OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 427
(L_132_1882-3)

132nd General Assembly
(Under consideration by H. Community & Family Advancement)

Rep. Young

BILL SUMMARY

Involuntary manslaughter involving a controlled substance

- Prohibits a person from recklessly causing the death of another or the unlawful termination of another's pregnancy as a result of the offender's sale of any controlled substance or controlled substance analog in violation of the existing crime of drug trafficking.

- Specifies that violation of the prohibition is involuntary manslaughter, a first degree felony.

Emergency transport and admission of opioid overdose survivors

- Authorizes certain health care professionals to admit an opioid overdose survivor, without consent, to a hospital or inpatient drug treatment facility for emergency assessment and stabilization, if the survivor was administered naloxone at least twice in the preceding 72 hours.

- Authorizes an emergency medical services person to transport such an overdose survivor, without consent, to a hospital or inpatient drug treatment facility for emergency assessment and stabilization.

- Requires an admitting professional to assess the overdose survivor within 72 hours and determine whether the survivor can be voluntarily or involuntarily treated for substance abuse or addiction or mental illness under current law.

Medicaid waiver for inpatient substance addiction treatment

- Requires the Department of Medicaid to create and administer a Medicaid waiver component to provide substance addiction treatment for eligible individuals in certain facilities that are primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases.

Substance abuse grant programs for faith-based organizations

- Creates three grant programs to be administered by the Department of Mental Health and Addiction Services which must award grants to faith-based organizations that manage programs supporting individuals suffering from substance abuse and addiction.

Drug abuse response teams (DARTs) and quick response teams (QRTs)

- Requires the Ohio Attorney General to establish a procedure to approve faith-based organizations that provide addiction services or recovery supports to individuals who suffer from drug abuse or addiction and that desire to participate on drug abuse response teams (DARTs) and quick response teams (QRTs).

- Requires a DART or QRT (a team of law enforcement officers who partner with community addiction services providers and others to assist drug overdose survivors) that receives a grant from the Ohio Attorney General to include an approved faith-based organization if one exists in the relevant community.

- Requires the Ohio Attorney General to maintain a registry of all such approved faith-based organizations.

Naloxone administration reports

- Requires a hospital or inpatient drug treatment facility in which naloxone was administered to an individual, as well as an emergency medical services person or peace officer who administered naloxone, to notify a DART or QRT if one exists in the community in which the administration occurred.

- Requires hospitals and inpatient drug treatment facilities to submit monthly reports to the State Board of Emergency Medical, Fire, and Transportation Services regarding each individual to whom naloxone was administered on hospital or facility premises in the preceding calendar month.

- Extends the monthly reporting requirement to emergency medical services personnel and peace officers who have administered naloxone.

Drug overdose death reports

- Requires the Department of Health to publish monthly reports on its website showing the number of drug overdose deaths, delineated by county.

- Requires the Department to issue a press release each time a monthly report is completed.

Income tax deduction for uncompensated medical services

- Authorizes a personal income tax deduction for a physician based on the number of hours the physician provides uncompensated medical services through a hospital, free clinic, or nongovernmental medical organization.

Appropriations

- Makes appropriations.

TABLE OF CONTENTS

CONTENT AND OPERATION

Involuntary manslaughter involving a controlled substance

The bill prohibits a person from recklessly causing the death of another or the unlawful termination of another's pregnancy as a result of the offender's sale of any controlled substance or controlled substance analog in violation of the existing crime of drug trafficking.[1] A person who violates the prohibition is guilty of involuntary manslaughter, a first degree felony.[2] A controlled substance is a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V (schedules adopted by the General Assembly under existing law[3] not modified by the bill) that mirror the five schedules specified in the federal Controlled Substances Act.[4] They are placed in their respective schedules based on whether they have a currently accepted medical use in the United States, their relative abuse potential, and likelihood of causing dependence when abused.[5] A "controlled substance analog" is generally a substance to which both of the following apply:[6]

--The chemical structure of the substance is substantially similar to the structure of a controlled substance in schedule I or II.

