



# Ohio Legislative Service Commission

## Bill Analysis

Bob Bennett

### **S.B. 94**

131st General Assembly  
(As Introduced)

**Sens.** Bacon, Lehner, Jones, LaRose, Manning, Patton, Seitz

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### **BILL SUMMARY**

- Provides for the Ohio Department of Education (ODE) to receive at least 3.5% of the federal matching funds the state receives for the Medicaid School Program (MSP).
- Requires an MSP school provider to submit to ODE an annual report showing the number of the provider's students who received special education and related services in the most recent previous October.
- Requires the Ohio Department of Medicaid (ODM) and ODE to jointly prepare procedural guidelines for, and other informational materials about, MSP that give school providers clear instructions for participating in MSP.
- Eliminates a requirement that an MSP service be provided in a school.
- Specifies conditions under which an MSP claim is to be rejected.
- Requires an MSP claim to be a clean claim in order for ODM to seek federal funds for it.
- Requires ODM to disburse federal funds received for a clean claim not later than nine months after the date ODM receives the claim.
- Requires that MSP cover delegated nursing services provided by an unlicensed adult employed by or under contract with an MSP school provider.
- Requires MSP to cover personal care services under certain circumstances.
- Permits a Medicaid recipient to receive specialized medical transportation services under MSP if certain conditions are met.

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## **CONTENT AND OPERATION**

### **Medicaid School Program**

The bill revises the law governing the Medicaid School Program (MSP), which permits participating qualified school providers to submit claims to the Ohio Department of Medicaid (ODM) for federal matching funds for providing services covered by the MSP to Medicaid recipients eligible for the services. Under law unchanged by the bill, a qualified school provider must incur the cost of providing the service before submitting a claim. ODM is required to (1) seek the federal matching funds for each claim a qualified school provider properly submits and (2) disburse the federal matching funds it receives to the provider. ODM is prohibited from paying a qualified school provider the nonfederal share of the cost of the services for which a claim is submitted.

### **Administration of the MSP**

The Ohio Department of Education (ODE) is required to administer aspects of the MSP pursuant to an interagency agreement with ODM. The bill requires that the interagency agreement include a provision that provides for ODE to receive at least 3.5% of the federal matching funds the state receives for the MSP.<sup>1</sup>

### **Qualified school providers**

The board of education of a city, local, or exempted village school district, the governing authority of a community school, the State School for the Deaf, and the State School for the Blind may participate in the MSP as a qualified school provider by obtaining a Medicaid provider agreement and meeting all other conditions for participation in the MSP established in rules. Except as otherwise provided by state statutes and rules governing the MSP, a qualified school provider is subject to all conditions of participation in Medicaid that generally apply to Medicaid providers, including conditions regarding audits and recovery of overpayments. The bill provides that a qualified school provider in addition must annually submit to ODE a report showing the number of the provider's students who received special education and related services in the most recent previous October.<sup>2</sup> In contrast, an ODM rule

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<sup>1</sup> R.C. 5162.364.

<sup>2</sup> R.C. 5162.361.



currently requires qualified school providers to submit a December count of special education students.<sup>3</sup>

ODM and ODE are required by the bill to jointly prepare procedural guidelines for, and other informational materials about, the MSP that give qualified school providers clear instructions for participating in the MSP. ODM and ODE must annually update the guidelines.<sup>4</sup>

## **Provider claims**

Under current law, a qualified school provider must have provided a service in a school to be able to submit an MSP claim to ODM for federal matching funds. The bill eliminates this requirement.<sup>5</sup>

The bill requires that a qualified school provider's claim for a service be rejected if any of the following apply:

(1) Unless the service is an initial assessment or evaluation performed in the development of a Medicaid recipient's individualized education program (IEP), the service is not included in the recipient's IEP.

(2) The Medicaid recipient who receives the service fails to show progress in meeting the goals included in the recipient's IEP over two consecutive three-month periods unless (a) there is documentation that a method or technique of the service has been modified to help the recipient meet a such a goal or (b) it is not the purpose of the service to help the recipient show progress in meeting such a goal. (An ODM rule requires a claim to be rejected if it is for services for which an eligible child fails to show progress toward goals identified in an IEP over two consecutive three-month periods and there is no documentation that the methods or techniques applied have been modified to improve progress.)<sup>6</sup>

(3) Another reason for rejection specified in rules governing the MSP applies to the claim.<sup>7</sup>

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<sup>3</sup> Ohio Administrative Code (O.A.C.) 5160-35-02(F)(2).

