OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

H.B. 365*
133rd General Assembly

Bill Analysis

Click here for H.B. 365's Fiscal Note

Version: As Reported by Senate Health, Human Services and Medicaid

Primary Sponsor: Rep. G. Manning

Audra Tidball, Attorney

SUMMARY

Chemical dependency professionals

- Revises the requirements to qualify for a chemical dependency counselor II license issued by the Ohio Chemical Dependency Professionals Board.

Reimbursements to 340B covered entities

- Prohibits health plan issuers and Medicaid managed care organizations (MCOs) from including in a contract with a covered entity that participates in the federal 340B Drug Pricing Program certain provisions that would result in the 340B covered entity not receiving the financial relief it is entitled to by virtue of its participation in the program.
- Requires terminal distributors of dangerous drugs to pay to a 340B covered entity the full amount received from the patient and the patient's health insurer, except for a fee agreed upon in writing between the terminal distributor and the covered entity.

DETAILED ANALYSIS

Chemical dependency professionals

Background

Established in 2002, the Ohio Chemical Dependency Professionals Board regulates the practice of chemical dependency counseling, including by licensing chemical dependency professionals such as counselor assistants, counselors, and independent counselors.[1] At

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

[1] R.C. Chapter 4758.

present, the holder of a chemical dependency counselor II license issued by the Board may engage in all of the following activities:

- Practice chemical dependency counseling;
- Perform treatment planning, assessment, crisis intervention, individual and group counseling, case management, and education services as they relate to alcohol and drug abuse or dependency;
- Refer individuals with nonchemical dependency conditions to appropriate sources of help.[2]

Note that current law prohibits such a license holder from practicing as an individual practitioner.[3]

H.B. 365 maintains the chemical dependency counselor II license and its scope of practice, but revises the requirements for qualifying for a license, including by authorizing alternative criteria for obtaining a license.[4]

Counselor II license requirements

Under existing law, to qualify for a chemical dependency counselor II license, an individual must either (1) hold, on December 23, 2002, a certificate or credentials accepted by the former Department of Alcohol and Drug Addiction Services as authority to practice as a certified chemical dependency counselor II[5] or (2) meet all of the following criteria:

- Hold an associate's degree in a behavioral science or nursing or a bachelor's degree in any field;
- Have 180 hours of approved chemical dependency specific education, of which 50% must have been obtained in the last five years;
- Have completed 2,000 hours of compensated work or supervised internship experience in chemical dependency or substance abuse services or the practice of psychology, professional counseling, social work, or marriage and family therapy, not less than 400 of which are in chemical dependency counseling;
- Have a minimum of 220 hours of training in chemical dependency; and

[2] R.C. 4758.57(A), not in the bill.

[3] R.C. 4758.57(B), not in the bill.

[4] R.C. 4758.42.

[5] R.C. 4758.42(B). *See also* H.B. 496 of the 124th General Assembly, available at http://archives.legislature.state.oh.us/BillText124/124_HB_496_ENR.pdf. Before H.B. 496, the Ohio Department of Alcohol and Drug Addiction Services was required to establish and administer a process for the certification or credentialing of chemical dependency professionals for the purpose of qualifying their services for reimbursement under Medicare or Medicaid.

- Have passed the International Certification and Reciprocity Consortium Alcohol and Drug Counselor Examination.[6]

License requirements under the bill

The bill establishes two additional sets of criteria by which an individual may qualify for a chemical dependency counselor II license. The second criteria set, however, remains an option for license applicants only until three years after the bill's effective date.[7]

First criteria set

Under the first new set, an individual must satisfy all of the following to qualify for a counselor II license:

- Hold an associate's degree or bachelor's degree in a behavioral science or nursing, each with a specialization in chemical dependency counseling;
- Have a minimum of 180 hours of education in chemical dependency that meets requirements specified in Board rules;
- While holding a valid chemical dependency counselor assistant certificate, have successfully completed at least one semester of practicum experience in chemical dependency that meets requirements specified in Board rules, including 16 practicum hours per week, at least two of which are supervised;
- Have at least 1,000 hours of compensated work experience as a chemical dependency counselor assistant;
- Provide to the Board a written recommendation from an individual who supervised the individual's practice as a chemical dependency counselor assistant; and
- Have passed one or more examinations administered for the purpose of determining competence to practice as a chemical dependency counselor II.[8]

Second criteria set

Under the second new set, an individual must meet the following in order to qualify for a chemical dependency counselor II license:

- Since at least December 31, 2008, have continuously held a valid chemical dependency counselor assistant certificate and practiced chemical dependency counseling while under supervision;
- Provide to the Board a written recommendation from an individual who supervised the individual's practice as a chemical dependency counselor assistant;

[6] R.C. 4758.42(A) and Ohio Administrative Code 4758-5-03.

