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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 122*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Health

Primary Sponsors: Reps. Fraizer and Holmes

Jason Hoskins, Attorney

SUMMARY

Insurance coverage of telehealth services

- Expands existing law's provisions on telemedicine services (renamed as telehealth services) by applying them to psychologists and school psychologists; audiologists and speech-language pathologists; occupational therapists and physical therapists; occupational therapy assistants and physical therapist assistants; professional clinical counselors, independent social workers, and independent marriage and family therapists; independent chemical dependency counselors; certified Ohio behavior analysts; dietitians; optometrists with therapeutic prescriptive authority; pharmacists; chiropractors; respiratory care professionals; and genetic counselors.
- 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 reimbursement to be a specific amount.
- Allows the Superintendent of Insurance to adopt rules as necessary to carry out the provisions regarding insurance coverage of telehealth services.

* This analysis was prepared before the report of the Senate Health Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

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 subject to specified parameters.
- 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.
- Declares that it is the intent of the General Assembly to expand access to and investment in telehealth services.
- Permits a physician authorized to recommend medical marijuana to use telehealth services to conduct a patient examination required before medical marijuana may be recommended.
- Specifies that the bill's provisions are not to be interpreted as altering any law or rule related to the practice of dentistry.

Certified community mental health, addiction services providers

- Permits community mental health services providers and community addiction services 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 provisions regarding telehealth services provided by community mental health and addiction services providers.

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.

Medicaid credentialing program

- Requires the Department of Medicaid to establish a credentialing program to review the competence, professional conduct, and quality of care provided by Medicaid providers.

Medical Board One-Bite Program

- Allows certain licensure applicants to participate in the State Medical Board’s One-Bite Program.

Suspension of open enrollment and other insurance programs

- Extends to January 1, 2026 (from January 1, 2022), the suspension of the operation of certain programs operated under the state’s insurance laws.

TABLE OF CONTENTS

Insurance coverage of telehealth services	4
Provision of telehealth services by health care professionals.....	5
Authorized providers.....	5
Conditions for providing telehealth services	7
Immunity from liability.....	8
Fees and billing.....	8
Legislative intent	8
Recommending medical marijuana.....	8
Practice of dentistry	9
Medicaid coverage of telehealth services	9
Rulemaking.....	9
Eligible providers	10
Certified community mental health, addiction service providers.....	11
Requirements for providing telehealth services.....	11

Rulemaking.....	12
Video-conference visitation in long-term care facilities.....	13
Assistance at health care appointments.....	13
Medicaid credentialing program	13
State Medical Board One-Bite Program	14
Applicants authorized to practice in another jurisdiction	14
New applicants	15
Program requirements.....	15
Suspension of open enrollment and other insurance programs.....	16

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, including school psychologists licensed under rules adopted by the State Board of Education; audiologists and speech-language pathologists; occupational therapists and physical therapists; occupational therapy assistants and physical therapist assistants; professional clinical counselors, independent social workers, and independent marriage and family therapists; independent chemical dependency counselors; certified Ohio behavior analysts; dietitians; optometrists licensed to practice under a therapeutic pharmaceutical agents certificate; pharmacists; chiropractors; respiratory care professionals; and genetic counselors. 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 specifies that its provisions do not require a health plan issuer to provide coverage for asynchronous communications that differs from the coverage described in the health benefit plan.

The bill expressly 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. Under the bill, these rules are exempt from the existing 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 the use of 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 (either the patient or a consulting health care professional) 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;
- Optometrists licensed to practice under a therapeutic pharmaceutical agents certificate;
- Pharmacists;
- Physician assistants;
- Physicians;
- Psychologists and school psychologists, including school psychologists licensed under rules adopted by the State Board of Education;
- Chiropractors;
- Audiologists and speech-language pathologists;
- Occupational therapists and physical therapists;

¹ R.C. 3902.30, 4743.09(A)(6), and Section 5 of the bill; R.C. 121.95 and 3922.01, not in the bill.

² R.C. 4743.09(A)(3); *see also* R.C. 3319.2212, 4723.94, 4725.35, 4729.285, 4730.60, 4731.741, 4732.33, 4734.60, 4753.20, 4755.90, 4757.50, 4758.80, 4759.20, 4761.30, 4778.30, and 4783.20.

- Occupational therapy assistants and physical therapist assistants;
- Professional clinical counselors, independent social workers, and independent marriage and family therapists;
- Independent chemical dependency counselors;
- Certified Ohio behavior analysts;
- Dietitians;
- Respiratory care professionals;
- Genetic counselors.

