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S.B. 81
135th General Assembly

Bill Analysis

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Version: As Reported by House Health Provider Services

Primary Sponsor: Sen. Romanchuk

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SUMMARY

- Authorizes physician assistants, certified nurse practitioners, clinical nurse specialists, and certified nurse midwives to sign documents related to the admission, treatment, and discharge of psychiatric inpatients, if certain conditions are met.
- Replaces the Board of Nursing's Substance Use Disorder Monitoring Program with the Safe Haven Program, a program to monitor applicant and practitioner impairment resulting from substance use or mental or physical disability.
- Requires the Safe Haven Program to be conducted by a monitoring organization under contract with the Board and places duties on the organization, including receiving reports of impairment, determining eligibility for program participation, and monitoring participant treatment and compliance.
- Authorizes an insurance navigator to receive compensation from a health insurer offering insurance through an exchange operating in Ohio so long as the compensation is not in connection with the enrollment of employees and other individuals in a qualified health benefit plan.

DETAILED ANALYSIS

Authority to sign documents relating to psychiatric inpatient admission, treatment, and discharge

The bill authorizes eligible physician assistants and advanced practice registered nurses (APRNs) who are certified nurse practitioners, clinical nurse specialists, or certified nurse-midwives to sign certain documents relating to individuals receiving psychiatric or other

behavioral health care services at a health care facility on an inpatient basis.[1] The documents must concern an inpatient's admission, treatment, or discharge and may include treatment plans and medication orders that are part of treatment plans.

Conditions on signing authority

The following conditions must be satisfied in order for a physician assistant or APRN to be eligible to sign the documents:

- The physician assistant or APRN must either be employed, or granted appropriate credentials, by the facility;
- The physician assistant's supervising physician or the APRN's collaborating physician must either be employed by the facility or be a member of its medical staff;
- The supervising or collaborating physician must have authorized the physician assistant or APRN to sign documents relating to the admission, treatment, or discharge of the physician's patients;
- In the case of a physician assistant, the facility's policies must allow the physician assistant to sign the documents;
- In the case of an APRN, the nurse's standard care arrangement must specify in writing that the nurse is authorized to sign documents for the physician's patients.[2]

Physician immunity

The bill states that a supervising physician, in the case of a physician assistant, or a collaborating physician, in the case of an APRN, who authorizes the physician assistant or APRN to sign documents under the bill's provisions is not subject to civil liability, administrative action, or criminal prosecution for an act or omission that arises from the physician assistant or APRN signing the document.[3]

Physician supervision and collaboration – background

Physician supervision – physician assistants

Existing law unchanged by the bill requires a physician assistant to practice only under the supervision, control, and direction of a physician with whom the physician assistant has entered into a supervision agreement. The physician assistant also must practice in accordance with that agreement and if applicable, the policies of the health care facility where the physician assistant practices.[4]

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[1] R.C. 4723.436(A) and 4730.204(A).

[2] R.C. 4723.431(C), 4723.436(B), 4730.204(A) and (B).

[3] R.C. 4723.436(C) and 4730.204(C).

[4] R.C. 4730.08, not in the bill.

Physician collaboration – APRNs

Current law unchanged by the bill requires an APRN who is a certified nurse practitioner, clinical nurse specialist, or certified nurse-midwife to practice in collaboration with a physician, meaning that the physician is continuously available to communicate with the nurse either in person or by electronic communication.[5] The APRN also must enter into a standard care arrangement with one or more collaborating physicians and practice in accordance with it. A standard care arrangement is a written, formal guide for planning and evaluating a patient's health care that is developed by one or more collaborating physician and the APRN.

Board of Nursing – impairment monitoring

The bill requires the Board of Nursing to establish the Safe Haven Program to monitor practitioners and applicants who are or may be impaired. In creating Safe Haven, the bill eliminates existing law provisions establishing the Board of Nursing's Substance Use Disorder Monitoring Program.[6] Note that, at present, the Board issues licenses or certificates to the following types of practitioners – registered nurses, advanced practice registered nurses, licensed practical nurses, dialysis technicians, medication aides, community health workers, and doulas.[7]

Like its Substance Use Disorder Monitoring Program, the Board, through Safe Haven, monitors impairment, but with several differences. First, while the current law program addresses only impairment related to drug, alcohol, or other substance use, Safe Haven also addresses impairment resulting from a mental or physical disability.[8] Second, participation extends to applicants for licensure or certification; the Board's existing program governs only licensed or certified practitioners.[9] Third, Safe Haven must be conducted by a monitoring organization, while under current law, the Board must administer the Substance Use Monitoring Program or, in the alternative, may contract with a third-party vendor to do so.[10]

Fourth, a practitioner is no longer required to surrender the practitioner's Board-issued license or certificate as a condition of participation.[11] Fifth, the Board is required by the bill, rather than authorized as under current law, to abstain from taking disciplinary action against certain impaired individuals.[12]

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[5] R.C. 4723.01 and 4723.43, not in the bill, and 4723.431.

