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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 679  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Fraizer and A. Holmes

Yosef Schiff, Attorney  
Jason Hoskins, Attorney

### SUMMARY

#### Insurance coverage of telehealth services

- Prohibits a health benefit plan from imposing cost sharing for telehealth services provided via telephone or email.
- Requires telehealth services provided via telephone or email to be tallied using minutes spent per patient on a running total and reimbursed for a block of time in a manner equivalent to the standard amount of time spent on a telehealth service.
- 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.
- Specifies certain telehealth services that are eligible for payment by the Medicaid program.
- Requires the Department 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 the provision of telehealth services.
- 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.
- Prohibits a health care professional from charging a fee 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 specified 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.

## **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.

## **Emergency**

- Declares an emergency.

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## **DETAILED ANALYSIS**

### **Insurance coverage of telehealth services**

The bill prohibits 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) from imposing a cost-sharing requirement for telehealth services (called “telemedicine services” under current law) that are provided via telephone or email.<sup>1</sup>

Under the bill, telehealth services that are provided via telephone or email must be tallied using the minutes spent per patient on a running total. A health plan issuer (an entity that contracts to provide or reimburse any of the costs of health care services under a health benefit plan, including a health insuring corporation, sickness and accident insurer, public employee benefit plan, self-funded multiple employer welfare arrangement, or third-party administrator) must reimburse a provider for a block of time spent on such telephone or email services that is equivalent to the standard amount of time spent on a telehealth service.<sup>2</sup>

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<sup>1</sup> R.C. 3902.30(D).

<sup>2</sup> R.C. 3902.30(E).

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.<sup>3</sup>

The telemedicine provisions in current law apply to health benefit plans issued, offered, or renewed on or after January 1, 2021. The bill changes this to apply 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**).<sup>4</sup>

Lastly, the bill renames the existing term "telemedicine services" as "telehealth services," but retains the existing definition: a mode of providing health care services through synchronous or asynchronous information and communication technology by a health care professional (a physician, physician assistant, or advanced practice registered nurse), within the professional's scope of practice, who is located at a site other than the site where the recipient is located.<sup>5</sup>

## **Provision of telehealth services**

### **Authorized health care professionals**

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:<sup>6</sup>

- Advanced practice registered nurses;
- Physician assistants;
- Physicians;
- 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.

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<sup>3</sup> R.C. 3902.30(H); R.C. 3922.01 and 121.95, not in the bill.

<sup>4</sup> Section 3 of the bill.

<sup>5</sup> R.C. 3902.30(A).

<sup>6</sup> 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.

A licensing board that has jurisdiction over any of these health care professionals is required 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.<sup>7</sup>

### **Conditions for providing telehealth services**

The bill establishes several conditions regarding the provision of telehealth services by a health care professional. Each professional must conduct an initial in-person visit with a patient before providing telehealth services, and must conduct at least one in-person visit annually with a patient who receives telehealth services. However, a health care professional may waive either of these requirements if the health care professional determines that a patient's situation is critical and an in-person visit would not be practical.<sup>8</sup> A health care professional may also deny any patient telehealth services and instead require the patient to undergo an in-person visit.<sup>9</sup>

Telehealth services provided by a health care professional must be provided using secure video capabilities. Additionally, a health care professional providing telehealth services must ensure that any username or password information and electronic communications transmitted between a health care professional and a patient are securely transmitted and stored.<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup>

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<sup>7</sup> R.C. 4743.09(B).

<sup>8</sup> R.C. 4743.09(C)(1) and (4).

<sup>9</sup> R.C. 4743.09(C)(2).

<sup>10</sup> R.C. 4743.09(C)(3).

<sup>11</sup> R.C. 4743.09(C)(5).

<sup>12</sup> R.C. 4743.09(F).

## **Health care professional 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.<sup>13</sup>

## **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. In addition to these prohibited fees, the bill prohibits any of the health care professionals covered by the bill from charging any of the above-described fees or a fee associated with the administrative costs incurred in the provision of telehealth services. The bill also specifies that a health care professional is not required to obtain a patient's consent before billing for the cost of the telehealth services provided.<sup>14</sup>

## **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 Department 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.<sup>15</sup>

### **Eligible providers**

For purposes of the Medicaid program, the bill provides that all of the following practitioners are eligible to provide telehealth services:<sup>16</sup>

- Physicians;
- Psychologists;
- Physician assistants;
- Clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners;

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<sup>13</sup> R.C. 4743.09(D).

