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133rd General Assembly

Bill Analysis

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Version: As Passed by the House

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SUMMARY

Insurance coverage of telehealth services

- Expands existing law's telemedicine services provisions to apply to psychologists and school psychologists; audiologists and speech-language pathologists; occupational therapists and physical therapists; professional clinical counselors, independent social workers, and independent marriage and family therapists; independent chemical dependency counselors; and dietitians.
- Prohibits a health benefit plan from imposing cost sharing for telehealth services that exceeds the cost sharing for comparable in-person services and prohibits cost sharing for communications that meet specified criteria.
- Requires a health benefit plan to reimburse a health care professional for a covered telehealth service, but does not require the reimburse to be a specific amount.
- Allows the Superintendent of Insurance to adopt rules as necessary to carry out the bill's provisions governing insurance coverage of telehealth services.

Medicaid coverage of telehealth services

- Provides that specified health care practitioners may provide telehealth services to a patient participating in the Medicaid program and that specified providers are eligible to submit claims to the Ohio Department of Medicaid for payment for telehealth services rendered.
- Establishes requirements that must be satisfied when providing telehealth services to an individual in the Medicaid program.

- Requires the Medicaid Director to adopt rules authorizing the directors of other state agencies that administer portions of the Medicaid program to adopt rules regarding the provision of telehealth services.

Provision of telehealth services by health care professionals

- Permits specified health care professionals to provide telehealth services.
- Requires telehealth services provided by health care professionals to be done so according to specified conditions and standards.
- Permits certain health care licensing boards to adopt rules as necessary to carry out the bill's provisions regarding telehealth services provided by health care professionals.
- Provides that a health care professional is not liable in damages under a claim that telehealth services provided do not meet the standard of care that would apply if services were provided in-person.
- Permits a health care professional to negotiate with a health plan issuer to establish a reimbursement rate for fees associated with the administrative costs of providing telehealth services.

Certified community mental health, addiction service providers

- Permits community mental health service providers and community addiction service providers certified by the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to provide services through telehealth.
- Specifies requirements and standards that must be satisfied when telehealth services are provided.
- Permits OhioMHAS to adopt rules necessary to carry out the bill's provisions regarding telehealth services provided by community mental health and addiction services providers.

Teledentistry and other dentistry law changes

- Authorizes a dentist to practice teledentistry without obtaining a separate permit from the State Dental Board, but maintains existing law that requires a dentist to obtain a teledentistry permit in order to provide or authorize certain dental services through teledentistry.
- Establishes conditions on the practice of teledentistry without a permit.
- Allows for the taking of scans by digital scan technicians for use in the practice of teledentistry without a permit.
- Requires a digital scan technician to be registered with the Dental Board, and requires the Board to provide for registration in rules to be adopted by the Board.
- Adds references to orthodontic aligners to the law governing dentistry.

- Makes other changes to the dentistry law, including requiring a dentist to establish a bona fide dentist-patient relationship with a patient before treating the patient.

Video-conference visitation in long-term care facilities

- Specifies that during a declared disaster, epidemic, pandemic, public health emergency, or public safety emergency, long-term care facilities must provide residents and their families with video-conference visitation options.

Assistance at health care appointments

- Provides that during a declared disaster, epidemic, pandemic, public health emergency, or public safety emergency, an individual who with a developmental disability or other permanent disability may have a parent or guardian present during a health care procedure, test, or other care visit.

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DETAILED ANALYSIS

Insurance coverage of telehealth services

The bill expands existing law’s insurance provisions regarding coverage of telemedicine services (renamed telehealth services under the bill) to include additional types of health care professionals: psychologists and school psychologists; audiologists and speech-language pathologists; occupational therapists and physical therapists; professional clinical counselors, independent social workers, and independent marriage and family therapists; independent chemical dependency counselors; and dietitians. Currently, these provisions apply only to physicians, physician assistants, and advanced practice registered nurses.

Under the bill, a health benefit plan (a policy, contract, certificate, or agreement offered by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services) may not impose a cost-sharing requirement for telehealth services that exceeds the cost-sharing requirement for comparable in-person health care services (services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease).