--One of the following applies regarding the substance:

- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

- With respect to a particular person, that person represents or intends the substance to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the

[1] R.C. 2903.04(A)(2).

[2] R.C. 2903.04(C).

[3] R.C. 3719.41, not in the bill.

[4] R.C. 2903.04(E). The schedules in the federal Controlled Substances Act are codified in 21 Code of Federal Regulations 1308.11 through 1308.15.

[5] U.S. Drug Enforcement Administration, *Controlled Substance Schedules*, available at https://www.deadiversion.usdoj.gov/schedules/.

[6] R.C. 3710.01(HH).

stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

A "controlled substance analog" does not include any of the following:

(1) A controlled substance;

(2) Any substance for which there is an approved new drug application;

(3) With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent that conduct with respect to that substance is pursuant to that exemption; or

(4) Any substance to the extent it is not intended for human consumption before the exemption described in (2), above, takes effect with respect to that substance.

Involuntary emergency transport and admission of opioid overdose survivors

Involuntary admission

The bill permits health care professionals who are authorized under current law to admit patients to hospitals (physicians, physician assistants, clinical nurse specialists, and certified nurse practitioners) to admit, without patient consent, certain opioid overdose survivors to a hospital or inpatient drug treatment facility solely for the purpose of emergency assessment and stabilization for drug abuse and addiction. This involuntary admission procedure applies only when the admitting health professional knows that the individual has been treated with naloxone for reversal of an apparent opioid overdose at least twice in a single 72-hour period during the week immediately before the admission.[7] Naloxone is a medication that rapidly reverses the effects of opioid overdose and is the standard treatment for overdose.[8]

Emergency medical services (EMS) transportation

The bill authorizes an emergency medical services (EMS) person to transport an individual who refuses to consent to drug abuse or addiction assistance to a hospital or inpatient drug treatment facility, but only if the EMS person knows that the individual has been treated with naloxone for reversal of an apparent opioid overdose at least

[7] R.C. 5119.581(A) and (B).

[8] U.S. Food and Drug Administration, *Information about Naloxone*, available at https://www.fda.gov/drugs/drugsafety/postmarketdrugsafetyinformationforpatientsandproviders/ucm472923.htm.

twice in a single 72-hour period during the week immediately before the refusal. The bill specifies that transportation in this manner is not an arrest, and prohibits an entry or other record from being made indicating that the individual was charged with a crime.[9]

On arrival, the EMS person must complete an affidavit that the bill requires the Department of Mental Health and Addiction Services to develop and make available on its website in a format that may be downloaded and reproduced.[10] An admitting health care professional who reviews the affidavit may admit the individual to the hospital or facility for emergency assessment and stabilization, as described above.[11]

72-hour assessment period

Report

The bill requires that an individual who has been admitted to a hospital or inpatient drug treatment facility as described above must be assessed for drug abuse or addiction without delay. Not later than 72 hours after admission, the admitting health care professional or another authorized health care professional must complete a report that specifies all of the following:[12]

--Whether the professional, based on judgment and training, determines that the individual suffers from drug abuse or addiction.

--Whether the professional, based on the judgment and training, determines that the individual presents an imminent danger or imminent threat of danger to self, family, or others as a result of drug abuse or addiction or there exists a substantial likelihood of such a threat in the near future. If the professional believes that the individual is more likely than not to suffer accidental drug overdose in the near future, that belief alone is sufficient to meet that standard.

--Whether the professional, based on the judgment and training, determines that the individual can reasonably benefit from drug abuse or addiction treatment.

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[9] R.C. 5119.582.

[10] R.C. 5119.584.

[11] R.C. 5119.582.

[12] R.C. 5119.583(A).

Post-assessment alternatives

If the professional completing the assessment determines that the individual does not meet the three criteria described above, the hospital or facility must immediately notify the individual of that determination and discharge the individual if the individual does not consent to further inpatient treatment. If appropriate and requested by the individual, the hospital or facility may arrange for the individual to receive services it offers or refer the individual to other services.[13]

Alternatively, if the three criteria are met and the individual *consents* to inpatient treatment, the hospital or facility may retain the individual for the period of time covered by the consent.[14] If the individual *does not consent*, however, the hospital or facility may do one of the following:[15]

--Determine if the individual has a spouse, relative, or guardian who is willing to initiate proceedings for involuntary treatment for drug abuse under current law[16] that requires the person initiating proceedings to pay to the probate court a security deposit covering half of the estimated cost of treatment and sign a guarantee in which that person agrees to pay the costs of examinations, a required hearing, and any court-ordered treatment.

