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Bill Analysis

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Version: As Introduced

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SUMMARY

Epilepsy guidance, information and education, and reporting

- Requires the Director of Health, in consultation with local and national organizations that provide education or services related to epilepsy conditions to provide guidance to health care practitioners to assist them in determining when an individual is at an elevated risk for sudden unexpected death in epilepsy.
- Requires a health care practitioner with primary responsibility for the treatment and care of a patient who has been diagnosed with epilepsy to provide education and counseling to the patient or patient's caregiver.
- Generally provides that a health care practitioner who provides that education and counseling is not liable for injury or death arising from sudden unexpected death in epilepsy.
- Requires the Director to develop an information and education program regarding sudden unexpected death in epilepsy for individuals with epilepsy and to make information about it available to all persons eligible to sign death certificates.
- Requires a coroner, deputy coroner, or pathologist to determine whether certain individuals suffered a sudden unexpected death in epilepsy and, if so, to ensure that information is included on the individual's death certificate and reported to relevant state and national registries.

Insurance and Medicaid coverage of seizure detection devices

- Requires a health benefit plan to provide the same coverage and benefits for an individual diagnosed with epilepsy as an individual who has not been diagnosed with epilepsy.

- Requires both a health benefit plan and the Medicaid program to cover seizure detection devices.

Epilepsy symbol on a driver's license or ID card

- Allows a person to indicate if they are or have been afflicted with epilepsy on their driver's license or state identification card ("ID card") with a symbol chosen by the Registrar of Motor Vehicles.

DETAILED ANALYSIS

Epilepsy guidance, information and education, and reporting

Department of Health education and training

The bill requires the Director of Health, in consultation with local and national organizations that provide education or services related to epilepsy conditions, to provide guidance to health care practitioners who have the primary responsibility for treating individuals with epilepsy. The guidance is intended to assist practitioners in determining when an individual is at an elevated risk for sudden unexpected death in epilepsy.[1] Sudden unexpected death in epilepsy refers to a sudden, unexpected death in patients with epilepsy, with or without evidence of a seizure.[2]

The guidance established by the Director must include information concerning (1) convulsive seizures, (2) the frequency and recency of seizures, and (3) whether symptoms may subside in response to medicinal or surgical treatment.[3] In addition to the established guidance, the bill requires the Director to develop an information and education program to notify individuals with epilepsy concerning the danger of sudden unexpected death in epilepsy, including educational awareness initiatives, risk counseling for patients to support continuity of care, and referrals to other appropriate services based on care plans determined by health care providers. The information and education must be provided to health care professionals and posted on the Department of Health's website.[4]

Additionally, the bill requires the Director to conduct outreach to the American Medical Association to recommend adding a current procedural terminology code for epilepsy education and counseling provided by a health care professional to a patient diagnosed with epilepsy.[5] The Director also must make available on the Department's website information concerning sudden unexpected death in epilepsy. This information must be available to all persons who are eligible

[1] R.C. 3701.1311(B).

[2] R.C. 3701.1311(A)(2).

[3] R.C. 3701.1311(B).

[4] R.C. 3701.1311(D).

[5] R.C. 3701.1311(E).

to sign death certificates. The bill further permits the Director to provide educational training concerning sudden unexpected death in epilepsy.[6]

Health care practitioner education and training

The bill provides that each health care practitioner who has the primary responsibility for the treatment or care of a patient who has been diagnosed with epilepsy must provide the patient or patient's caregiver with education and counseling concerning the risks associated with sudden unexpected death in epilepsy. Moreover, the health care practitioner must refer the patient or the patient's caregiver to the guidance established by the Director of Health to provide the patient or caregiver with appropriate education concerning sudden unexpected death in epilepsy. The above requirements do not apply to a health care practitioner that is treating a patient during an emergency situation.[7]

Under the bill, a health care practitioner who provides education and counseling to a patient in accordance with the bill and maintains appropriate documentation is not liable for an injury or death arising from sudden unexpected death in epilepsy. This immunity does not apply in cases of intentional, willful, wanton, or reckless conduct, or if an injured party is able to prove by a preponderance of the evidence that education and counseling were not adequately provided.[8]

For purposes of the bill, a health care practitioner includes a physician, advanced practice registered nurse, and a physician assistant.[9]

Autopsies

The bill specifies that if a coroner, deputy coroner, or pathologist is informed that an individual who is the subject of an autopsy had epilepsy or a history of seizures, the autopsy must include an investigation and determination as to whether the individual suffered a sudden unexpected death in epilepsy. If the coroner, deputy coroner, or pathologist determines that the individual did suffer a sudden unexpected death in epilepsy, they must ensure that information is included on the individual's death certificate. Additionally, they must report the information to a relevant state or national sudden unexpected death in epilepsy registry.[10]

Insurance and Medicaid coverage of seizure detection devices

Insurance coverage

The bill requires that each health benefit plan amended, issued, or renewed on or after the bill's effective date must provide the same coverage and benefits for an individual diagnosed

[6] R.C. 3705.081.