A licensing board that has jurisdiction over any of these health care professionals is required by the bill to permit the licensed health care professionals 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 Under the bill, any rules adopted by a board are exempt from the existing requirement that an agency remove two rules for each new rule it implements.⁴

Any rules adopted by a health care professional licensing board must generally establish a standard of care for telehealth services that is equal to the standard of care for in-person services.⁵ The bill permits a health care professional licensing board to require an initial in-person visit before a health care professional may prescribe a schedule II controlled substance to a new patient.⁶ However, a board is prohibited from requiring this initial in-person visit for a new patient if the patient's medical record indicates that the patient (1) is receiving hospice or palliative care, (2) is receiving medication-assisted treatment or other medication for opioid-use disorder, (3) is a patient with a mental health condition, or (4) as determined by the clinical judgment of a health care professional, is in an emergency situation.⁷

The bill further provides that beginning on the bill's effective date, a health care professional licensing board covered under the bill may suspend the enforcement of any rules the board has in effect on the bill's effective date regarding the provision of telehealth and in-person services by a health care professional under the board's jurisdiction, and requirements

³ R.C. 4743.09(B)(1).

⁴ R.C. 4743.09(B)(1); R.C. 121.95, not in the bill.

⁵ R.C. 4743.09(B)(2)(a).

⁶ R.C. 4743.09(B)(2)(b).

⁷ R.C. 4743.09(B)(2)(c)(i).

for the prescribing of controlled substances, while the board amends or adopts new rules that are consistent with the bill's provisions.⁸

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 synchronous or asynchronous 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 synchronous or asynchronous technology to provide telehealth services to a patient during an annual visit if the appropriate standard of care for an annual visit is satisfied.⁹ A health care professional may also deny any patient telehealth services and instead require the patient to undergo an in-person visit.¹⁰

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.¹¹

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.¹²

With regard to a pharmacist providing telehealth services, the bill specifies that a pharmacist may not use telehealth mechanisms or other virtual means to perform any of the actions involved in dispensing a dangerous drug, unless specifically authorized under rules adopted by the State Board of Pharmacy.¹³

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.¹⁴

⁸ Section 6.

⁹ R.C. 4743.09(C)(1) and (4).

¹⁰ R.C. 4743.09(C)(2).

¹¹ R.C. 4743.09(C)(3).

¹² R.C. 4743.09(C)(5).

¹³ R.C. 4729.285.

¹⁴ R.C. 4743.09(F).

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.¹⁵

Fees and billing

Under existing law, a health care professional (physician, physician assistant, or advanced practice registered nurse) may not charge a health plan issuers any of the following: 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 care professionals covered by the bill from charging any of the above-described fees to either a patient or a health plan issuer covering telehealth services. 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, including remote monitoring devices.¹⁶

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.¹⁷

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 requirement to obtain this consent applies only once.¹⁸

Legislative intent

The bill specifies that it is the intent of the General Assembly to expand access to and investment in telehealth services in congruence with the expansion and investment in telehealth services that was made during the COVID-19 pandemic.¹⁹

Recommending medical marijuana

Current law authorizes a physician who holds a certificate to recommend medical marijuana from the State Medical Board to recommend treatment with medical marijuana to a patient with a qualifying medical condition. Before recommending treatment with medical

¹⁵ R.C. 4743.09(D).

¹⁶ R.C. 4743.09(A)(1) and (E)(1). *See also* R.C. 4723.94 and 4731.2910 (existing versions).

¹⁷ R.C. 4743.09(E)(2).

¹⁸ R.C. 4743.09(E)(3).

¹⁹ R.C. 4743.09(G).

marijuana, a physician must establish a bona fide physician-patient relationship with the patient seeking treatment with medical marijuana. To establish this physician-patient relationship, a physician must conduct an in-person physical examination of the patient. Following the establishment of a bona fide physician-patient relationship and satisfaction of several other requirements, a physician may issue a recommendation for treatment with medical marijuana to a patient.²⁰

A written recommendation for treatment with medical marijuana is valid for 90 days. Current law authorizes a physician to renew a recommendation for not more than three additional 90-day periods. Thereafter, a physician must conduct another in-person examination of a patient before issuing a new recommendation to the patient.²¹

The bill authorizes a physician to utilize telehealth services to conduct these required patient examinations.²²

The bill further provides that for purposes of a health care professional licensing board adopting rules requiring a health care professional to conduct an in-person visit of a new patient before prescribing a schedule II controlled substance, as discussed above, medical marijuana is not considered a schedule II controlled substance.²³

Practice of dentistry

The bill specifies that its provisions are not to be interpreted as altering any law related to the practice of dentistry or rule adopted by the State Dental Board in effect on the bill's effective date.²⁴

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 existing requirement that an agency remove two rules for each new rule it implements.²⁵

²⁰ R.C. 4731.30(C)(1).

²¹ R.C. 4731.30(D)(2).

²² R.C. 4731.30(C)(1)(b)(i) and (D)(2).

²³ R.C. 4743.09(B)(2)(c)(ii).

