



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 293

128th General Assembly  
(As Introduced)

**Reps.** Yates, Yuko, Boyd, S. Williams, DeBose, Skindell, Foley, Patten, Harris, Garland, Celeste, Stewart, Heard, Weddington, Dyer, Sykes, Slesnick, Koziura, Hagan, Letson, Chandler, Pryor, Domenick

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## BILL SUMMARY

### Health insurance coverage of contraceptives

- 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.

### 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 each hospital with organized emergency services to meet when caring for victims of sexual assault, and specifies that each hospital must provide certain services and information on emergency contraception, sexually transmitted diseases, and follow-up care.
- 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.

### **Emergency contraception information on Department of Health's web site**

- Requires the Department of Health to create and make available on its web site information explaining emergency contraception.

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## **CONTENT AND OPERATION**

### **Health insurance coverage of contraceptives**

(R.C. 1751.69 and 3923.85; Section 3)

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 approved by the United States Food and Drug Administration. 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.

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).<sup>1</sup>

### **Access to contraceptives in pharmacies**

(R.C. 4729.43(A) to (D))

If a customer of a pharmacy requests a contraceptive that is in stock, the bill requires the pharmacy to ensure that the contraceptive<sup>2</sup> 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.<sup>3</sup>

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 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:

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

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<sup>1</sup> 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.

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

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

--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 4729.44)

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 Board 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.

## **Sexual health education**

(R.C. 3313.60, 3313.6011, 3314.03(A)(11)(d), and 3326.11)

### **Current law**

Current law requires each public school district to include venereal disease education as part of its health curriculum. However, 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 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.<sup>4</sup>

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<sup>4</sup> See also Ohio Administrative Code 3301-80-01.

## The bill--generally

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).<sup>5</sup> 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, if age-appropriate,<sup>6</sup> the value of abstinence while not ignoring those who have been or are sexually active. However, the bill prohibits abstinence from being taught to the exclusion of other instruction and materials on contraceptive and disease reduction measures.

The bill creates an optional comprehensive sexual health education<sup>7</sup> 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). Regardless of whether a public school district utilizes the bill's comprehensive sexual health education program, the bill further emphasizes that any sexual education is to stress, if age-appropriate, the value of abstinence while not ignoring those who have been or are sexually active, but prohibits abstinence from being taught to the exclusion of other instruction and materials on contraceptive and disease reduction measures.

In addition to public school districts, the bill's provisions also apply to community (charter) schools, STEM schools,<sup>8</sup> and educational service centers (ESCs).<sup>9</sup>

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<sup>5</sup> 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 (R.C. 3313.6011(A)(3)).

<sup>6</sup> Under the bill, "age-appropriate" means designed to teach concepts, information, and skills based on the social, cognitive, emotional, and experience level of pupils (R.C. 3313.6011(A)(1)).

<sup>7</sup> 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 (R.C. 3313.6011(A)(2)).

<sup>8</sup> A STEM school is a public science, technology, engineering, and math school that operates under the direction of its own governing body (see R.C. Chapter 3323.).

<sup>9</sup> An amendment may be necessary to clarify the application of the bill's provisions to charter schools and STEM schools.

## Standards for the mandatory HIV/AIDS prevention education

(R.C. 3313.6011(C))

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.<sup>10</sup> 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, and the National Academy of Sciences. The information must include all of the following:

- (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;
- (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 disease and its impact on people's lives;

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<sup>10</sup> 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 (R.C. 3313.6011(A)(4)).



(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**

(R.C. 3313.6011(B))

For schools that elect to offer the bill's comprehensive sexual health education program, the bill specifies that, beginning in the 2010-2011 school year, the comprehensive sexual health education must meet the following requirements:

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

(2) All factual information taught in the program must be medically and scientifically accurate. That is, it must be verified or supported by scientific, peer-reviewed research and recognized as accurate and objective by professional organizations and agencies with expertise in the field, such as the U.S. Centers for Disease Control and Prevention 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.

(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 young people how 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) If age-appropriate, instruction and materials must stress the value of abstinence while not ignoring those young people who have been or are sexually active, therefore, abstinence is not to be taught to the exclusion of other instruction and materials on contraceptive and disease 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.

(12) Instruction about sexually transmitted infections must begin no later than 7th grade and cover (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 that test and provide 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.<sup>11</sup>

### **Parental opt-out and inspection of instructional materials**

(R.C. 3313.6011(E))

At the start of each school year, each school must notify parents about the planned HIV/AIDS instruction, comprehensive sexual health education if applicable, and if the district or school intends to conduct any research on student health behaviors and health risks that year.<sup>12</sup> The notification must advise parents (1) that written and audio-visual instructional materials used in the comprehensive sexual health education program 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 participate in the program.

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 whose parent takes advantage of the opt-out provision.

### **HIV/AIDS prevention and sexual health education training**

(R.C. 3313.6011(D))

Under the bill, in consultation with the Department of Education, each school must provide periodic in-service training for personnel who teach HIV/AIDS 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 U.S. Centers for Disease Control and Prevention. Schools may provide the in-service training through joint agreements with other districts and schools or by hiring

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<sup>11</sup> 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 (R.C. 3313.6011(B)).

