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S.B. 40
135th General Assembly

Bill Analysis

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Version: As Reported by House Health Provider Services

Primary Sponsor: Sen. Roegner

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SUMMARY

Dentist and Dental Hygienist Compact

- Enters Ohio as a party to the Dentist and Dental Hygienist Compact, the purpose of which is to facilitate the interstate practice of dentistry and dental hygiene and improve public access to dentistry and dental hygiene services.
- As a member of the Compact, requires Ohio to allow a dentist or dental hygienist licensed in another participating state to practice in Ohio, subject to Ohio's laws and rules governing the practice of dentistry and dental hygiene.
- Requires the State Dental Board to appoint a member to the Dentist and Dental Hygienist Compact Commission, a joint public agency created by the Compact to enforce the provisions and rules of the Compact.
- Requires Ohio to submit data regarding dentist and dental hygienist licensees to the Commission's data system, including information related to licensure, adverse action, and the presence of significant investigative information.
- Requires the Board to issue a report assessing the impact of Ohio having entered into the Compact five years after the Compact takes effect.

Insurance coverage of dental care services

- Requires health plan issuers to notify covered persons that they may incur out-of-pocket expenses for dental care services that are not covered services.
- Prohibits a contracting entity from requiring a dental care provider to accept a payment amount set by the contracting entity for dental care services unless those services are covered services.
- Makes a violation of the above provisions an unfair and deceptive act in the business of insurance.

- Requires dental care providers to disclose pricing and certain other information for dental care services that are not covered services.
- Subjects providers who violate the bill's disclosure requirements to professional discipline.

DETAILED ANALYSIS

Dentist and Dental Hygienist Compact

The bill enacts the Dentist and Dental Hygienist Compact in Ohio. The Dentist and Dental Hygienist Compact is an agreement between participating states that improves public access to dentistry and dental hygiene services by permitting eligible dentistry and dental hygiene providers to work in multiple states.¹ The Compact goes into effect when it is enacted by the seventh participating state.² Each state's enacting statute cannot be materially different from the Model Compact. Nothing in the Compact impacts Ohio's requirements for a license to practice as a dentist or dental hygienist.³

State participation in the Compact

To participate in the Compact, a state – including Ohio – must:⁴

1. Enact a compact that is not materially different than the Model Compact;
2. Fully participate in the Commission's data system (see "**Dentist and Dental Hygienist Compact Commission**" and "**Data system**" below);
3. Have a mechanism for receiving and investigating complaints;
4. Notify the Commission of any adverse action or the availability of investigative information about a licensee;
5. Fully implement a criminal background check requirement and use the results in making licensing decisions in accordance with the Compact;
6. Comply with the rules of the Commission;
7. Use a recognized national examination as a license requirement;
8. Require licensees to graduate from a program accredited by an approved accreditation agency;
9. Require all licensees to successfully complete a clinical assessment;

¹ R.C. 4715.271; Section 1 ("Section" references in this analysis are to the Compact).

² Section 11.A. As of May 16, 2024, seven states have enacted the Compact: Iowa, Kansas, Maine, North Carolina, Virginia, Washington, and Wisconsin.

³ Section 1.E.

⁴ Section 3.A.

10. Have continuing professional development requirements as a condition of license renewal;
11. Pay a participation fee to the Commission as established by Commission rule.

Compact privilege

Compact privilege is authorization granted by a remote state to allow a dentist or dental hygienist licensee from another participating state to practice as a dentist or dental hygienist in the remote state under its laws and rules.⁵ A dentist or dental hygienist working under compact privilege must function within the scope of practice authorized by that state.⁶

Each participating state is required to grant compact privilege to a licensee holding a valid, unencumbered license in another participating state. Participating states may charge a fee for granting compact privilege. The Dentist and Dental Hygienist Compact Commission (see **“Dentist and Dental Hygienist Compact Commission”** below) also may charge a fee for granting compact privilege. The Commission’s fee is waived for active military members and their spouses, and states may choose to waive fees for active military members and their spouses as well.

If a licensee’s license is encumbered, the licensee automatically loses compact privilege in all remote states until the license is no longer encumbered. Once a restricted license is restored to good standing, the licensee must meet all requirements to obtain compact privilege in a remote state.

Requirements to grant privilege

To exercise the compact privilege, a licensee must:⁷

1. Be licensed as a dentist or dental hygienist in a participating state;
2. Have no adverse action imposed on their compact privilege in the remote state they will be practicing in;
3. Submit to an application process in every state the licensee is seeking compact privilege;
4. Pay any applicable fees to the Dentist and Dental Hygienist Compact Commission and the remote state;
5. Meet any jurisprudence requirement established by a remote state where the licensee is seeking compact privilege;

⁵ Section 2.G.

