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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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H.B. 122
134th General Assembly

Bill Analysis

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Version: As Reported by House Insurance

Primary Sponsors: Reps. Fraizer and Holmes

Jason Hoskins, Attorney

SUMMARY

Insurance coverage of telehealth services

- Expands existing law's telemedicine services provisions to apply to psychologists and school psychologists; audiologists and speech-language pathologists; occupational therapists and physical therapists; occupational therapy assistants and physical therapist assistants; professional clinical counselors, independent social workers, and independent marriage and family therapists; independent chemical dependency counselors; dietitians; optometrists with therapeutic prescriptive authority; pharmacists; chiropractors; respiratory care professionals; and genetic counselors.
- Prohibits a health benefit plan from imposing cost sharing for telehealth services that exceeds the cost sharing for comparable in-person services and prohibits cost sharing for communications that meet specified criteria.
- Requires a health benefit plan to reimburse a health care professional for a covered telehealth service, but does not require the reimbursement to be a specific amount.
- Allows the Superintendent of Insurance to adopt rules as necessary to carry out the provisions regarding 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.
- Requires the Medicaid Director 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 telehealth services provided by health care professionals.
- 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.
- Permits a health care professional to negotiate with a health plan issuer to establish a reimbursement rate for fees 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 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 provisions regarding telehealth services provided by community mental health and addiction services providers.

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.

DETAILED ANALYSIS

Insurance coverage of telehealth services

The bill expands existing law's insurance provisions regarding coverage of telemedicine services (renamed telehealth services under the bill) to include additional types of health care professionals: psychologists and school psychologists; audiologists and speech-language pathologists; occupational therapists and physical therapists; occupational therapy assistants and physical therapist assistants; professional clinical counselors, independent social workers,

and independent marriage and family therapists; independent chemical dependency counselors; dietitians; optometrists licensed to practice under a therapeutic pharmaceutical agents certificate; pharmacists; chiropractors; respiratory care professionals; and genetic counselors. Currently, these provisions apply only to physicians, physician assistants, and advanced practice registered nurses.

Under the bill, 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) may not impose a cost-sharing requirement for telehealth services that exceeds the cost-sharing requirement for comparable in-person health care services (services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease).

In addition, the bill prohibits a health benefit plan from imposing a cost-sharing requirement for a communication when all of the following apply:

- The communication was initiated by the health care professional;
- The patient consented to receive a telehealth service from that provider on any prior occasion;
- The communication is conducted for the purposes of preventive health care services only.

If such a communication is coded based on time, then only the time the health care professional spends engaged in the communication is billable. The bill specifies that its provisions do not require a health plan issuer to provide coverage for asynchronous communications that differs from the coverage described in the health benefit plan.

The bill explicitly requires a health plan issuer to reimburse a health care professional for a covered telehealth service, but does not require a specific reimbursement amount.

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. Under the bill, these rules are exempt from the existing requirement that an agency remove two rules for each new rule it implements.

In current law, telemedicine provisions apply to health benefit plans issued, offered, or renewed on or after January 1, 2021. The bill instead applies 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**).

Lastly, the bill renames the existing term "telemedicine services" as "telehealth services," but substantively retains the existing definition: providing health care services through the use of information and communication technology by a health care professional,

within the professional's scope of practice, who is located at a site other than the site where the recipient (either the patient or a consulting health care professional) is located.¹

Provision of telehealth services by health care professionals

Authorized providers

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:²

- Advanced practice registered nurses;
- Optometrists licensed to practice under a therapeutic pharmaceutical agents certificate;
- Pharmacists;
- Physician assistants;
- Physicians;
- Psychologists and school psychologists;
- Chiropractors;
- Audiologists and speech-language pathologists;
- Occupational therapists and physical therapists;
- Occupational therapy assistants and physical therapist assistants;
- Professional clinical counselors, independent social workers, and independent marriage and family therapists;
- Independent chemical dependency counselors;
- Dietitians;
- Respiratory care professionals;
- Genetic counselors.

A licensing board that has jurisdiction over any of these health care professionals is required by the bill 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.³

¹ R.C. 3902.30, 4743.09(A)(6), and Section 3 of the bill; R.C. 121.95 and 3922.01, not in the bill.

² R.C. 4743.09(A)(2); *see also* R.C. 4723.94, 4725.35, 4729.284, 4730.60, 4731.741, 4732.33, 4734.60, 4753.20, 4755.90, 4757.50, 4758.80, 4759.20, 4761.30, and 4778.30.

³ R.C. 4743.09(B).