<sup>12</sup> 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.

outside consultants, including entities that have developed multilingual curricula or curricula accessible to students with disabilities.

### **State Board model program**

(R.C. 3313.6011(F))

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. 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.<sup>13</sup> 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**

(R.C. 3313.6011(H))

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.<sup>14</sup> The bill expressly prohibits the state Superintendent from waiving any of the bill's requirements.

### **Ohio Teen Pregnancy Prevention Task Force**

(R.C. 3701.048)

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

- (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;

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<sup>13</sup> R.C. 3301.0718, not in the bill.

<sup>14</sup> R.C. 3302.07, not in the bill.

(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 public and private entities 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 to also 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.

### **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.

The Task Force is to consist of the following members:

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

(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) Representatives of community-based organizations that provide teen pregnancy prevention services, public health professionals, licensed medical practitioners, and school nurses, as appointed by the Director of Health.

The bill permits the Director to appoint additional members, as specified in (5), above, who are relevant to the duties of the Task Force.

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. The bill requires the Task Force to hold meetings and maintain records of those meetings.

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.

## **Standard of care for victims of sexual offenses**

(R.C. 3727.60 and 3727.601(A), (B), and (D)(1))

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 believed to be such victims. "Sexual assault" is defined by the bill as rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, and sexual imposition. The hospital must provide the services described below, without regard to a victim's ability to pay.

### **Emergency contraception**

The hospital must provide the victim with medically and factually accurate, unbiased, and clear and concise written and oral information about emergency contraception.<sup>15</sup> The bill specifies that the information must explain the following:

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<sup>15</sup> As used in the bill, "emergency contraception" means any drug, drug regimen, or device approved by the United States Food and Drug Administration intended to prevent pregnancy after unprotected sexual intercourse or contraceptive failure (R.C. 3727.60(C)).

"Drug" means an article (1) recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, (2) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, (3) intended to affect the structure or any function of the body of man or other animals (other than food), or (4) intended for use as a component of any article specified in (1), (2), or (3) (21 U.S.C. 321(g)(1)).

"Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is (1) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals. The device must not achieve its primary intended purposes through chemical action within or on the body of man or other animals and must not be dependent upon being metabolized for the achievement of its primary intended purposes. (21 U.S.C. 321(h).)

--That emergency contraception has been approved by the United States Food and Drug Administration 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 accepts the offer.

In the case of a victim of sexual assault who is pregnant, as confirmed by a positive pregnancy test, the bill specifies that a hospital is not required to provide information about emergency contraception, offer emergency contraception, or provide emergency contraception.

### **Sexually transmitted disease**

The hospital must promptly provide the victim with an assessment of the victim's risk of contracting a sexually transmitted disease, 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 is to be based on the following:

--The available information regarding the sexual assault;

--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.

After conducting the assessment, the hospital must provide the victim with counseling concerning sexually transmitted diseases 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, or certified nurse-midwife. Specifically, the counseling must discuss 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, including the diseases for which prophylactic treatment is recommended based on guidelines from the CDC.

After providing the counseling, the hospital must offer treatment for sexually transmitted diseases to the victim and provide the treatment if the victim accepts the offer.

### **Follow-up care**

Before the 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 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, or certified nurse-midwife.

### **Victims who are minors**

(R.C. 2907.29 and 3727.601(C))

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.

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, but unlike existing law, 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.



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.

### **Effect of the hospital standard of care**

(R.C. 3727.601(D)(2))

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. 3727.602)

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.

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

## **Additional requirements for health care professionals examining victims of sexual offenses**

(R.C. 2907.29)

Current law requires all hospitals with organized emergency services to ensure that a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife is on call at all times to examine reported victims of the following sexual offenses: rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, and sexual imposition. Upon the request of a peace officer, a prosecuting attorney, or the victim, and with the victim's consent, the health professional on call must examine the victim for the purposes of gathering physical evidence and complete any written documentation of the physical examination.

Current law also requires victims to be informed of available venereal disease, pregnancy, medical, and psychiatric services. The bill specifies that instead of *venereal* disease services information, the information must be about *sexually transmitted* disease services, and that all of the information given to such victims be in accordance with the bill's standard of care for victims of sexual assault discussed above.

## **Emergency contraception information on Department of Health's web site**

(R.C. 3701.137(B))

The bill requires the Department of Health to create and make available on its web site information explaining emergency contraception.<sup>16</sup> The information must be made available in a format suitable for downloading. The information is to include an explanation of the use, safety, efficacy, and availability of emergency contraception, and a recommendation regarding the use of emergency contraception in appropriate cases.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	09-30-09

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<sup>16</sup> As used in the bill, "emergency contraception" means any drug, drug regimen, or device approved by the United States Food and Drug Administration to prevent pregnancy after unprotected sexual intercourse or contraceptive failure (R.C. 3701.137(A)).