²⁴ R.C. 4715.438.

²⁵ R.C. 5164.95(B); R.C. 121.95, not in the bill.

Eligible providers

For purposes of the Medicaid program, the bill provides that all of the following practitioners are eligible to provide telehealth services, to the extent permitted by the rules adopted by the Medicaid Director and applicable federal law:²⁶

- Physicians;
- Psychologists or school psychologists, including school psychologists licensed under rules adopted by the State Board of Education;
- Physician assistants;
- Clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners;
- Independent social workers, independent marriage and family therapists, and professional clinical counselors;
- Independent chemical dependency counselors;
- Certified Ohio behavior analysts;
- 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;
- Chiropractors;
- Pharmacists;
- Genetic counselors;
- Optometrists licensed to practice under a therapeutic pharmaceutical agents certificate;
- Respiratory care professionals;
- Practitioners who provide services through Medicaid school programs;
- Practitioners certified to provide services and supports through a community mental health services provider or a community addiction services provider;
- Any other practitioner considered eligible by the Medicaid Director.

²⁶ R.C. 5164.95(C)(1).

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, to the extent permitted by the rules adopted by the Medicaid Director and applicable federal law:²⁷

- 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 federally qualified health center look-alike;
- A rural health clinic;
- An ambulatory health care clinic;
- An outpatient hospital;
- A Medicaid school program;
- A community mental health services provider or community addiction services provider;
- 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.²⁸

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.²⁹ 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.³⁰ Additionally, a mental health facility or unit serving as a client site must

²⁷ R.C. 5164.95(C)(2).

²⁸ R.C. 5164.95(D).

²⁹ R.C. 5119.36, not in the bill.

³⁰ R.C. 5119.368(B) and (E).

have appropriate staff on hand at the facility or unit in the event of a malfunction with the equipment used to provide telehealth services.³¹

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.³²

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.³³

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) in the case of telehealth services using synchronous technology, video or audio sufficient to enable real-time communication between provider and client.³⁴ 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.³⁵ 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 username or password information and electronic communications transmitted between a provider and a client are securely transmitted and stored.³⁶

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

³¹ R.C. 5119.368(H).

³² R.C. 5119.368(C).

³³ R.C. 5119.368(F).

³⁴ R.C. 5119.368(G).

³⁵ R.C. 5119.368(D).

³⁶ R.C. 5119.368(I).

addiction services providers. These rules are exempted from the continuing requirement that an agency remove two rules for each new rule it implements.³⁷

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 all of 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.³⁸

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 individual. To enforce this provision, the bill authorizes the Director of Health to take any action the Director considers necessary.³⁹

Medicaid credentialing program

The bill requires the Department of Medicaid to establish a credentialing program that includes a credentialing committee. The purpose of the program and the committee is to review the competence, professional conduct, and quality of care provided by Medicaid providers. The bill specifies that the activities performed by the credentialing committee are considered activities of a peer review committee of a health care entity and are subject to the requirements of a peer review committee of a health care entity specified in Ohio law.⁴⁰

In implementing the credentialing program and credentialing committee, the bill permits the Medicaid Director to adopt rules. Any rules adopted by the Director must be

³⁷ R.C. 5119.368(J); R.C. 121.95, not in the bill.

³⁸ R.C. 3721.60.

³⁹ R.C. 3701.1310.

⁴⁰ R.C. 5164.291; *see also* R.C. 2305.25 to 2305.253, not in the bill.

consistent with the federal law credentialing requirements that apply to Medicare Advantage organizations.⁴¹

State Medical Board One-Bite Program

H.B. 145 of the 132nd General Assembly required the State Medical Board to establish a confidential program known as the “One-Bite Program” for the treatment of impaired practitioners regulated by the Board.⁴² The program allows a practitioner who has not previously participated in the program or been sanctioned by the Board for impairment as a result of drugs, alcohol, or other substances to avoid discipline if specified conditions are met, including completing treatment. Current law requires the Board to contract with one organization to conduct the One-Bite Program and perform monitoring services.

In addition to the practitioners authorized by current law to participate in the One-Bite Program, the bill permits an applicant for licensure to practice as any of the following to participate in the program:⁴³

- Physician assistant;
- Physician;
- Podiatrist;
- Limited branch of medicine practitioner;
- Dietitian;
- Anesthesiologist assistant;
- Respiratory care professional;
- Acupuncturist;
- Radiologist assistant;
- Genetic counselor.

Applicants authorized to practice in another jurisdiction

Under the bill, two categories of applicants for licensure are eligible to participate in the One-Bite Program: applicants who are authorized to practice in another jurisdiction and applicants who are not authorized to practice in another jurisdiction (see “**New applicants,**” below). An applicant for licensure as a specified practitioner who is authorized to practice in

⁴¹ See 42 Code of Federal Regulations 422.204.