--Determine if the individual has a co-occurring mental illness that could make the individual a "mentally ill person subject to court order" under current law.[17] If such a determination is made, the hospital or facility may consult with a person authorized to initiate involuntary mental health treatment under current law[18] and recommend that such treatment be initiated.

--Discharge the individual and, if appropriate, refer the individual to a community addiction services provider that offers services suited to the individual's needs.

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[13] R.C. 5119.583(B).

[14] R.C. 5119.583(C)(1).

[15] R.C. 5119.583(C)(2).

[16] R.C. 5119.93, not in the bill.

[17] R.C. 5122.01(B), not in the bill.

[18] R.C. 5122.10, not in the bill.

Medicaid waiver for inpatient substance addiction treatment

Under federal law,[19] the Institutions for Mental Diseases (IMD) exclusion prohibits the use of federal Medicaid funds for care provided to patients between ages 21 through 64 in facilities larger than 16 beds that primarily provide diagnosis, inpatient psychiatric treatment, or care of persons with mental diseases.[20] Because the Diagnostic and Statistical Manual of Mental Disorders classifies chemical dependency as a mental disorder, many inpatient addiction treatment facilities are considered IMDs and therefore excluded from Medicaid.[21]

The bill requires the Department of Medicaid to create and administer a Medicaid waiver component that permits an individual described above to enroll in Medicaid if (1) the individual was admitted to the IMD only for substance abuse treatment, (2) the IMD has less than 100 beds, and (3) the individual would be eligible to enroll in Medicaid if not for the individual's age and being such a patient.[22]

If approved, the bill specifies that the Medicaid program would receive federal financial participation for Medicaid services provided to individuals who enroll in the component, including services provided by an IMD.[23]

The Governor vetoed a similar provision in the main appropriations act for the 132nd General Assembly, H.B. 49. That provision, however, would have required the Department of Medicaid to participate in the Centers for Medicare and Medicaid Services' Innovation Accelerator Program to determine where, when, and how the waiver services were to be provided and was not limited to addiction treatment services.[24]

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[19] 42 United States Code (U.S.C.) 1396d(a)(14) and (29)(B).

[20] Office of Health Transformation, *Medicaid Reimbursement for Institutions for Mental Diseases*, available at http://bit.ly/2DCet0S, discussing the definition in 42 U.S.C. 1396d(i).

[21] United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, *State Medicaid Manual*, Part 4 – Services, 4-389-390.

[22] R.C. 5166.38.

[23] R.C. 5166.38(B).

[24] R.C. 5166.38 (a provision in Am. Sub. H.B. 49 of the 132nd General Assembly that was vetoed by the Governor).

Substance abuse grant programs for faith-based organizations

The bill creates three substance abuse grant programs to be administered by the Department of Mental Health and Addiction Services and award grants to faith-based organizations.[25] Each program requires the Department to do all of the following:[26]

(1) Create a separate grant application and develop a process for reviewing and evaluating completed applications on a competitive basis;

(2) Select initial grant recipients not later than nine months after the bill's effective date; and

(3) Award a grant to an out-of-state applicant if the applicant attests in the application that the amount received will be used only to serve Ohio residents.

In addition to these common requirements, the bill specifies unique requirements for each program.

