



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 145

132nd General Assembly

(As Reported by H. Government Accountability and Oversight)

Reps. Huffman and Sprague, Seitz, Blessing, Butler, Clyde, Faber

BILL SUMMARY

- Requires the State Medical Board to establish "One-Bite," a confidential program for the treatment of health care practitioners who are impaired by alcohol, drugs, or other substances but have not been previously sanctioned by the Board for impairment.
 - Requires the Board to contract with an organization to conduct the One-Bite program and monitor practitioner compliance with treatment.
 - Requires cases of suspected practitioner impairment to be reported to the monitoring organization, rather than the Board as under existing law.
 - Declares an emergency.
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CONTENT AND OPERATION

One-Bite program

The bill requires the State Medical Board to establish a confidential program known as "One-Bite" for the treatment of impaired practitioners regulated by the Board who satisfy certain eligibility requirements.¹ It allows a practitioner who has not previously participated in One-Bite or been sanctioned by the Board for impairment as a result of drugs, alcohol, or other substances to avoid discipline, if specified conditions

¹ R.C. 4731.251.

are met, including completing treatment. The bill requires the Board to contract with one organization to conduct the One-Bite program and perform monitoring services.²

Board authority over impaired practitioners

The bill includes the One-Bite program in the Board's existing authority to address impaired practitioners. It also revises laws governing the reporting of suspected practitioner impairment by requiring reports to be made to the monitoring organization rather than the Board.³

Current law unchanged by the bill permits the Board to sanction a Board-regulated practitioner on several grounds, including impairment. If the Board determines that a practitioner is unable to practice due to habitual or excessive use or abuse of alcohol, drugs, or other substances, it must suspend the practitioner's license or certificate and require the practitioner to submit to treatment. Before the license or certificate can be reinstated, the practitioner must successfully complete treatment from a Board-approved treatment provider and must continue to participate in aftercare.

The Board is required by existing law to adopt rules establishing standards for the approval of physicians and facilities as treatment providers for impaired practitioners.⁴

Practitioners affected

The bill applies to the following practitioners regulated by the State Medical Board:

- (1) Physicians, including medical doctors, osteopaths, and podiatrists;
- (2) Physician assistants;
- (3) Anesthesiology assistants;
- (4) Acupuncturists and Oriental medicine practitioners;
- (5) Radiologist assistants;
- (6) Genetic counselors;

² R.C. 4731.251(B).

³ R.C. 4730.32(B), 4731.224(B), 4760.16(B), 4762.16(B), 4774.16(B), and 4778.17.

⁴ R.C. 4731.22(B)(26) and 4731.25.



- (7) Massage and cosmetic therapists;
- (8) Naprapaths and mechanotherapists.⁵

Eligibility

A practitioner is eligible to participate in the One-Bite program if all of the following are the case:

- (1) The practitioner is unable to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;⁶
- (2) The practitioner has not participated previously in the One-Bite program;
- (3) Unless the Board has referred the practitioner to the program, the practitioner has not been sanctioned previously by the Board for impairment.⁷

Monitoring organization

To be qualified to contract with the Board and conduct One-Bite, a monitoring organization must meet the following requirements:

- (1) Be sponsored by one or more professional associations or societies of practitioners;
- (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 to serve as the organization's medical director;
- (4) Employ or contract with one or more licensed chemical dependency counselors, independent social workers, social workers, professional clinical counselors, professional counselors, or psychologists, as necessary for the organization's operation.⁸

⁵ R.C. 4731.251(A).

⁶ See e.g., R.C. 4731.22(B)(26).

⁷ R.C. 4731.252(A).

⁸ R.C. 4731.251(B).



Duties

As part of its contract with the Board, the monitoring organization must, among other duties, receive reports of suspected impairment, refer eligible practitioners to evaluation and treatment, and monitor practitioner compliance with the program.⁹ Each duty is described briefly below.

Receiving reports of suspected impairment

The organization must receive any report of suspected impairment and notify a practitioner who is the subject of a report that the practitioner may be eligible to participate in the One-Bite program.

Determining eligibility

The organization must determine whether a practitioner reported to the organization is eligible to participate in the One-Bite program (see "**Eligibility**," above) and notify the practitioner of its determination.¹⁰ In the case of a practitioner reported by a treatment provider, the organization must notify the provider of its eligibility determination. If the organization determines that a practitioner is ineligible, it must report the practitioner to the Board.

Making referrals

Once an eligible practitioner elects to participate in the program, the organization must refer the practitioner to a Board-approved treatment provider for evaluation unless the report of suspected impairment was made by a Board-approved treatment provider that has already evaluated the practitioner.

Following evaluation, the monitoring organization must refer the practitioner to treatment with a Board-approved provider. The organization must establish, in consultation with the treatment provider, the terms and conditions for the practitioner's continued participation and successful completion of the program.

Monitoring

The bill requires the organization to monitor the evaluation of an eligible practitioner. It also requires the organization to report to the Board any practitioner

⁹ R.C. 4731.251(C).