In addition, the bill prohibits a health benefit plan from imposing a cost-sharing requirement for a communication when all of the following apply:

- The communication was initiated by the health care professional;
- The patient consented to receive a telehealth service from that provider on any prior occasion;
- The communication is conducted for the purposes of preventive health care services only.

If such a communication is coded based on time, then only the time the health care professional spends engaged in the communication is billable.

The bill explicitly requires a health plan issuer to reimburse a health care professional for a covered telehealth service, but does not require a specific reimbursement amount.

The bill allows the Superintendent of Insurance to adopt rules as necessary to carry out the bill’s requirements relating to insurance coverage of telehealth services. These rules are exempted from the continuing requirement that an agency remove two rules for each new rule it implements.

In current law, telemedicine provisions apply to health benefit plans issued, offered, or renewed on or after January 1, 2021. The bill instead applies to all health benefit plans in effect

as of the bill's effective date, and to any health benefit plan issued, renewed, modified, or amended on or after the bill's effective date (see **COMMENT**).

Lastly, the bill renames the existing term "telemedicine services" as "telehealth services," but substantively retains the existing definition: providing health care services through synchronous or asynchronous information and communication technology by a health care professional, within the professional's scope of practice, who is located at a site other than the site where the recipient is located.¹

Provision of telehealth services by health care professionals

Authorized providers

The bill specifies that certain health care professionals may provide their services as telehealth services, subject to several requirements. All of the following licensed health care professionals are authorized to provide telehealth services under the bill:²

- Advanced practice registered nurses;
- Physician assistants;
- Physicians;
- Psychologists and school psychologists;
- Audiologists and speech-language pathologists;
- Occupational therapists and physical therapists;
- Professional clinical counselors, independent social workers, and independent marriage and family therapists;
- Independent chemical dependency counselors;
- Dietitians.

A licensing board that has jurisdiction over any of these health care professionals is required by the bill to permit the licensed health care professional to provide their services as telehealth services. Each board may adopt rules that it considers necessary for implementing the bill's provisions as it relates to the provision of telehealth services by a health care professional over which the board has jurisdiction.³

¹ R.C. 3902.30 and Section 3 of the bill; R.C. 121.95 and 3922.01, not in the bill.

² R.C. 4743.09(A)(2); see also R.C. 4723.94, 4730.60, 4732.33, 4753.20, 4755.90, 4757.50, 4758.80, and 4759.20.

³ R.C. 4743.09(B).

Conditions for providing telehealth services

The bill establishes several conditions regarding the provision of telehealth services by a health care professional. Each professional may use technology to provide telehealth services to a patient during an initial visit if the appropriate standard of care for an initial visit is satisfied. Additionally, a professional may use technology to provide telehealth services to a patient during an annual visit if the appropriate standard of care for an annual visit is satisfied. A health care professional may also deny any patient telehealth services and instead require the patient to undergo an in-person visit.⁴

When a health care professional is providing telehealth services, the bill requires the professional to comply with all state and federal law requirements concerning the protection of patient information. Additionally, a health care professional must ensure that any username or password information and electronic communications transmitted between the professional and a patient are securely transmitted and stored.⁵

The bill specifies that if a health care professional is a physician, physician assistant, or advanced practice registered nurse, the health care professional may provide telehealth services to a patient located outside of Ohio if the health care professional is permitted to do so by the laws of the state in which the patient is located. Under the bill, these health care professionals may also provide telehealth services through the use of medical devices that enable remote monitoring of a patient.⁶

The bill notes that its provisions do not eliminate or modify any other provisions of the Revised Code that require a health care professional, who is not a physician, to practice under the supervision of, in collaboration with, in consultation with, or pursuant to the referral of another health care professional.⁷

Immunity from liability

Under the bill, when a patient has consented to receiving telehealth services, a health care professional who provides those services to that patient is not liable in damages under any claim made that alleges that the services provided do not meet the same standard of care that would apply if the services were provided in-person.⁸

Fees and billing

Under existing law, a health care professional (physician, physician assistant, or advanced practice registered nurse) may not charge a facility fee, an origination fee, or any fee associated with the cost of equipment used to provide telehealth services. The bill prohibits any of the health

⁴ R.C. 4743.09(C)(1), (2), and (4).