⁶ Section 4.C.

⁷ Section 4.A.

6. Have passed a National Board Examination of the Joint Commission on National Dental Examinations or another examination accepted by Dentist and Dental Hygienist Compact Commission rule;
7. If a dentist, have graduated with a Doctor of Dental Surgery or Doctor of Dental Medicine degree from a predoctoral dental education program accredited by an approved accreditation agency;
8. If a dental hygienist, have graduated from a dental hygiene education program accredited by an approved accreditation agency;
9. Have successfully completed a clinical assessment;
10. Report to the Dentist and Dental Hygienist Compact Commission any adverse action taken by a nonparticipating state;
11. Report their address to the Dentist and Dental Hygienist Compact Commission and consent to accept service of process and service of subpoena at that address.

Practicing in a remote state

The Compact requires any licensee practicing dentistry or dental hygiene in a remote state under compact privilege to practice in accordance with the laws and regulations of the remote state. The Compact provides that licensees practicing dentistry or dental hygiene in a remote state are subject to the remote state's regulatory authority, meaning a remote state may temporarily remove a licensee's compact privilege, impose fines, or take other actions that are necessary to protect the health and safety of the citizens of the state. A licensee is ineligible for compact privilege in any state until a remote state has reinstated the licensee's compact privilege in the remote state.⁸

Adverse actions

The Compact provides that a participating state in which a licensee is licensed has the exclusive power to impose adverse action against a license it issues. Adverse action is defined as disciplinary action or encumbrance imposed on a license or compact privilege by a state licensing authority.⁹

A participating state may take adverse action based on investigative information from a remote state, so long as the participating state follows its own procedures. While states that are not the participating state that issued the license cannot impose adverse action against the license, a participating state may take adverse action against a licensee's compact privilege in that state. Joint investigations between participating states also are permissible.¹⁰

⁸ Section 4.C and D.

⁹ Sections 6.A and 2.B.

¹⁰ Section 6.E.1 and F.

In addition to imposing adverse action against a licensee's compact privilege, a remote state may (1) issue subpoenas for hearings and investigations and (2) recover from the licensee the costs related to the adverse action against the licensee (if authorized by state law).¹¹

The Compact preserves a state's ability to permit participation in an alternative program in lieu of adverse action, but the state must require licensees who enter into alternative programs in lieu of discipline to agree not to practice in other participating states during the term of the alternative program, unless prior authorization from the other participating state is given.¹² "Alternative program" is defined as a nondisciplinary monitoring or practice remediation process approved by a state licensing authority.¹³

If a participating state imposes adverse action against a licensee, it must immediately notify the administrator of the Commission's data system (see "**Data system**" below).¹⁴

Impact of compact privilege removal by a remote state

If a remote state removes a licensee's compact privilege, the licensee's compact privilege in any other participating state is removed until the time for which compact privilege was removed has ended, all fines have been paid, and all other conditions imposed by the remote state have been met. The licensee must again meet the above requirements to obtain compact privilege.¹⁵

Dentist and Dental Hygiene Compact Commission

The bill requires states participating in the Compact to establish a joint public agency known as the Dentist and Dental Hygiene Compact Commission.¹⁶ Each participating state must appoint one commissioner. The commissioner is entitled to one vote regarding all matters that are voted on by the Commission, and is to participate in the business and affairs of the Commission. Meetings may take place by telecommunication, video conference, or other similar electronic means.¹⁷

As a party to the Compact, the State Dental Board must select one commissioner to the Commission within 60 days of Ohio entering the Compact and fill any subsequent vacancy within 60 days.¹⁸

¹¹ Section 6.E.

¹² Section 6.C.

¹³ Section 2.C.

¹⁴ Section 6.G.2.

¹⁵ Section 4.D, G, and H.

¹⁶ Section 7.

¹⁷ Section 7.B.

¹⁸ Section 7.B and R.C. 4715.272(A).