Curricula grant program

Under the "Faith-based Substance Abuse Curricula Grant Program," the Department must award grants to nonprofit faith-based entities that administer programs intended to support individuals in avoiding abuse of or overcoming addiction to one or more substances and that use curricula materials to achieve this intended purpose. The curricula materials may be faith-based in nature. The grant application must require an applicant to specify which of the following the Department must consult with to obtain input about the entity's success with supporting individuals in avoiding abuse of or overcoming addiction: a judge or magistrate from the drug court or other court that considers drug-related prosecutions in the same jurisdiction as the entity, that jurisdiction's chief police officer or the officer's delegate, the Ohio Attorney General, or any combination of the foregoing. The Department must give this input significant weight when making a final determination regarding a grant award, although the Department's decision is final.[27]

Transportation assistance grant program

Under the "Faith-based Substance Abuse Transportation Assistance Grant Program," the Department must award grants to nonprofit faith-based entities that

[25] R.C. 5119.63, 5119.64, and 5119.65(A).

[26] R.C. 5119.63, 5119.64, and 5119.65(D).

[27] R.C. 5119.63.

administer programs intended to support individuals in avoiding abuse of or overcoming substance addiction. A grantee may use the award only to defray the cost of providing the grantee's program participants with transportation services to program meetings or activities or to reimburse them for the costs they incur in traveling to program meetings or activities. Like the first grant program, the application must require an applicant to specify at least one of the same parties who the Department must consult with for input regarding the entity's success. The bill prohibits the Department from transferring any funds for the program to other Department programs or services.[28]

Rehabilitation facility grant program

Under the "Faith-based Substance Abuse Rehabilitation Facility Grant Program," the Department must award grants to nonprofit faith-based entities that meet all of the following criteria:[29]

--Have been operating for at least three years immediately before application;

--Are able to demonstrate success with supporting individuals, including those who participate in drug court or are incarcerated, in avoiding abuse of or overcoming addiction to one or more substances using faith-based programming;

--Are able to demonstrate that they have received community support for their programming, including financial support; and

--Have been endorsed by at least three judges or police officers in a community intended to benefit from a grant.

The Department must give significant weight to the quality of the evidence it receives when making a final grant award. The Department's decision regarding an award is final.[30]

A grantee may use its award to open and operate one or more facilities at which certified drug addiction services are provided. Addiction services are certified by the Department under continuing law.[31] The entity must ensure that all such facilities are

[28] R.C. 5119.64.

[29] R.C. 5119.65(B).

[30] R.C. 5119.65(D).

[31] R.C. 5119.36, not in the bill.

located in or not more than ten miles from a community that has historically had a high incidence of accidental death by opioid overdose.[32]

Drug abuse response teams (DARTs) and quick response teams (QRTs)

Attorney General's grant program

If the Ohio Attorney General establishes and maintains a program to award grants to drug abuse response teams and quick response teams (DARTs and QRTs), the bill requires the Attorney General to create a grant application and develop a process to receive and evaluate the applications on a competitive basis. The application must require an applicant to either identify at least one approved faith-based organization that will participate on the DART or QRT or specify that no approved faith-based organization exists in the geographic communities served by the DART or QRT.[33] An applicant that fails to comply with this requirement is ineligible for a grant.[34]

The bill defines a DART or QRT as a team of law enforcement officers who partner with community addiction services providers and other individuals to assist drug overdose survivors in the addiction recovery process.[35]

Approval procedure

The bill requires the Attorney General to establish a procedure for the approval of faith-based organizations that provide addiction services or recovery supports to individuals who suffer from drug abuse or addiction and that desire to participate on DARTs or QRTs that receive grants from the Attorney General. The procedure must include provisions that require a faith-based organization to submit evidence that it has all required licenses or certifications for the services it provides, that it has been successful in assisting drug addicts with recovery, that it is financially stable, and that it has a positive reputation among drug or common pleas court personnel and peace officers in the geographic communities it serves. The Attorney General may consult with the Director of Mental Health and Addiction Services as well as other persons or government entities experienced with the provision of addiction services and recovery supports when fulfilling this requirement.[36]

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[32] R.C. 5119.65(C).

[33] R.C. 109.961.

[34] R.C. 109.961(B).

[35] R.C. 109.96(A)(1).

[36] R.C. 109.96(B).