[7] R.C. 4758.42.

[8] R.C. 4758.42(C).

- Have earned the minimum number of hours in chemical dependency training specified in Board rules; and
- Have passed one or more examinations administered for the purpose of determining competence to practice as a chemical dependency counselor II.[9]

Rulemaking

The bill requires the Chemical Dependency Professionals Board to adopt rules specifying the education and practicum experience requirements for the first new criteria set.[10] It also requires the Board to adopt rules establishing chemical dependency training requirements for the second new criteria set.[11] The rules are to be adopted in accordance with the Administrative Procedure Act.[12]

Reimbursements to 340B covered entities

Generally, the bill prohibits private insurers and Medicaid managed care organizations (MCOs) from including certain provisions related to reimbursement and fees in contracts entered into with 340B covered entities. A 340B covered entity is an entity that under federal law is authorized to participate in the 340B Drug Pricing Program.

340B Drug Pricing Program – federal law background

The 340B Drug Pricing Program resulted from the enactment of the "Veterans Health Care Act of 1992," which is codified as Section 340B of the Public Health Service Act.[13] Section 340B requires drug manufacturers to sell outpatient drugs at a discount to certain grantees of federal agencies and other entities identified in the statute. Drugs that are covered by the 340B Drug Pricing Program are (1) drugs provided in outpatient settings approved by the U.S. Food and Drug Administration (FDA) that require a prescription, (2) over-the-counter drugs written on a prescription, (3) biological products that can be dispensed only by a prescription (other than vaccines), or (4) FDA-approved insulin.[14]

The purpose of the program is to provide financial relief to facilities that provide care to the medically underserved. The program is administered by the Office of Pharmacy Affairs of the Health Resources and Services Administration (HRSA), a division of the U.S. Department of Health and Human Services.[15]

---

[9] R.C. 4758.42(D).

[10] R.C. 4758.20(A)(16) and (A)(17).

[11] R.C. 4758.20(A)(12).

[12] R.C. 4758.20(B) and R.C. Chapter 119, not in the bill.

[13] 42 United States Code (U.S.C.) 256b.

[14] 42 U.S.C. 1396r-8(k)(2).

[15] Health Resources and Services Administration, U.S. Department of Health and Human Services, *340B Drug Pricing Program*, https://www.hrsa.gov/opa/index.html.

Only "covered entities" as defined in Section 340B are authorized to participate in the 340B Drug Pricing Program. Covered entities are referred to in the bill as "340B covered entities" and include all of the following:[16]

1. FQHCs – This category includes federally qualified health center look-alikes, consolidated health centers, migrant health centers, health care for the homeless, healthy schools/healthy communities, health centers for residents of public housing, and Office of Tribal Programs or urban Indian organizations.
2. A family planning project receiving a grant or contract under Section 1001 of the federal Public Health Service Act;
3. An entity receiving a grant under subpart II of part C of Title XXVI of the federal Ryan White Care Act (relating to categorical grants for outpatient early intervention services for the human immunodeficiency virus (HIV));
4. A state-operated AIDS Drug Assistance Program (ADAP) receiving financial assistance under the Ryan White Care Act;
5. A black lung clinic receiving funds under Section 427(a) of the federal Black Lung Benefits Act;
6. A comprehensive hemophilia diagnostic treatment center receiving a grant under Section 501(a)(2) of the Social Security Act;
7. A Native Hawaiian Health Center receiving funds under the federal Native Hawaiian Health Care Act of 1988;
8. An urban Indian organization receiving funds under Title V of the federal Indian Health Care Improvement Act;
9. Any entity receiving assistance under Title XXVI of the Public Health Service Act (the HIV Health Care Services Program), other than a state or unit of local government, but only if the entity is certified by the U.S. Secretary of Health and Human Services;
10. An entity receiving funds under Section 318 (relating to treatment of sexually transmitted diseases) or Section 317(j)(2) (relating to treatment of tuberculosis) of the Social Security Act through a state or unit of local government, but only if the entity is certified by the U.S. Secretary of Health and Human Services; and
11. Certain hospitals, including children's hospitals, critical access hospitals, free standing cancer hospitals, rural referral centers, sole community hospitals, and disproportionate share hospitals (often referred to as DSH hospitals).[17]

[16] R.C. 5167.01, citing 42 U.S.C. 256b(a)(4).