Powers and duties

The Commission must enforce the provisions and rules of the Compact.¹⁹ It is required to meet annually. Generally, meetings must be open to the public. The Compact permits closed, nonpublic meetings of the Commission, the Executive Board, or other committees in limited circumstances, such as to discuss noncompliance of participating states, employment matters, licensee discipline, litigation, contract negotiation, criminal accusations, trade secrets, investigative records, and legal advice.²⁰

The Commission has numerous powers and duties specified in the bill, some of which include:²¹

1. Establishing bylaws and a code of ethics for the Commission;
2. Electing a chair, vice chair, secretary, and treasurer, and any other officer provided by the Commission's bylaws;
3. Maintaining financial records, establishing a budget, making expenditures, and borrowing money;
4. Adopting rules to facilitate and coordinate implementation and administration of the Compact, including emergency rules;
5. Hiring employees and performing matters related to personnel;
6. Accepting donations and gifts and taking actions regarding real and personal property;
7. Electing the Executive Board and appointing committees;
8. Performing other functions as necessary and appropriate to achieve the purposes of the Compact.

Data system

The Commission must provide for the development, maintenance, and use of a coordinated database and reporting system containing licensure, adverse action, and significant investigative information regarding licensed individuals in participating states. All participating states must submit a uniform data set to the data system regarding licensees that are subject to the Compact. The data set includes: (1) identifying information, (2) licensure data, (3) adverse actions against a licensee, license applicant, or compact privilege, (4) nonconfidential information related to alternative program participation, (5) any denial of an application for licensure and reasons for the denial, (6) the presence of significant investigative information, and (7) other information specified in Commission rules.²²

¹⁹ Section 10.J.

²⁰ Section 7.

²¹ Section 7.C.

²² Section 8.

Participating states contributing information to the data system may designate information that may not be shared with the public without express permission from that state. Investigative information received by a dental licensing board pertaining to the investigation of a licensee in a participating state will always only be available to other participating states.²³

Commission finances

The Commission is required to pay the reasonable expenses of its establishment, organization, and ongoing activities. The Commission may accept monetary and nonmonetary donations and grants. It may impose annual assessments on participating states and fees on licensees of participating states to cover costs of granting compact privilege. The Commission must keep accurate records of receipts and disbursements, which must be audited annually.

The Commission is not permitted to incur obligations before securing funds to meet those obligations and it may not pledge the credit of participating states without authority.²⁴

Executive Board

The Compact creates a Compact Commission Executive Board, and provides that the Executive Board has the power to act on behalf of the Commission. Board meetings with formal action on a matter must be public, with at least five days' notice. The Executive Board, which must meet annually, is comprised of the following seven members:²⁵

- The chair, vice chair, secretary, and treasurer of the Commission, and any other officer provided by the Commission's bylaws;
- Up to three other voting members from the Commission, elected by the Commission.

Duties and responsibilities of the Executive Board include:

1. Overseeing the day-to-day activities of the administration of the Compact;
2. Recommending changes to rules, bylaws, Compact legislation, and fees paid by participating states and licensees;
3. Ensuring Compact administration services are appropriately provided;
4. Preparing and recommending the budget;
5. Maintaining financial records;
6. Monitoring Compact compliance of participating states and providing compliance reports;
7. Establishing additional committees;

²³ Section 8.E. and F.

²⁴ Section 7.E.

²⁵ Section 7.F.2.

8. Exercising the powers and duties of the Commission during the interim period between Commission meetings;
9. Any other duties provided in the bylaws.

Rulemaking

The Commission has the power to adopt rules by majority vote pursuant to the criteria and process set forth in the Compact. The Commission must hold a public meeting before adopting a rule, with advanced notice of the proposed rulemaking and other specified information. If a majority of state legislatures of participating states reject a rule by enacting a statute or resolution within four years of the date the rule was adopted, the rule has no further force or effect.²⁶

Qualified immunity, defense, and indemnification

The Compact provides that the members, officers, executive director, employees, and representatives of the Commission are immune from suit and liability for damages caused by or arising out of acts or omissions occurring within the scope of Commission employment, duties, or responsibilities, so long as the loss is not caused by intentional or willful or wanton misconduct. The Commission must defend individuals entitled to immunity, but individuals also may retain their own counsel.

The Commission must indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of a settlement or judgment obtained against the individual arising out of acts or omissions occurring within the scope of Commission employment, duties, or responsibilities, except in the case of intentional or willful or wanton misconduct.²⁷

Enforcement and dispute resolution

The Compact requires each participating state's executive, legislative, and judicial branches of government to enforce it.²⁸

The Commission must attempt to resolve Compact disputes that arise among participating states and between participating states and nonparticipating states. The Commission is required to adopt a rule providing for both mediation and binding dispute resolution.²⁹

²⁶ Section 9.

²⁷ Section 7.G.

²⁸ Section 10.A.

²⁹ Section 10.I.

