planning services and evaluating program efficiency, will have to be expressed as amendments to the appropriation earmarks contained in H.B. 119.

HISTORY

ACTION	DATE
Introduced	05-30-07

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