[17] A "disproportionate share hospital" is a hospital with a disproportionately large share of low-income patients. Health Resources and Services Administration, U.S. Department of Health and Human Services,

Insurer and MCO contracts with 340B covered entities

The bill prohibits health plan issuers[18] and MCOs, including third-party administrators of either, from including any of the following provisions in a contract with a 340B covered entity:[19]

1. A reimbursement or payment rate for a prescription drug that is less than the national average drug acquisition cost rate[20] for the drug as determined by the U.S. Centers for Medicare and Medicaid Services (CMS), measured at the time the drug is administered or dispensed, or, if that rate is not available, a reimbursement rate that is less than the wholesale acquisition cost of the drug as defined in federal law;
2. A fee that is not imposed on a health care provider that is not a 340B covered entity;
3. A fee that exceeds a fee imposed on a health care provider that is not a 340B covered entity.

For purposes of these provisions, "third party administrator" has the same definition as under current law and means any person who adjusts or settles claims on behalf of an insuring entity in connection with life, dental, health, prescription drugs, or disability insurance or self-insurance programs, and includes a pharmacy benefit manager.[21]

Additionally, the bill prohibits a health plan issuer from including in the contract a provision that establishes a dispensing fee reimbursement that is less than the dispensing fee for terminal distributors of dangerous drugs the Medicaid Director establishes for the Medicaid program under current law.[22]

Both health plan issuers and MCOs are prohibited by the bill from discriminating against 340B covered entities in a manner that prevents or interferes with an enrollee or recipient's choice to receive a prescription drug from a 340B covered entity or its contracted pharmacies.[23]

The bill specifies that its provisions that are applicable to health plan issuers apply to contracts entered into on and after the bill's effective date.[24] For both health plan issuers and MCOs, the bill specifies that any contract provision entered into that is contrary to the

---

Disproportionate Share Hospitals, https://www.hrsa.gov/opa/eligibility-and-registration/hospitals/disproportionate-share-hospitals/index.html.

[18] R.C. 3922.01, not in the bill.

[19] R.C. 3902.51(A) and 5167.123(A).

[20] CMS' methodology for calculating the national average drug acquisition cost can be found at the following link: https://www.medicaid.gov/medicaid-chip-program-information/by-topics/prescription-drugs/ful-nadac-downloads/nadacmethodology.pdf.

[21] R.C. 3902.50(A), 4729.49(A), and 5167.01(V).

[22] R.C. 3902.51(A)(2), referencing R.C. 5164.753, not in the bill.

[23] R.C. 3902.51(B) and 5167.123(B).

[24] R.C. 3902.51(A).

prohibitions discussed above is unenforceable and must be replaced with a dispensing fee or reimbursement rate that applies to health care providers that are not 340B covered entities.[25]

Terminal distributor contracts with 340B covered entities

The bill requires contracts between a terminal distributor of dangerous drugs and a 340B covered entity to provide that, when paying a 340B covered entity for dispensing a dangerous drug to a patient, the terminal distributor must pay to the 340B covered entity the full amount the terminal distributor receives from the patient and the patient's health insurer, except that the terminal distributor may deduct not more than a fee agreed upon in writing between the terminal distributor and the 340B covered entity.[26] A terminal distributor of dangerous drugs is a person engaged in the sale of dangerous drugs at retail, or a person, other than a wholesale distributor or a pharmacist, who has possession, custody, or control of dangerous drugs for any purpose other than for that person's own use and consumption.[27] Sites licensed as terminal distributors include pharmacies, hospitals, nursing homes, emergency medical service organizations, and laboratories.

Medicaid state maximum allowable cost

Regarding current law that requires the Medicaid Director to establish a state maximum allowable cost program for purposes of managing Medicaid payments to terminal distributors for certain identified drugs, the bill specifies that the establishment of the program is subject to its prohibitions on MCOs, as discussed above.[28]

HISTORY

Action	Date
Introduced	10-10-19
Reported, H. Health	01-15-20
Passed House (93-2)	05-06-20
Reported, S. Health, Human Services & Medicaid	---

H0365-RS-133/ks

[25] R.C. 3902.51(C) and 5167.123(C).

[26] R.C. 4729.49(B) and (C).

[27] R.C. 4729.01(Q), not in the bill.

[28] R.C. 5164.751(B).