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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 81  
135<sup>th</sup> General Assembly

## Final Analysis

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**Primary Sponsor:** Sen. Romanchuk

**Effective date:\***

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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 be conducted by an organization under contract with the Board to monitor applicant and practitioner impairment resulting from substance use or mental or physical disability.
- 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 enrollment in a qualified health benefit plan.

### DETAILED ANALYSIS

#### SIGNING PSYCHIATRIC INPATIENT DOCUMENTS

##### Authority granted to PAs and APRNs

The act authorizes eligible physician assistants (PAs) 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.<sup>1</sup> The documents

\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

<sup>1</sup> R.C. 4723.436(A) and 4730.204(A).

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 PA or APRN to be eligible to sign the documents:

- The PA or APRN must either be employed, or granted appropriate credentials, by the facility;
- The PA'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 PA or APRN to sign documents relating to the admission, treatment, or discharge of the physician's patients;
- For a PA, the facility's policies must allow the PA to sign the documents;
- For 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.<sup>2</sup>

### **Physician immunity**

The act states that a PA's supervising physician or an APRN's collaborating physician who authorizes the PA or APRN to sign documents is not subject to civil liability, administrative action, or criminal prosecution for an act or omission that arises from the practitioner signing the documents.<sup>3</sup>

## **SAFE HAVEN PROGRAM**

### **Board of Nursing – impairment monitoring**

The act 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 act eliminates prior law establishing the Board's Substance Use Disorder Monitoring Program.<sup>4</sup> Note that 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.<sup>5</sup>

Like the former Substance Use Disorder Monitoring Program, the Board, through Safe Haven, monitors impairment, but with several differences:

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<sup>2</sup> R.C. 4723.431(C), 4723.436(B), 4730.204(A) and (B).

<sup>3</sup> R.C. 4723.436(C) and 4730.204(C).

<sup>4</sup> R.C. 4723.35 and 4723.351; conforming changes in R.C. 4723.06 and 4723.28.

<sup>5</sup> R.C. Chapter 4723. Doula certification begins October 3, 2024 (R.C. 4723.89, not in the act).

- While the prior program addressed only impairment related to drug, alcohol, or other substance use, Safe Haven also addresses impairment resulting from a mental or physical disability.<sup>6</sup>
- Safe Haven participation extends to applicants for licensure or certification; the former program governed only licensed or certified practitioners.<sup>7</sup>
- Safe Haven must be conducted by a monitoring organization, while under prior law, the Substance Use Disorder Monitoring Program could be administered by either the Board or a third-party vendor under a Board contract to do so.<sup>8</sup>
- A practitioner is no longer required to surrender the practitioner's license or certificate as a condition of participation.<sup>9</sup>
- The Board is required, rather than authorized under former law, to abstain from taking disciplinary action against certain impaired individuals.<sup>10</sup>

### **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) hold an unencumbered license and not be under the terms of a Board order or consent agreement for impairment.<sup>11</sup> Eligibility determinations are to be made by the program's monitoring organization.<sup>12</sup> Prior law required the Board's supervising member to make the determinations.

### **Monitoring organization**

As noted above, the act requires Safe Haven to be conducted by a monitoring organization under contract with the Board. It establishes eligibility conditions for the contract and specifies duties to be fulfilled under the contract.

### **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

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<sup>6</sup> R.C. 4723.35(A) and (B); see also R.C. 4723.28(G).

<sup>7</sup> R.C. 4723.35(A) and (B); Ohio Administrative Code 4723-6-02.

<sup>8</sup> R.C. 4723.35(B).

<sup>9</sup> Former R.C. 4723.35(E).

<sup>10</sup> R.C. 4723.35(F).

<sup>11</sup> R.C. 4723.35(G).

<sup>12</sup> R.C. 4723.35(E).

with one or more licensed health care professionals as necessary for the organization's operation.<sup>13</sup>

### **Duties and procedures**

The act 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 that a report or referral has been made and that the applicant or practitioner may be eligible to participate in Safe Haven;
- Determining whether applicants and practitioners reported or referred to the organization are eligible to participate and notifying them of determinations;
- Regarding individuals 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 that has already evaluated the applicant or practitioner;
- 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;

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<sup>13</sup> R.C. 4723.351(A).