⁵ R.C. 4743.09(C)(3).

⁶ R.C. 4743.09(C)(5).

⁷ R.C. 4743.09(F).

⁸ R.C. 4743.09(D).

care professionals covered by the bill from charging any of the above-described fees. In addition, the bill clarifies that the prohibition against charging a fee associated with the cost of equipment applies to equipment used at a provider site to provide telehealth services. A health care professional is permitted to charge a health plan issuer for durable medical equipment used at a patient or client site.⁹

Under the bill, a health care professional may negotiate with a health plan issuer to establish a reimbursement rate for fees associated with the administrative costs incurred with providing telehealth services. This negotiation may not place any portion of responsibility for this fee on a patient.¹⁰

The bill also specifies that a health care professional is required to obtain a patient's consent before billing for the cost of the telehealth services provided. The bill requires that this consent be obtained only once.¹¹

Medicaid coverage of telehealth services

Rulemaking

Existing law requires the Ohio Department of Medicaid to establish, through rulemaking, standards for Medicaid payments for health care services that the Department determines are appropriate to be covered by the Medicaid program when those services are provided as telehealth services. The bill requires the Medicaid Director to adopt rules to authorize the directors of other state agencies that administer portions of the Medicaid program to adopt rules regarding Medicaid coverage of telehealth services. These rules are exempted from the continuing requirement that an agency remove two rules for each new rule it implements.¹²

Eligible providers

For purposes of the Medicaid program, the bill provides that all of the following practitioners are eligible to provide telehealth services:¹³

- Physicians;
- Psychologists;
- Physician assistants;
- Clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners;
- Independent social workers, independent marriage and family therapists, and professional clinical counselors;

⁹ R.C. 4743.09(E)(1). See also R.C. 4723.94 and 4731.2910 (existing versions).

¹⁰ R.C. 4743.09(E)(2).

¹¹ R.C. 4743.09(E)(3).

¹² R.C. 5164.95(B); R.C. 121.95, not in the bill.

¹³ R.C. 5164.95(C)(1).

- Independent chemical dependency counselors;
- Supervised practitioners and supervised trainees;
- Audiologists and speech-language pathologists;
- Audiology aides and speech-language pathology aides;
- Occupational therapists and physical therapists;
- Occupational therapy assistants and physical therapist assistants;
- Dietitians;
- Medicaid school programs;
- Any other practitioner considered eligible by the Medicaid Director.

The bill also specifies the types of providers that are eligible to submit a claim to the Department for payment under the Medicaid program for providing telehealth services:¹⁴

- Any of the above-identified practitioners, except for a supervised practitioner or supervised trainee, an audiology aide or speech-language pathology aide, and an occupational therapy assistant or physical therapist assistant;
- A professional medical group;
- A federally qualified health center or rural health clinic;
- An ambulatory health care clinic;
- An outpatient hospital;
- A Medicaid school program;
- Any other provider type that the Medicaid Director considers eligible to submit a claim.

As a condition of providing telehealth services under the Medicaid program, the bill requires a practitioner to comply with all state and federal law requirements concerning the protection of patient information. Practitioners must also ensure that any username or password information and electronic communications transmitted between a practitioner and a patient are securely transmitted and stored. Every practitioner site must have access to the medical records of a patient at the time that telehealth services are provided.¹⁵

¹⁴ R.C. 5164.95(C)(2).

¹⁵ R.C. 5164.95(D).

Certified community mental health, addiction service providers Requirements for providing telehealth services

Under existing law, the Ohio Department of Mental Health and Addiction Services (OhioMHAS) certifies community mental health service providers and community addiction service providers.¹⁶ The bill establishes several requirements that must be satisfied when these providers provide telehealth services. First, each provider must establish a written policy and procedures to ensure that staff who provide telehealth services are fully trained in using the equipment necessary to provide telehealth services. The bill requires providers to establish a contingency plan in the event that technical problems arise during the provision of telehealth services to a client. Additionally, a mental health facility or unit serving as a client site must have appropriate staff on hand at the facility or unit in the event of a malfunction with the equipment used to provide telehealth services.¹⁷