[6] R.C. 4723.35 and 4723.351; conforming change in R.C. 4723.06.

[7] R.C. Chapter 4723.

[8] R.C. 4723.35(A) and (B).

[9] R.C. 4723.35(A) and (B).

[10] R.C. 4723.35(B).

[11] R.C. 4723.35(E), repealed.

[12] R.C. 4723.35(F).

Participant eligibility

To be eligible to participate in Safe Haven, a practitioner or applicant must (1) be in need of assistance with impairment or potential impairment and (2) must hold an unencumbered license and not be under the terms of a Board order or consent agreement for impairment.[13] Under the bill, eligibility determinations are to be made by the program's monitoring organization.[14] Current law requires the Board's supervising member to make the determinations.

Monitoring organization

As noted above, the bill requires Safe Haven to be conducted by a monitoring organization under contract with the Board. It establishes eligibility conditions that must be met by the organization before a contract is entered into and also imposes duties on the contracting organization.

Eligibility conditions

To be eligible to contract with the Board, an organization must meet all of the following: (1) operate in Ohio as a professionals health program, (2) be organized as a not-for-profit entity and exempt from federal income taxation, (3) employ or contract with a physician specializing in addiction medicine or psychiatry to serve as its medical director, and (4) employ or contract with one or more licensed health care professionals as necessary for the organization's operation.[15]

Duties and procedures

The bill establishes the following duties to be fulfilled by the monitoring organization:

- Conducting a review of individuals and entities providing impairment evaluation and treatment services to determine which should be approved to serve as the program's evaluators and treatment providers;
- Granting or denying approval to evaluators and treatment providers and periodically reviewing and updating the program's list of approved evaluators and providers, including by examining their outcomes and operations;
- Receiving reports of impairment or suspected impairment from any source, including Board referrals;
- Notifying an applicant or practitioner who is the subject of a report or referral that the report or referral has been made and that the applicant or practitioner may be eligible to participate in Safe Haven;

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[13] R.C. 4723.35(G).

[14] R.C. 4723.35(E).

[15] R.C. 4723.351(A).

- Determining whether applicants and practitioners reported or referred to the organization are eligible to participate and notifying them of determinations;
- In the case of applicants or practitioners reported by treatment providers, notifying the providers of eligibility determinations;
- Reporting to the Board any practitioner or applicant who is determined ineligible to participate in Safe Haven;
- Referring participants for evaluation by a treatment provider approved by the organization, unless the report the organization received was made by an approved treatment provider and the applicant or practitioner has already been evaluated by the treatment provider;
- Monitoring the evaluation of eligible applicants and practitioners;
- Referring eligible applicants and practitioners who choose to participate in Safe Haven to approved treatment providers;
- Establishing, in consultation with treatment providers, the terms and conditions with which individual participants must comply for continued participation in and successful completion of the program;
- Reporting to the Board any practitioner or applicant who does not complete evaluation or treatment or does not comply with any of the terms and conditions established by the monitoring organization and the treatment provider;
- Performing any other activities specified in the contract with the Board or that the organization considers necessary to comply with the bill.[16]

Related to the foregoing duties, the bill requires the monitoring organization to develop procedures for performing them.[17] And, in consultation with the Board, the organization must develop procedures for reporting certain information to the Board, including the following: (1) the total number of Safe Haven participants, (2) any applicant or practitioner that presents an imminent danger to the public or self, (3) any applicant or practitioner who is unwilling or unable to complete or comply with any part of the program, including evaluation, treatment, or monitoring, and (4) any applicant or practitioner whose impairment was not substantially alleviated by participation in the program.[18]

Disclosures to the Board

The bill prohibits the monitoring organization from disclosing to the Board the name of any applicant or practitioner or any records relating to the applicant or practitioner, except

[16] R.C. 4723.351(B).

[17] R.C. 4723.351(D)(1).