Conflict with state law

The Compact does not prevent or inhibit the enforcement of laws in a participating state that do not conflict with the Compact. Any laws, statutes, regulations, or other legal requirements in a participating state that are in conflict with the Compact are superseded.³⁰

Compact amendment

Participating states may amend the Compact by enacting legislation. An amendment is not effective until it has been enacted by all participating states.³¹

Withdrawal and termination

The Compact permits participating states to withdraw by enacting a statute repealing the Compact. Such a withdrawal is effective 180 days after the repeal.³²

The Compact provides a process for notifying a participating state if the state has defaulted in performing its obligations or duties under the Compact. If the defaulting state fails to cure the default, it may be terminated from the Compact upon an affirmative vote of a majority of all participating states. The defaulting state may appeal the action of the Commission to the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing party is to be awarded costs of litigation, including attorney's fees.³³

Construction and severability

The Compact provides that it is to be liberally construed, and its provisions are severable.³⁴

Delayed effective date

The bill's provisions regarding the Compact take effect on January 1, 2025.

Compact report

The bill requires the State Dental Board to issue a report assessing the impact of Ohio having entered into the Compact.³⁵ The report must (1) be issued five years after entering the Compact, (2) include the number of dentists and dental hygienists practicing in Ohio under a compact privilege, and (3) address any discernible impact on dental practice in the state resulting from the Compact.

³⁰ Section 13.

³¹ Section 11.D.

³² Section 11.B.

³³ Section 10.B, C, and H.

³⁴ Section 12.B.

³⁵ R.C. 4715.272(C).

The Board must make the report available on its website and submit copies to the Speaker of the House of Representatives, Senate President, and chairpersons of the General Assembly's standing committees primarily responsible for considering health issues.

Insurance coverage of dental care services

Overview

The bill modifies the law governing health plan issuers, health care contracts, and dental care providers to include several contract and disclosure requirements related to the provision of dental care services that are not covered by insurance. The bill requires health plan issuers to notify covered persons of potential out-of-pocket costs, prohibits inclusion of certain terms in contracts between contracting entities and dental care providers, and requires certain pricing disclosures by dental care providers. The bill's requirements for dental care services are similar, in some respects, to current law requirements for vision care services. However, unlike vision care, where the requirements apply to both services *and* materials, the bill's dental care requirements apply only to services. The bill does not address insurance contracts that exclusively cover dental care materials.

Health Plan Issuers

Notifications

The bill imposes disclosure requirements on any health care policy, contract, agreement, or plan of a (1) health insuring corporation, (2) sickness and accident insurer, (3) multiple employer welfare arrangement, or (4) public employee benefit plan (collectively, health plan issuers) covering dental care services. The bill requires the following notification to be made to all individuals covered by such a health benefit plan:

IMPORTANT: If you opt to receive dental care services that are not covered benefits under this plan, a participating dental care provider may charge you his or her normal fee for such services. Prior to providing you with dental care services that are not covered benefits, the dental care provider will provide you with an estimated cost for each service.³⁶

Similarly, health plan issuers must explain to covered persons that they may incur out-of-pocket expenses as a result of the purchase of dental care services that are not covered. The explanation must be provided in a manner similar to that in which the health plan issuer provides a covered person with information on a health benefit plan's coverage levels and out-of-pocket expenses.³⁷

³⁶ R.C. 1751.85(B)(2) and 3923.86(B)(2); R.C. 1739.05, not in the bill.

³⁷ R.C. 1751.85(B)(4) and 3923.86(B)(4); R.C. 1739.05, not in the bill.

Unfair and deceptive practice

Under continuing law, a continuous or repeated practice by a health plan issuer of violating notice requirements is an unfair and deceptive practice. This classification also applies to the bill's new requirements related to dental care services.³⁸ Under continuing law, a person who is found to have committed an unfair and deceptive practice in the business of insurance is subject to any or all of the following sanctions:

- Suspension or revocation of the person's license to engage in the business of insurance;
- Prohibition on an insurance company or insurance agency employing the person or permitting the person to serve the company or agency in any capacity for a period of time;
- Return of any payments received by the person as a result of the violation;
- Fees for attorneys and other costs of any investigation into the violations committed by the person.³⁹

Health Care Contracts

Provider contract terms

The bill also prohibits certain terms from being included in health care contracts between a dental care provider and a contracting entity (i.e., any person that has the primary business purpose of contracting with participating providers for the delivery of health care services). Under the bill such contracts must not require, or be made contingent upon, a dental care provider accepting an amount set by the contracting entity as payment for dental care services other than covered services. A dental care provider may choose to accept an amount set by the contracting entity as payment for noncovered dental care services. Furthermore, a covered entity may communicate to covered persons which dental care providers have made such a choice. However, other than noting the provider's decision, the bill requires contracting entities to treat all participating, in-network dental care providers equally in provider directories, locators, and other marketing materials.