Before providing telehealth services to a client, the bill requires a provider to describe to the client the following potential risks associated with receiving treatment through telehealth: (1) the clinical aspects of receiving treatment through telehealth services, (2) security considerations when receiving treatment through telehealth services, and (3) confidentiality for individual and group counseling. Providers must document that a client has been provided with information regarding these risks and has agreed to assume those risks.¹⁸

In addition to the above information, the bill requires that each provider maintain information regarding the local suicide prevention hotline, or the national suicide prevention hotline, as well as the contact information for the local police and fire departments. The bill requires each provider to provide clients with information on how to access assistance in a crisis, including a crisis caused by an equipment malfunction or failure.¹⁹

Under the bill, providers have the responsibility to ensure that equipment used to provide telehealth services meets the following standards: (1) confidential communication between provider and client, (2) interactive communication between provider and client, and (3) video or audio sufficient to enable real-time communication between provider and client. The bill specifies that it is a provider's responsibility to ensure that any entity the provider contracts with that is involved in the transmission of information through telehealth does so in a manner that maintains the confidentiality of client information. Telehealth services that are provided by interactive videoconferencing must (1) begin with the verification of the client through the use of a username and password or personal identification number and (2) be provided in accordance with state and federal law. The bill requires each provider to comply with all state and federal law requirements concerning the protection of patient information and also ensure that any

¹⁶ R.C. 5119.36, not in the bill.

¹⁷ R.C. 5119.368(B), (E), and (H).

¹⁸ R.C. 5119.368(C).

¹⁹ R.C. 5119.368(F).

username or password information and electronic communications transmitted between a provider and a client are securely transmitted and stored.²⁰

Rulemaking

The bill allows OhioMHAS to adopt rules as necessary to carry out the bill's requirements regarding telehealth services provided by community mental health and addiction services providers. These rules are exempted from the continuing requirement that an agency remove two rules for each new rule it implements.²¹

Teledentistry and other dentistry law changes

Teledentistry permit

Since September 20, 2019, Ohio law has authorized the practice of teledentistry, defined as the delivery of dental services through the use of synchronous, real-time communication, including by a dental hygienist or expanded function dental auxiliary (EFDA) pursuant to a dentist's authorization.²² To perform and authorize teledentistry services or procedures, a dentist must first obtain a permit from the Dental Board. A dentist who holds such a permit is an "authorizing dentist" under the law and may do either of the following without examining a patient in person:

- Authorize a dental hygienist or EFDA to perform certain dental services or procedures at a location where a dentist is not physically present;
- Prescribe a drug that is not a controlled substance for a patient who is at a location where a dentist is not physically present.²³

Teledentistry without a permit

The bill adds to the law governing dentistry another definition of teledentistry, and does not require a dentist to obtain a permit from the Dental Board in order to practice this type of teledentistry.²⁴ At the same time, the bill maintains the existing law that requires a dentist to obtain a permit in order to provide or authorize certain dental services or procedures (see "**Teledentistry permit**" above).

The bill defines "teledentistry" as the delivery of dentistry between a patient and a dentist licensed by the Dental Board through the use of telehealth systems and electronic technologies or media, including interactive, two-way audio or video. It also authorizes a dentist delivering services through teledentistry to employ instrumentation and diagnostic equipment, including store-and-forward technology, digital scans, photographs, images, electronic records, and face-

²⁰ R.C. 5119.368(D), (G), and (I).

²¹ R.C. 5119.368(J); R.C. 121.95, not in the bill.

²² R.C. 4715.43 to 4715.437. See S.B. 259 of the 132nd General Assembly, available at <https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA132-SB-259>.

²³ R.C. 4715.431.

²⁴ R.C. 4715.44.

to-face interactive two-way real-time communications services. The bill further defines “store-and-forward technologies” as technologies that allow for the electronic transmission of dental and health information, including images, radiographs, photographs, documents, and health histories, through a secure communication system.