Conditions for providing telehealth services

The bill establishes several conditions regarding the provision of telehealth services by a health care professional. Each professional may use synchronous or asynchronous technology to provide telehealth services to a patient during an initial visit if the appropriate standard of care for an initial visit is satisfied. Additionally, a professional may use synchronous or asynchronous technology to provide telehealth services to a patient during an annual visit if the appropriate standard of care for an annual visit is satisfied.⁴ A health care professional may also deny any patient telehealth services and instead require the patient to undergo an in-person visit.⁵

When a health care professional is providing telehealth services, the bill requires the professional to comply with all state and federal law requirements concerning the protection of patient information. Additionally, a health care professional must ensure that any username or password information and electronic communications transmitted between the professional and a patient are securely transmitted and stored.⁶

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.⁷

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.⁸

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.⁹

⁴ R.C. 4743.09(C)(1) and (4).

⁵ R.C. 4743.09(C)(2).

⁶ R.C. 4743.09(C)(3).

⁷ R.C. 4743.09(C)(5).

⁸ R.C. 4743.09(F).

⁹ R.C. 4743.09(D).

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. The bill prohibits any of the health care professionals covered by the bill from charging any of the above-described fees. In addition, the bill clarifies that the prohibition against charging a fee associated with the cost of equipment applies to equipment used at a provider site to provide telehealth services. A health care professional is permitted to charge a health plan issuer for durable medical equipment used at a patient or client site, including remote monitoring devices.¹⁰

Under the bill, a health care professional may negotiate with a health plan issuer to establish a reimbursement rate for fees associated with the administrative costs incurred with providing telehealth services. This negotiation may not place any portion of responsibility for this fee on a patient.¹¹

The bill also specifies that a health care professional is required to obtain a patient's consent before billing for the cost of the telehealth services provided. The requirement to obtain this consent applies only once.¹²

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 Medicaid Director 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.¹³

Eligible providers

For purposes of the Medicaid program, the bill provides that all of the following practitioners are eligible to provide telehealth services:¹⁴

- Physicians;
- Psychologists;

¹⁰ R.C. 4743.09(A)(1) and (E)(1). *See also* R.C. 4723.94 and 4731.2910 (existing versions).

¹¹ R.C. 4743.09(E)(2).

¹² R.C. 4743.09(E)(3).

¹³ R.C. 5164.95(B); R.C. 121.95, not in the bill.

¹⁴ R.C. 5164.95(C)(1).

- Physician assistants;
- Clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners;
- 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;
- Chiropractors;
- Pharmacists;
- Genetic counselors;
- Optometrists licensed to practice under a therapeutic pharmaceutical agents certificate;
- Respiratory care professionals;
- Practitioners who provide services through Medicaid school programs;
- Practitioners certified to provide services and supports through a community mental health services provider or a community addiction services provider;
- Any other practitioner considered eligible 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:¹⁵

- 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;

¹⁵ R.C. 5164.95(C)(2).

- A Medicaid school program;
- A community mental health services provider or community addiction services provider;
- 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.¹⁶

Certified community mental health, addiction service providers

Requirements for providing telehealth services

Under existing law, the Ohio Department of Mental Health and Addiction Services (OhioMHAS) certifies community mental health service providers and community addiction service providers.¹⁷ The bill establishes several requirements that must be satisfied when these 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. 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.¹⁸ Additionally, a mental health facility or unit serving as a client site must have appropriate staff on hand at the facility or unit in the event of a malfunction with the equipment used to provide telehealth services.¹⁹

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.²⁰

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

¹⁶ R.C. 5164.95(D).

¹⁷ R.C. 5119.36, not in the bill.

¹⁸ R.C. 5119.368(B), and (E).

¹⁹ R.C. 5119.368(H).

²⁰ R.C. 5119.368(C).

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.²¹

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) in the case of telehealth services using synchronous technology, video or audio sufficient to enable real-time communication between provider and client.²² 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.²³ 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 comply with all state and federal law requirements concerning the protection of patient information and also ensure that any username or password information and electronic communications transmitted between a provider and a client are securely transmitted and stored.²⁴

Rulemaking

The bill allows OhioMHAS to adopt rules as necessary to carry out the bill's requirements regarding telehealth services provided by community mental health and addiction services providers. These rules are exempted from the continuing requirement that an agency remove two rules for each new rule it implements.²⁵

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 or any facility in which a hospice care program provides care for hospice patients.²⁶

²¹ R.C. 5119.368(F).

²² R.C. 5119.368(G).

²³ R.C. 5119.368(D).

²⁴ R.C. 5119.368(I).

²⁵ R.C. 5119.368(J); R.C. 121.95, not in the bill.

²⁶ R.C. 3721.60.

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. To enforce this provision, the bill authorizes the Director of Health to take any action the Director considers necessary.²⁷

COMMENT

The bill's provisions regarding insurance coverage of telehealth services apply 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*.²⁸

HISTORY

| Action | Date |
|------------------------|----------|
| Introduced | 02-16-21 |
| Reported, H. Insurance | 03-25-21 |

H0122-RH-134/ts

²⁷ R.C. 3701.1310.

²⁸ U.S. Constitution, Article I, Section 10; Ohio Constitution, Article II, Section 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).