¹⁰ As part of the eligibility determination, the organization must determine that the Board has not previously sanctioned the practitioner for impairment, which might be difficult to do without disclosing the practitioner's identity to the Board. Such disclosures are generally prohibited by the bill (R.C. 4731.25(D)).

who does not complete evaluation or treatment or does not comply with any of the terms and conditions established by the organization and treatment provider.

Other activities

The monitoring organization must perform any other activities that are specified in the contract or that the organization considers necessary to comply with the bill.

Program procedures

The monitoring organization must develop procedures relating to its duties, including procedures for the following:

- (1) Receiving reports of practitioner impairment;
- (2) Notifying practitioners of reports and eligibility determinations;
- (3) Referring eligible practitioners for evaluation or treatment;
- (4) Establishing individualized treatment plans for eligible practitioners, as recommended by treatment providers;
- (5) Establishing individualized terms and conditions for continued participation in and successful completion of the program.¹¹

Board consultation

The organization must develop procedures, in consultation with the Board, to address the following:

- (1) Reporting to the Board a practitioner who, due to impairment, presents an imminent danger to the public or the practitioner;
- (2) Reporting to the Board a practitioner who is unwilling or unable to complete or comply with any part of the program, including evaluation, treatment, or monitoring;
- (3) Reporting to the Board a practitioner whose impairment was not substantially alleviated by participation in the program or who has relapsed;
- (4) Providing reports to the Board on a periodic basis regarding the total number of practitioners participating in the program, without disclosing the names or records of any program participants other than disclosures required by the bill.¹²

¹¹ R.C. 4731.251(E)(1).



Program rules

The Board may adopt any rules it considers necessary to implement the bill, including rules regarding the monitoring organization and providers treating practitioners referred by the monitoring organization.¹³ These rules must be adopted in accordance with the Administrative Procedure Act.¹⁴

Immunity

The bill grants the monitoring organization, as well as its agents, employees, members, or representatives, immunity from civil liability or criminal prosecution for performing any duty required by the bill or Board contract, so long as there is an absence of fraud or bad faith.¹⁵

Disclosures to the Board

In general, the bill prohibits the monitoring organization from disclosing to the Board the name of an impaired practitioner or any records relating to the practitioner. However, the organization may disclose to the Board a name or records in the following circumstances:

- (1) The practitioner is determined to be ineligible to participate in the program;
- (2) The practitioner requests the disclosure;
- (3) The practitioner is unwilling or unable to complete or comply with any part of the program, including evaluation, treatment, and monitoring;
- (4) The practitioner presents an imminent danger to the public or practitioner, as a result of the practitioner's impairment;
- (5) The practitioner has relapsed or the practitioner's impairment has not been substantially alleviated by participation in the program.¹⁶

¹² R.C. 4731.251(E)(2).

¹³ R.C. 4731.251(F).

¹⁴ R.C. Chapter 119.

¹⁵ R.C. 4730.32, 4731.224, 4731.253, 4760.16, 4762.16, 4774.16, and 4778.17.

¹⁶ R.C. 4731.251(D).



Waiver of confidentiality

Under the bill, a participating practitioner is deemed to have waived any right to confidentiality that would prevent the monitoring organization from making reports required by the bill.¹⁷

Program requirements

A practitioner who participates in One-Bite must comply with all terms and conditions established by the monitoring organization and treatment provider, in addition to satisfying the requirements described below.¹⁸

Costs

A participating practitioner is responsible for all costs associated with One-Bite, including evaluation and treatment costs.

Suspension of practice

On acceptance into the program, a practitioner must suspend practice until after the later of the following:

(1) The date the treatment provider determines that the practitioner is no longer impaired and is able to practice according to acceptable and prevailing standards of care;

(2) The end of a period specified by the treatment provider, which cannot be less than 30 days.

Reports of suspected impairment

The bill requires that reports of suspected practitioner impairment be made to the monitoring organization responsible for conducting the One-Bite program, rather than the Board as provided in current law.¹⁹ Under the bill, if any practitioner or any society or professional association of practitioners believes that a practitioner is impaired, the practitioner, society, or association must report the information on which the belief is based to the monitoring organization. If the monitoring organization

¹⁷ R.C. 4731.252.

¹⁸ R.C. 4731.252(B).

¹⁹ R.C. 4730.32(B), 4731.224(B), 4760.16(B), 4762.16(B), 4774.16(B), and 4778.17.



determines that the practitioner is not eligible for One-Bite, the bill requires the organization to report the practitioner to the Board.²⁰

The bill eliminates current law provisions under which a Board-approved treatment provider or a committee of a health care facility or professional organization was excused from making a report if the impaired practitioner was participating in treatment.

In the event that a report of suspected impairment is made to the Board rather than the monitoring organization, the bill requires the Board to refer the report to the monitoring organization. The bill specifies that the Board is not required to make the referral if it is aware that the practitioner does not meet One-Bite program eligibility requirements.

Standards

Existing law requires the Board to adopt rules establishing standards for approval of treatment providers. The bill requires these rules to also include standards for care and monitoring that continues after treatment.²¹

HISTORY

ACTION	DATE
Introduced	03-21-17
Reported, H. Gov't Accountability & Oversight	06-06-17

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²⁰ R.C. 4731.251(C).

²¹ R.C. 4731.25.