[18] R.C. 4723.351(D)(2).

under one of the following five circumstances: (1) the applicant or practitioner is determined ineligible for Safe Haven, (2) the applicant or practitioner requests the disclosure, (3) the applicant or practitioner is unwilling or unable to complete or comply with any part of the program, (4) the applicant or practitioner presents an imminent danger to the public or self, as a result of impairment, and (5) the applicant's or practitioner's impairment has not been substantially alleviated by participation in the program.[19]

Immunity

Under the bill, in the absence of fraud or bad faith, the monitoring organization is not liable in damages to any person as a result of any act or omission related to its official duties. In the event of a claim or action against the organization, the bill requires the state to provide and pay for the monitoring organization's defense, but only if the organization asks to be defended, makes its request to the state in writing, and cooperates in its defense in good faith. The state also must pay any resulting judgment or settlement, but not any part of a claim or judgment that is for punitive or exemplary damages.[20]

Board duties and authority

In addition to requiring the Board to establish Safe Haven, the bill imposes other duties on it and also grants it certain authority.

Requirement to abstain from imposing discipline

Under the bill, the Board must abstain from taking disciplinary action against an individual whose health and effectiveness show signs of impairment or potential impairment, but who is not currently under the terms of a consent agreement or Board-issued order for impairment and who is participating in Safe Haven.[21] Under current law, the Board may abstain from imposing discipline against a practitioner with a substance use disorder if it finds that the practitioner can be treated effectively and there is no impairment of the practitioner's ability to practice according to acceptable and prevailing standards of safe care.[22]

The bill also specifies that an applicant's or practitioner's impairment neither excuses an applicant or practitioner who has committed other violations nor precludes the Board from investigating or taking disciplinary action against an applicant or practitioner for other violations.

Requirement to refer to the monitoring organization

The bill requires the Board to refer to the monitoring organization any applicant or practitioner whose health and effectiveness show signs of impairment or potential impairment,

[19] R.C. 4723.351(C).

[20] R.C. 4723.021.

[21] R.C. 4723.35(F).

[22] R.C. 4723.35(B), repealed.

but only if the applicant or practitioner satisfies the bill's eligibility conditions for participation in Safe Haven.[23]

Prohibition against mental or physical examinations

The bill prohibits the Board from compelling any individual who has been referred to Safe Haven, by the Board or otherwise, to submit to a mental or physical examination.[24]

Authority to transfer responsibilities

After establishing Safe Haven, the Board may transfer to the monitoring organization, in whole or in part, either or both of the following responsibilities:

- The monitoring and oversight of licensees as part of the Substance Use Disorder Program as that program existed on or before the bill's effective date;
- The monitoring and oversight of licensees under terms specified in a Board adjudication order or consent agreement.

If the Board transfers the foregoing responsibilities, the monitoring organization must provide quarterly reports to the Board regarding the compliance of transferred licensees. It also must immediately report to the Board any licensee who is not in compliance with the terms and conditions of monitoring.[25]

Rulemaking authority

The bill authorizes the Board to adopt any rules it considers necessary to implement the bill's Safe Haven provisions.[26] The rules must be adopted in accordance with Ohio's Administrative Procedure Act.[27]

Insurance navigators

Existing Ohio law prohibits an insurance navigator from receiving financial compensation from a health insurer offering insurance through an exchange operating in this state.[28] The bill revises this prohibition, limiting its application to compensation received in connection with the enrollment of employees or other individuals in a qualified health benefit plan.[29] In doing so, the bill aligns Ohio's law governing insurance navigators with federal law,

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[23] R.C. 4723.35(D).

[24] R.C. 4723.28(G).

[25] R.C. 4723.35(C).

[26] R.C. 4723.351(E).

[27] R.C. Chapter 119, not in the bill.

[28] R.C. 3905.471.

[29] R.C. 3905.471(G)(3).

which authorizes navigators to receive compensation from insurers so long as it is not in connection with enrollment.[30]

An insurance navigator performs activities and duties identified in the federal Patient Protection and Affordable Care Act, such as:

- Conducting public education activities to raise awareness of the availability of qualified health plans;
- Distributing fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits and cost-sharing reductions;
- Facilitating enrollment in qualified health plans;
- Providing referrals to appropriate state agencies for any enrollee with a grievance or question regarding their health plan.[31]

HISTORY

Action	Date
Introduced	03-07-23
Reported, S. Health	11-15-23
Passed Senate (29-1)	11-15-23
Reported, H. Health Provider Services	04-22-24

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[30] See, 45 Code of Federal Regulations 155.210(d)(4) and 155.215.

[31] R.C. 3905.01, not in the bill, and by reference, Section 1311 of the federal "Patient Protection and Affordable Care Act."