Practice protocols

Before delivering dental services through teledentistry without a permit, a dentist must establish written or electronic protocols for the practice of teledentistry that include all of the following:

- Methods to ensure that patients are fully informed about services provided through the use of teledentistry, including obtaining informed consent;
- Safeguards to ensure compliance with all state and federal laws and regulations related to the privacy of health information;
- Documentation of all dental services provided to a patient through teledentistry, including the full name, address, telephone number, and license number of the dentist providing the dental services;
- Procedures for providing in-person services or for the referral of patients requiring dental services that cannot be provided by teledentistry to another Board-licensed dentist who actually practices in an area of the state the patient can readily access;
- Provisions for the use of appropriate encryption when transmitting patient health information via teledentistry;
- Any other provisions required by the Dental Board.²⁵

The bill also requires a dentist to establish written policy and procedures describing how the dentist will ensure that any dental hygienist, EFDA, digital scan technician (see “**Digital scans and technicians**” below), or qualified person assisting patients in the receipt or delivery of telehealth services is fully trained in using equipment necessary for such services.²⁶

Health records

The bill requires a dentist who delivers dental services through teledentistry without a permit to provide in a timely manner to a patient or dentist of record – upon the patient’s request – health records in accordance with any applicable federal or state laws or regulations.

Communication with dentist providing teledentistry

Under the bill, all patients receiving teledentistry services that may be provided without a Board-issued permit have the right to speak or communicate with the dentist providing such services upon request.²⁷

²⁵ R.C. 4715.44(C).

²⁶ R.C. 4715.44(D)(2).

²⁷ R.C. 4715.44(C)(2).

Standard of care

Dental services delivered through teledentistry without need for a permit must be consistent with the standard of care, including when the standard of care requires the use of diagnostic testing or the performance of a physical examination. The bill also specifies that the dental services must comply with the requirements of the existing statutes and administrative rules governing dentistry.²⁸

Dental examination and dentist of record

In cases in which teledentistry is provided without a permit to a patient who has a dentist of record but has not had a dental examination in the six months prior to the initiation of teledentistry, the dentist providing teledentistry must recommend that the patient schedule a dental examination. If the patient does not have a dentist of record, the teledentistry dentist must provide or cause to be provided options for referrals for obtaining a dental examination.²⁹

Supervision

The bill specifies that it does not eliminate or modify any other statutory provision that requires a dental hygienist, EFDA, certified dental assistant, or qualified personnel to be supervised by a dentist.³⁰

Digital scans and technicians

The bill allows for the taking of scans by digital scan technicians, including for use in the practice of teledentistry without a permit. A “digital scan” means digital technology that creates a computer-generated replica of the hard and soft tissues of the oral cavity using enhanced digital photography.

The bill also recognizes a “digital scan technician,” as a person who has completed a training program approved by the Dental Board to take digital scans of intraoral and extraoral hard and soft tissues for use in teledentistry without a permit and is registered with the Dental Board. The bill requires the Dental Board to adopt rules providing for the registration of these technicians.³¹

Under the bill, no person other than a dentist, dental hygienist, EFDA, digital scan technician, or qualified personnel under the direction of an Ohio-licensed dentist may obtain dental scans for use in the practice of dentistry. The bill does not define dental scans. In the case of a digital scan technician who obtains dental scans for use in the practice of teledentistry without a permit, the technician must work under the supervision of an Ohio-licensed dentist who is both of the following:

²⁸ R.C. 4715.44(C)(3).

²⁹ R.C. 4715.44(C)(4).

³⁰ R.C. 4715.44(D)(3).

³¹ R.C. 4715.44(A), (B), and (E).

- Accessible and available for communication and consultation with the digital scan technician at all times during the patient interaction in real time upon request;
- Responsible for ensuring that the digital scan technician has completed a program of training approved by the Dental Board for such purpose.

The bill also requires that both (1) protocols and procedures for the performance of digital scans by digital scan technicians and (2) evidence that a digital scan technician has complied with the training requirements of the Dental Board must be made available to the Board upon request.

Other dentistry law changes

Practice of dentistry generally

The bill adds references to orthodontic aligners to the law governing dentistry.³² It also specifies that personal fitting by an individual of self-fabricated or over-the-counter mouth guards does not constitute the practice of dentistry.