<sup>14</sup> R.C. 4743.09(E). *See also existing* R.C. 4723.94 and 4731.2910.

<sup>15</sup> R.C. 5164.95(B); R.C. 121.95, not in the bill.

<sup>16</sup> R.C. 5164.95(C)(1).

- Independent social workers, independent marriage and family therapists, and professional clinical counselors;
- 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;
- A Medicaid school program;
- Any other practitioner designated 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:<sup>17</sup>

- 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.<sup>18</sup>

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<sup>17</sup> R.C. 5164.95(C)(2).

<sup>18</sup> R.C. 5164.95(D).

## Medicaid-covered services

The bill provides that the Medicaid program will make payment for only the following services when they are delivered as telehealth services and are considered to be medically necessary:<sup>19</sup>

- Evaluation and management of a new patient or established patient described with medical decision making not to exceed moderate complexity;
- Inpatient or office consultation for a new or established patient when providing the same quality and timeliness of care is not possible other than by telehealth;
- Mental health or substance use disorder services described as psychiatric diagnostic evaluation or psychotherapy;
- Remote evaluation of recorded video or images submitted by an established patient;
- Virtual check-in by a physician or other qualified health care professional who can report evaluation and management services, provided to an established patient;
- Online digital evaluation and management services for an established patient;
- Remote patient monitoring;
- Audiology, speech-language pathology, physical therapy, and occupational therapy services;
- Medical nutrition services;
- Lactation counseling provided by a dietitian;
- Psychological and neuropsychological testing;
- Smoking and tobacco use cessation counseling;
- Developmental test administration;
- Services provided under the Specialized Recovery Services Program;
- Any other services designated by the Medicaid Director.

## Certified community mental health, addiction service providers

Under existing law, the Ohio Department of Mental Health and Addiction Services (OhioMHAS) certifies community mental health service providers and community addiction service providers.<sup>20</sup> The bill specifies that these providers may provide the following services as telehealth services:<sup>21</sup>

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<sup>19</sup> R.C. 5164.95(E).

<sup>20</sup> R.C. 5119.36, not in the bill.

<sup>21</sup> R.C. 5119.368(B).



- General services;
- Community psychiatric supportive treatment services;
- Therapeutic behavioral services and psychosocial rehabilitative services;
- Peer recovery services;
- Substance use disorder case management services;
- Crisis intervention services;
- Assertive community treatment services;
- Intensive home-based treatment services.

### **Requirements for providing telehealth services**

The bill establishes several requirements that must be satisfied when community mental health service providers and community addiction service 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. Appropriate staff must be on hand in the event of a malfunction with the equipment used 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.<sup>22</sup>

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.<sup>23</sup>

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.<sup>24</sup>

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) picture and audio sufficient to enable real-time communication between provider and

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<sup>22</sup> R.C. 5119.368(C), (F), and (I).

<sup>23</sup> R.C. 5119.368(D).

<sup>24</sup> R.C. 5119.368(G).

client.<sup>25</sup> 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.<sup>26</sup> 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 ensure that any username or password information and electronic communications transmitted between a provider and a client are securely transmitted and stored.<sup>27</sup>

### **Rulemaking**

The bill allows OhioMHAS to adopt rules as necessary to carry out the bill's requirements. These rules are exempted from the continuing requirement that an agency remove two rules for each new rule it implements.<sup>28</sup>

### **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.<sup>29</sup>

### **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. The bill designates Disability Rights Ohio, which is the nonprofit corporation

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<sup>25</sup> R.C. 5119.368(H).

<sup>26</sup> R.C. 5119.368(E).

<sup>27</sup> R.C. 5119.368(J).

<sup>28</sup> R.C. 5119.368(K); R.C. 121.95, not in the bill.

<sup>29</sup> R.C. 3721.60.

serving as Ohio’s protection and advocacy system, as the entity that may enforce this provision.<sup>30</sup>

## Effective date

As an emergency measure, the bill will have an immediate effective date and will not be subject to the referendum.<sup>31</sup>

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## COMMENT

The bill applies its provisions 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.*<sup>32</sup>

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## HISTORY

Action	Date
Introduced	05-26-20

H0679-I-133/ts

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<sup>30</sup> R.C. 5123.60 and 5123.603. *Disability Rights Ohio: Who We Are*, available at <https://www.disabilityrightsohio.org/>.

<sup>31</sup> Section 4.

<sup>32</sup> U.S. Constitution, Article I, Section 10; Ohio Const., Art. II, Sec. 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).