- Performing any other activities specified in the contract with the Board or that the organization considers necessary to comply with the act's Safe Haven provisions.<sup>14</sup>

Related to these duties, the act requires the monitoring organization to develop procedures for performing them.<sup>15</sup> And, in consultation with the Board, the organization must develop procedures for reporting certain information to the Board, including: (1) the total number of Safe Haven participants, (2) any applicant or practitioner who 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.<sup>16</sup>

### **Disclosures to the Board**

The act prohibits the monitoring organization from disclosing to the Board the name of or any records relating to an applicant or practitioner, except in the following 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, or (5) the applicant's or practitioner's impairment has not been substantially alleviated by participation in the program.<sup>17</sup>

### **Immunity**

Under the act, 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 state must 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.<sup>18</sup>

### **Board duties and authority**

In addition to requiring the Board to establish Safe Haven, the act establishes other Board duties and powers related to the program.

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<sup>14</sup> R.C. 4723.351(B).

<sup>15</sup> R.C. 4723.351(D)(1).

<sup>16</sup> R.C. 4723.351(D)(2).

<sup>17</sup> R.C. 4723.351(C).

<sup>18</sup> R.C. 4723.021.

### **Requirement to abstain from imposing discipline**

The act requires the Board to abstain from taking disciplinary action against an individual whose health and effectiveness show signs of impairment or potential impairment, but who is eligible for and participating in Safe Haven.<sup>19</sup> Under former law, the Board was authorized to abstain from imposing discipline against a practitioner with a substance use disorder if it found that the practitioner could be treated effectively and there was no impairment of the practitioner's ability to practice according to acceptable and prevailing standards of safe care.<sup>20</sup>

The act 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 act requires the Board to refer to the monitoring organization any applicant or practitioner whose health and effectiveness show signs of impairment or potential impairment, but only if the person is eligible to participate in Safe Haven.<sup>21</sup>

### **Prohibition against mental or physical examinations**

The act 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. In other circumstances, however, the Board continues to be authorized to compel a mental or physical examination as part of its investigation of an applicant or practitioner who may be impaired.<sup>22</sup>

### **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 Board's former Substance Use Disorder Program;
- The monitoring and oversight of licensees under terms specified in a Board adjudication order or consent agreement.

If the Board transfers these responsibilities, the monitoring organization must provide quarterly reports to the Board regarding the compliance of transferred licensees. It also must

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<sup>19</sup> R.C. 4723.35(F).

<sup>20</sup> Former R.C. 4723.35(B).

<sup>21</sup> R.C. 4723.35(D).

<sup>22</sup> R.C. 4723.28(G).

immediately report to the Board any licensee who is not in compliance with the terms and conditions of monitoring.<sup>23</sup>

### **Rulemaking authority**

The act authorizes the Board to adopt any rules it considers necessary to implement Safe Haven. The rules must be adopted in accordance with Ohio’s Administrative Procedure Act.<sup>24</sup>

## **INSURANCE NAVIGATORS**

### **Compensation**

Under the act, an insurance navigator may receive financial compensation from a health insurer offering insurance through an exchange operating in Ohio, but only if the compensation is not in connection with the enrollment of employees or other individuals in a qualified health benefit plan.<sup>25</sup> In authorizing the compensation, the act revises prior law, which had prohibited a navigator from receiving any compensation from a health insurer offering insurance through an exchange operating in Ohio, and aligns Ohio law with federal law, which also authorizes navigators to receive compensation from insurers so long as it is not in connection with enrollment.<sup>26</sup>

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## **HISTORY**

<b>Action</b>	<b>Date</b>
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
Passed House (89-1)	05-08-24
Senate concurred in House amendments (31-0)	05-22-24

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<sup>23</sup> R.C. 4723.35(C).

<sup>24</sup> R.C. 4723.351(E); R.C. Chapter 119, not in the act.

<sup>25</sup> R.C. 3905.471(G)(3); see also R.C. 3905.01, not in the act, and by reference, Section 1311 of the federal “Patient Protection and Affordable Care Act.”

<sup>26</sup> 45 Code of Federal Regulations 155.210(d)(4) and 155.215.