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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 117  
133rd General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Maharath

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### SUMMARY

#### Standard of care for victims of sexual assault

- Establishes a standard of care for certain hospitals when caring for victims of sexual assault and requires that certain services and information on emergency contraception, sexually transmitted infections, and follow-up care be provided.
- 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.

### DETAILED ANALYSIS

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 reported to be victims of sexual assault.<sup>1</sup> "Sexual assault" is defined by the bill as rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, and sexual imposition.<sup>2</sup>

<sup>1</sup> R.C. 3727.611 (primary) and 2907.29.

<sup>2</sup> R.C. 3727.61(D).

The hospital must provide the services described below without regard to a victim's ability to pay.<sup>3</sup>

## **Emergency contraception**

The hospital must provide a female victim or individual reported to be a victim who is, as determined by the hospital, of child-bearing age with medically and factually accurate, unbiased, and clear and concise written and oral information about emergency contraception.<sup>4</sup>

As used in the bill, "emergency contraception" means any drug, drug regimen, or device approved by the FDA and intended to prevent pregnancy after unprotected sexual intercourse or contraceptive failure. The bill specifies that the information must explain the following:<sup>5</sup>

--That emergency contraception has been approved by the Food and Drug Administration (FDA) 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 or individual accepts the offer.<sup>6</sup>

In the case of a female victim or an individual reported to be a victim of sexual assault who is, as determined by the hospital, of child-bearing age and who is pregnant or incapable of becoming pregnant, the bill specifies that a hospital is not required to provide information about emergency contraception, offer emergency contraception, or provide emergency contraception. If the hospital has a pregnancy test performed to confirm whether the victim or individual is pregnant, the hospital must have the test performed in such a manner that the results of the test are made available to the victim or individual during the initial visit to the hospital regarding the sexual assault.<sup>7</sup>

## **Sexually transmitted infection assessment, counseling, treatment**

The hospital must promptly provide a female or male victim or individual reported to be a victim with an assessment of the victim's or individual's risk of contracting a sexually

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<sup>3</sup> R.C. 3727.611(A).

<sup>4</sup> R.C. 3727.611(B)(1).

<sup>5</sup> R.C. 3727.611(B)(1).

<sup>6</sup> R.C. 3727.611(B)(2).

<sup>7</sup> R.C. 3727.611(E).

transmitted infection, including gonorrhea, chlamydia, syphilis, and hepatitis. The assessment is to be conducted by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or registered nurse. The assessment is to be based on the following:<sup>8</sup>

--The available information regarding the sexual assault;

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

After conducting the assessment, the hospital must provide the victim or individual reported to be a victim with counseling concerning sexually transmitted infections 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, certified nurse-midwife, or registered nurse. Specifically, the counseling must discuss 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 or individual's health, including the infections for which prophylactic treatment is recommended based on guidelines from the CDC.<sup>9</sup>

After providing the counseling, the hospital must offer treatment for sexually transmitted infections to the victim or individual reported to be a victim and provide the treatment if the victim or individual accepts the offer.<sup>10</sup>

### **Follow-up care counseling**

Before the victim or individual reported to be a 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 or individual'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, certified nurse-midwife, or registered nurse.<sup>11</sup>

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<sup>8</sup> R.C. 3727.611(C)(1).

<sup>9</sup> R.C. 3727.611(C)(2).

<sup>10</sup> R.C. 3727.611(C)(3).

<sup>11</sup> R.C. 3727.611(C)(4).

## 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 cannot be rejected due to minority, and the consent of the minor's parent, parents, or guardian is not required; however, 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.<sup>12</sup>

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 cannot be rejected due to minority. The consent of the minor's parent, parents, or guardian is not required for the services; however, unlike existing law, the bill does not require the hospital to notify a parent or guardian that services have been provided to the minor and does not specify 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.<sup>13</sup>

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.<sup>14</sup>

## Effect of the hospital standard of care

The bill specifies that its provisions on the standard of care in hospitals for victims or individuals reported to be victims of sexual assault are not to be construed to mean any of the following:<sup>15</sup>

1. That a hospital is required to provide treatment if the treatment goes against recommendations established by the CDC;
2. That a victim or an individual reported to be 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 or individual'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 individual or the victim's or individual'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.

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<sup>12</sup> R.C. 2907.29.

<sup>13</sup> R.C. 3727.611(D).

<sup>14</sup> R.C. 3727.611(D).

<sup>15</sup> R.C. 3727.611(F).

## 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 or individuals reported to be victims of sexual assault. The Department must investigate the complaint in a timely manner.<sup>16</sup>

If the Department determines that a violation has occurred, it must impose a civil penalty of not less than \$10,000 for each violation. The penalty is to be imposed pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.). 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 may 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.<sup>17</sup>

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### HISTORY

Action	Date
Introduced	03-22-19

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S0117-I-133/ts

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<sup>16</sup> R.C. 3727.612.

<sup>17</sup> R.C. 3727.612.