The bill uses the same definition of "peace officer" as current law[37] governing the crime of impersonation of a peace officer.[38] All of the following are peace officers under that law: a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision; a member of a police force employed by a metropolitan housing authority; a member of a police force employed by a regional transit authority; a state university law enforcement officer; a veterans' home police officer; a special police officer employed by a port authority; an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, who, by law, has a duty to conserve the peace or to enforce all or certain laws; or a State Highway Patrol trooper whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions.

Registry

The bill requires the Attorney General to maintain a registry of each faith-based organization the Attorney General approves pursuant to the procedure described above. The Attorney General must periodically review the registry and update it as the Attorney General considers appropriate.[39]

Reporting requirements

Naloxone administration reports

Reports to DARTs and QRTs

The bill requires a hospital or inpatient drug treatment facility in which naloxone was administered to notify a DART or QRT, if one exists in the community in which the administration occurred. If the hospital or treatment facility is aware that the naloxone recipient participates in a local drug court or similar program, it must notify the program. If requested, the hospital or facility must assist the DART or QRT with its assessment of the naloxone recipient.[40] The bill also applies this same requirement to an EMS person or peace officer who administers naloxone.[41]

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[37] R.C. 2921.51, not in the bill.

[38] R.C. 109.96(A)(2), 3727.80(A)(3), 4765.60(A)(3), and 5119.59(A)(2).

[39] R.C. 109.96(C).

[40] R.C. 3727.80(B) and 5119.59(B).

[41] R.C. 4765.60(B).

Reports to the State Board of Emergency Medical, Fire, and Transportation Services

The bill requires hospitals and inpatient drug treatment facilities to submit monthly reports to the State Board of Emergency Medical, Fire, and Transportation Services regarding each individual to whom naloxone was administered on hospital or facility premises in the preceding calendar month. If known, the hospital or treatment facility must include the individual's name, Social Security number, birth date, and residential address. The Board may, to the extent permitted by law, require hospital and treatment facilities to report other information about those individuals or the circumstances of administration that it considers appropriate.[42] The bill also applies this same requirement to EMS organizations and persons or government entities that employ peace officers with respect to each individual to whom an EMS person or peace officer employed by the organization, person, or government entity administered naloxone.[43]

The bill defines "emergency medical services person" consistent with current law not modified by the bill[44] to mean a first responder, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, and a person who provides medical direction to such persons.[45]

Drug overdose death reports

The bill requires the Department of Health to publish on its website the number of deaths, delineated by county, for which it determined during the preceding month that the known cause of death was drug overdose. The Department must update this information on a monthly basis using information submitted to it by coroners through the Ohio Public Health Data Warehouse.[46] The Department must issue a press release each time a monthly report is completed. The press release is required to include the most current hotline number for addiction treatment referral services administered by the Department of Mental Health and Addiction Services or its representative.[47]

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[42] R.C. 3727.81 and 5119.591.

[43] R.C. 4765.61.

[44] R.C. 4765.01(L), not in the bill.

[45] R.C. 3727.80(A)(2), 4765.60(A)(2), and 5119.58(C).

[46] The Ohio Public Health Data Warehouse is a self-service online tool where anyone can obtain the most recent public health data available about Ohio. Ohio Department of Health, *Ohio Public Health Data Warehouse*, available at http://publicapps.odh.ohio.gov/EDW/DataCatalog.

[47] R.C. 3705.161(A).

The bill authorizes the Director of Health to adopt rules as necessary to implement this requirement. All rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).[48]

Income tax deduction for uncompensated medical services

The bill authorizes a personal income tax deduction for licensed physicians who provide uncompensated medical services through or on behalf of a nonprofit faith-based entity that provides certified drug addiction services.[49] The deduction would be available for taxable years beginning in 2018 or thereafter.[50]

The amount of the deduction would equal $125 for each hour of medical services provided, excluding any hours for which the physician was compensated or reimbursed. The maximum deduction for each year would be $10,000. A physician claiming the deduction must submit, along with the annual tax return, a written statement from the entity confirming the number of uncompensated hours worked.

HISTORY

ACTION	DATE
Introduced	11-27-17

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[48] R.C. 3705.161(B).

[49] R.C. 5747.01(A)(33) and 5747.014.

[50] Section 6 of the bill.