⁴² H.B. 145 of the 132nd General Assembly. For more information regarding the State Medical Board’s One-Bite Program, please consult the H.B. 145 Final Analysis, available [here](#).

⁴³ R.C. 4731.251(A)(1).

another jurisdiction is not subject to disciplinary action and may participate in the One-Bite Program upon the satisfaction of several specified conditions.

To participate in the program, an applicant authorized to practice in another jurisdiction must, as part of the licensure application process, disclose to the State Medical Board that impairment occurred while the applicant was practicing in the jurisdiction in which the applicant was authorized to practice.⁴⁴ With this disclosure, an applicant must also (1) currently participate in a confidential treatment and monitoring program within the other jurisdiction, (2) agree to provide the Board or the monitoring organization operating the One-Bite Program with documentation of the applicant's current participation, and (3) waive any right to confidentiality that would ordinarily prevent the Board and monitoring organization from sharing that documentation with one another.⁴⁵

The bill further provides that an applicant must be in good standing with the other jurisdiction's licensing authority and confidential treatment and monitoring program, have not previously participated in the One-Bite Program, and have not been previously sanctioned by the Board for impairment.⁴⁶

New applicants

An applicant for licensure as a specified practitioner who is not authorized to practice in another jurisdiction is not subject to disciplinary action and may participate in the One-Bite Program upon the satisfaction of several specified conditions. To participate in the program, an applicant must disclose to the Board an impairment that occurred prior to the applicant applying for licensure. Regarding the disclosed impairment, an applicant must (1) have participated in and successfully completed a treatment program, (2) agree to provide the Board or the monitoring organization operating the One-Bite Program with documentation of the applicant's participation and successful completion, and (3) waive any right to confidentiality that would ordinarily prevent the Board and monitoring organization from sharing that documentation with one another.⁴⁷ An applicant must have not previously participated in the One-Bite Program and have not been previously sanctioned by the Board for impairment.⁴⁸

Program requirements

Under the bill, the monitoring organization operating the One-Bite Program must evaluate the records provided by an applicant to determine whether the applicant meets the

⁴⁴ R.C. 4731.253(B)(1)(a).

⁴⁵ R.C. 4731.253(B)(1)(b).

⁴⁶ R.C. 4731.253(B)(1)(c), (d), and (e).

⁴⁷ R.C. 4731.253(B)(2)(a) and (b).

⁴⁸ R.C. 4731.253(B)(2)(c) and (d).

eligibility standards for participating in the One-Bite Program, and promptly notify the Board if the records submitted by an applicant do not meet the program requirements.⁴⁹

Upon the issuance of a license to an applicant, the Board must refer the newly licensed practitioner to the monitoring organization to participate in the One-Bite Program.⁵⁰ Following this referral, the practitioner is required to enter into a monitoring agreement with the monitoring organization and the monitoring organization is required to determine the length and terms of the monitoring agreement. A practitioner must comply with all of the terms and conditions of the monitoring agreement and is responsible for all costs associated with participating in the program.⁵¹

Suspension of open enrollment and other insurance programs

The bill extends from January 1, 2022, to January 1, 2026, the suspension of certain program requirements under Ohio's Insurance Law. Section 3 of S.B. 9 of the 130th General Assembly suspended, beginning January 1, 2014, the operation of the following programs:

- Ohio's Open Enrollment Program;
- Ohio's Health Reinsurance Program;
- Option for conversion from a group to individual contract under an existing contract with a health insuring corporation (HIC);
- Option for conversion from a nongroup contract to a contract issued on a direct payment basis under an existing contract with a HIC;
- Option for conversion from a group policy to an individual policy under an existing policy with a sickness and accident insurer.⁵²

Under the federal Patient Protection and Affordable Care Act of 2010 (ACA), because of the guaranteed availability of coverage in the individual and group markets, the programs suspended by S.B. 9, and outlined above, appear to be duplicative of the federal programs.⁵³ If the guaranteed availability of coverage and the requirements related to health insurance coverage under the ACA become ineffective prior to the expiration of the suspension, the suspended programs outlined above, in either their present form or as they are later amended, again become operational.

⁴⁹ R.C. 4731.253(C).

⁵⁰ R.C. 4731.253(D).

⁵¹ R.C. 4731.253(E).

⁵² Sections 3 and 4 (amending Section 3 of S.B. 9 of the 130th General Assembly, as subsequently amended by H.B. 49 of the 132nd General Assembly).

⁵³ 42 United States Code 300gg-1 and 300gg-6.

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.*⁵⁴

HISTORY

Action	Date
Introduced	02-16-21
Reported, H. Insurance	03-25-21
Passed House (93-0)	04-15-21
Reported, S. Health	---

H0122-RS-134/ts

⁵⁴ 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).