Bona fide dentist-patient relationship

The bill prohibits a dentist from practicing dentistry unless the dentist establishes a bona fide dentist-patient relationship in person or through teledentistry. A bona fide relationship exists when all of the following are the case:

- The dentist has obtained or caused to be obtained a health and dental history of the patient;
- The dentist has performed or caused to be performed an appropriate examination of the patient, either physically, through the use of instrumentation and diagnostic equipment through which digital scans, photographs, images, and dental records are able to be transmitted electronically, or through use of face-to-face interactive two-way real-time communications services or store-and-forward technologies;
- The dentist provided information to the patient about the services to be performed;
- The dentist initiates additional diagnostic tests or referrals as needed.

When providing teledentistry, the examination is not required to establish a bona fide relationship if a Board-licensed dentist has examined the patient within six months prior to the initiation of teledentistry and the dentist providing teledentistry has reviewed the patient's dental records of the examination.³³

³² R.C. 4715.01 and 4715.09.

³³ R.C. 4715.09(H).

Dental Board complaints

The bill prohibits a dentist, including one providing teledentistry services, from requiring a patient to sign an agreement limiting the patient's ability to file a complaint with the Dental Board.³⁴

Work authorizations

Current law prohibits a dentist from using the services of a person or entity not licensed to practice dentistry in Ohio to construct, alter, repair, or duplicate any orthodontic or prosthetic appliance, including a denture, plate, bridge, or splint, without first furnishing the person or entity with a written work authorization on forms prescribed by the Dental Board. It also prohibits the person or entity from performing the service without a written work authorization and from subcontracting the service without a written work authorization.

The bill makes three changes to this law. First, it requires work authorizations for orthodontic aligners. Second, it allows for digital work authorizations, including for subcontractors. And third, it requires the dentist who uses such services to evaluate and review the appliance or aligner.³⁵

Video-conference visitation in long-term care facilities

The bill specifies that during any declared disaster, epidemic, pandemic, public health emergency, or public safety emergency, every long-term care facility must provide each resident and their family with a video-conference visitation option, if the Governor, the Director of Health, another governmental official or entity, or the long-term care facility itself determines that allowing in-person visits at the facility would create a risk to the health of the facility's residents. This requirement applies to the following types of long-term care facilities: (1) a nursing home, residential care facility, home for the aging, nursing facility, or skilled nursing facility, (2) a residential facility licensed by OhioMHAS, (3) a residential facility licensed by the Ohio Department of Developmental Disabilities, and (4) a facility operated by a hospice care program or any facility in which a hospice care program provides care for hospice patients.³⁶

Assistance at health care appointments

The bill also specifies that during any declared disaster, epidemic, pandemic, public health emergency, or public safety emergency, any individual with a developmental disability or other permanent disability who is in need of surgery or another health care procedure, a medical or other health care test, or any clinical care visit must have the opportunity to have at least one parent or legal guardian present during the procedure, test, surgery, or other care visit if the parent or legal guardian's presence is necessary to help alleviate a negative reaction by the

³⁴ R.C. 4715.09(I).

³⁵ R.C. 4715.09(B), (C), and (D).

³⁶ R.C. 3721.60.

individual. To enforce this provision, the bill authorizes the Director of Health to take any action the Director considers necessary.³⁷

COMMENT

The bill’s provisions regarding insurance coverage of telehealth services apply to health benefit plans in effect on the bill’s effective date. This might raise questions under the Contracts Clauses of the U.S. and Ohio Constitutions, which prohibit the General Assembly from enacting laws that impair existing contractual obligations. These prohibitions are not absolute, however. They do not absolutely prevent a state from abridging contractual obligations when exercising its police power and passing laws for the protection of public health, safety, and welfare.

Rather, they prohibit a “substantial” impairment of existing contractual obligations unless the state can *justify the impairment on the basis of an overriding public interest and the impairing measure is appropriately tailored to serve that interest*.³⁸

HISTORY

Action	Date
Introduced	05-26-20
Reported, H. Insurance	06-09-20
Passed House (91-3)	06-10-20

H0679-PH-133/ks

³⁷ R.C. 3701.1310.

³⁸ U.S. Constitution, Article I, Section 10; Ohio Constitution, Article II, Section 28; *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849; *City of Middletown v. Ferguson*, 25 Ohio St.3d 71 (1986), *cert. denied*, *Sticklen v. Middletown*, 479 U.S. 1034 (1987); and *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).