In addition, the bill prohibits a contracting entity from requiring a dental care provider to contract with a benefit plan offering supplemental or specialty health care services as a condition of contracting with a plan offering basic health care services.

The bill states that these provisions apply to contracts entered into, amended, or renewed on or after January 1, 2025.⁴⁰

³⁸ R.C. 1751.85(C), 3901.21(BB), and 3923.86(C); R.C. 1739.05, not in the bill.

³⁹ R.C. 3901.22, not in the bill.

⁴⁰ R.C. 3963.01(E) and (G) and 3963.02(F)(1).

Dental care provider disclosures

The bill requires a dental care provider that chooses not to accept a payment amount set by a contracting entity for dental services, other than covered services, to provide pricing and reimbursement information for those services. The information must include the estimated fee or discounted price suggested by the contracting entity, the estimated fee charged by the dental care provider, the amount the dental care provider expects to be reimbursed by the contracting entity, and estimated pricing and reimbursement information for any covered services that are also expected to be provided during the covered person's visit. Furthermore, the dental care provider must post, in a conspicuous place, a notice stating the following:

IMPORTANT: This dental care provider does not accept the fee schedule set by your insurer for dental care services that are not covered benefits under your plan and instead charges his or her normal fee for those services. This dental care provider will provide you with an estimated cost for each noncovered service.⁴¹

Meaning of provisions

The bill specifies that its health care contract provisions are not to be construed as doing any of the following:

- Restricting or limiting a contracting entity's ability to enter into an agreement with another contracting entity or an affiliate of another contracting entity;
- Restricting or limiting a health care plan's ability to enter into an agreement with a dental care plan to deliver routine dental care services that are covered under a covered person's plan;
- Restricting or limiting a dental care plan network from acting as a network for a health care plan;
- Prohibiting a participating dental care provider from accepting as payment an amount that is the same as the amount set by the contracting entity for dental care services that are not covered dental services.⁴²

Furthermore, the bill specifies that continuing law's requirements relating to the termination of health care contracts are not to be construed as authorizing the Superintendent of Insurance to exercise regulatory authority over dental care providers.⁴³

⁴¹ R.C. 3963.02(F)(2).

⁴² R.C. 3963.02(F)(3).

⁴³ R.C. 3963.02(G)(5).

Enforcement

Health Care Contract Law

The health care contract provisions described above are part of Ohio's Health Care Contract Law. Continuing law authorizes the Superintendent of Insurance to conduct a market investigation of any person regulated by the Department of Insurance under Ohio's Insurance Law or Ohio's Corporation and Partnership Law to determine whether any violation of the Health Care Contract Law has occurred. When conducting such an examination, the Superintendent can assess the costs of the examination against the person examined.

The Superintendent may enter into a consent agreement to impose any administrative assessment or fine for conduct discovered that may be a violation of the Health Care Contract Law. In addition, a series of violations of the Health Care Contract Law by any person regulated by the Department of Insurance that, taken together, constitute a pattern or practice of violating that Law may constitute an unfair and deceptive insurance practice.⁴⁴

The bill also specifies that a violation of its dental care services provisions is an unfair or deceptive practice in the business of insurance (see "**Unfair and deceptive practice**" above for a description of possible sanctions).⁴⁵

Professional licensing law

In addition, the bill subjects a dental care provider that engages in a pattern of continuous or repeated violations of the bill's disclosure, pricing, and notice requirements to discipline by the State Dental Board. Such discipline may include suspension or revocation of the provider's license to practice dentistry, formal censure, or other corrective actions.⁴⁶

Definitions

The bill establishes the following definitions:

"Covered dental services" means dental care services for which reimbursement is available under an enrollee's health care contract, or for which a reimbursement would be available but for the application of contractual limitations, such as a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or any other limitation.

"Dental care provider" means a dentist licensed by the State Dental Board. "Dental care provider" does not include a dental hygienist.⁴⁷

⁴⁴ R.C. 3963.09, not in the bill.

⁴⁵ R.C. 3901.21(BB).

⁴⁶ R.C. 4715.30(A)(19) and (C).

⁴⁷ R.C. 3963.01(E) and (G).

HISTORY

Action	Date
Introduced	01-31-23
Reported, S. Health	05-31-23
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