[7] R.C. 3701.1311(C).

[8] R.C. 3701.1311(F). LSC staff can prepare a corrective amendment to address an incorrect cross reference in division (F)(2) of that section.

[9] R.C. 3701.1311(A)(1).

[10] R.C. 313.133.

with epilepsy as an individual who has not been diagnosed with epilepsy. The health plan issuer may not terminate coverage or refuse to renew an individual's coverage under a health benefit plan on the sole basis that the individual has been diagnosed with epilepsy.[11] Additionally, each health benefit plan must include coverage for seizure detection devices that are prescribed to an enrollee by a physician who is a specialist in the treatment of epilepsy, if the physician determines that the device is medically necessary.[12]

Application of mandated health benefits

The required coverage of individuals diagnosed with epilepsy and seizure detection devices might be considered a mandated health benefit. Under continuing law, if the General Assembly enacts a mandated health benefit, it cannot be applied to any health benefit plan until the Superintendent of Insurance determines that it can be applied fully and equally in all respects to plans subject to regulation by the federal "Employee Retirement Income Security Act of 1974" (ERISA), and to plans established or modified by the state or any of its political subdivisions. ERISA appears to preempt any state regulation of such plans.[13] The bill includes a provision that exempts its requirements from this restriction.[14]

Medicaid coverage

The bill requires the Medicaid program to cover seizure detection devices as durable medical equipment if the seizure detection device is determined to be medically necessary by a health care provider based on the Medicaid recipient's medical condition or status and if the health care provider has determined that the seizure detection device would (1) likely assist in reducing bodily harm or death to a Medicaid recipient as a result of the recipient experiencing a seizure or (2) would provide data to the provider as necessary to appropriately diagnose or treat a health condition that causes seizure activity.[15] The Medicaid program's coverage of seizure detection devices must include the full cost of a device, including any related service or subscription supporting the device. Under the bill, the Medicaid payment rate for a service or subscription supporting the use of a seizure detection device must equal 100% of the rate for monthly remote monitoring services or subscriptions afforded to other remote monitoring devices.[16]

Additionally, the Department of Medicaid must conduct a biennial review of the list of covered seizure detection devices and update the list as necessary to include the latest

[11] R.C. 3902.65(A)

[12] R.C. 3902.65(B).

[13] 29 United States Code 1144.

[14] R.C. 3902.65(A); R.C. 3901.71, not in the bill.

[15] R.C. 5164.11(A).

[16] R.C. 5164.11(B).

technologies approved by the U.S. Food and Drug Administration, to ensure that Medicaid recipients have access to the most effective and current devices.[17]

Department of Public Safety database

Under existing law, an individual with a disability may register with the Department of Public Safety (DPS) for inclusion in a database that DPS maintains.[18] The purpose of the database is to provide real-time information to law enforcement officers, emergency medical service personnel, and firefighters concerning an individual's disability through the Law Enforcement Automated Data System (LEADS) and each countywide 9-1-1 system.[19]

The bill adds epilepsy to the list of disabilities that an individual may register.[20]

Epilepsy symbol on a driver's license or ID card

The bill allows a person to indicate that the person is or has been afflicted with epilepsy by displaying a symbol on the person's driver's license or state identification card ("ID card"). It requires the Registrar of Motor Vehicles to choose a unique symbol to indicate the person's current or prior epilepsy affliction.[21] Current law requires a person to disclose any history of a physical or mental disease or disability that might impact the person's ability to safely operate a motor vehicle (including epilepsy) when applying for a temporary instruction permit, driver's license, motorcycle operator's license or endorsement, motor-driven cycle or motor scooter license or endorsement, or a duplicate of any such license. If the person confirms a current or prior disability or disease, the person must disclose the nature and extent of the disability or disease and provide the names and addresses of physicians or other medical professionals who would know about the applicant's medical history.[22]

HISTORY

Action	Date
Introduced	04-01-26

ANSB0414IN-136/ts

[17] R.C. 5164.11(C).

[18] In the case of a minor or ward, registration must be conducted by a parent or guardian.

[19] R.C. 5502.08, not in the bill.

[20] R.C. 3304.23.

[21] R.C. 4507.06, 4507.13, 4507.51, and 4507.52.

[22] R.C. 4507.08 and 4507.081, not in the bill; Ohio Administrative Code 4501:1-1-18.