<sup>4</sup> R.C. 5162.365.

<sup>5</sup> R.C. 5162.361.

<sup>6</sup> O.A.C. 5160-35-05(C)(16).

<sup>7</sup> R.C. 5162.362 (primary) and 5162.01(B)(10).



Current law requires ODM to seek federal funds for each claim a qualified school provider properly submits to ODM. The bill stipulates that the claim must be clean in order for ODM to seek federal funds.<sup>8</sup> Clean claim is a term used in federal Medicaid regulations that means a claim that can be processed without obtaining additional information from the provider or from a third party. It includes a claim with errors originating in a state's claims system. It does not include a claim from a provider who is under investigation for fraud or abuse or a claim under review for medical necessity.<sup>9</sup>

ODM is required by the bill to disburse federal funds received for such a clean claim not later than nine months after the date ODM receives the claim. The date of receipt is to be indicated by a date stamp ODM is to put on the claim the day that ODM receives it.<sup>10</sup>

## **Services covered by the MSP**

The services that the MSP covers are currently specified in rules rather than statute. The bill expressly requires the MSP to cover certain nursing services, personal care services, and specialized medical transportation services and continues to authorize the Medicaid Director to adopt rules specifying other services the MSP is to cover.<sup>11</sup>

### **Nursing services**

An ODM rule provides for the MSP to cover nursing services provided by registered nurses and licensed practical nurses.<sup>12</sup> The bill codifies that rule and requires that the MSP also cover nursing services provided by a school health aide or any other individual who is not licensed, certified, or otherwise authorized by a board or other agency of the state to provide a health care service, but only if (1) the individual is at least 18 years of age, (2) a registered nurse or licensed practical nurse has delegated the nursing services to the individual in accordance with the Board of Nursing's rules, and (3) the individual and the registered nurse or licensed practical nurse who delegated the nursing services to the individual are employed by or under contract with the qualified school provider that submits the claim to ODM for federal funds for providing the

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<sup>8</sup> R.C. 5162.363 (primary) and 5162.01(B)(1).

<sup>9</sup> 42 Code of Federal Regulations (C.F.R.) 447.45(b).

<sup>10</sup> R.C. 5162.363.

<sup>11</sup> R.C. 5162.366, 5162.367, 5162.368, and 5162.369(B).

<sup>12</sup> O.A.C. 5160-35-05(B)(5).

nursing services.<sup>13</sup> An ODM rule currently excludes services provided by a nonlicensed person from coverage under the MSP.<sup>14</sup>

### **Personal care services**

ODM's rules do not provide for the MSP to cover personal care services. The bill requires the MSP to cover personal care services when both of the following requirements are met:

(1) The services (a) are provided to a Medicaid recipient who is eligible for the MSP, needs the services because the recipient either cannot perform one or more activities of daily living or instrumental activities of daily living or has a limitation in performing one or more such activities due to a functional, cognitive, or behavioral impairment and (b) help the recipient benefit from special education and related services.

(2) The services are provided by an individual who (a) is at least 18 years of age, (b) is trained to provide the services to the Medicaid recipient who receives the services, and (c) provides the services under the direct supervision of a health care professional who is licensed, certified, or otherwise authorized by a board or other agency of the state to provide a health care service and is employed by or under contract with the qualified school provider that submits the claim to ODM for the services.<sup>15</sup>

The bill provides that "personal care services" has the same meaning as in a federal Medicaid regulation.<sup>16</sup> The federal regulation defines the term as services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or institution for mental disease that are (1) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the state) otherwise authorized for the individual in accordance with a service plan approved by the state, (2) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (3) furnished in a home, and at the state's option, in another location.<sup>17</sup>

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<sup>13</sup> R.C. 5162.366.

<sup>14</sup> O.A.C. 5160-35-05(C)(15).

<sup>15</sup> R.C. 5162.367.

<sup>16</sup> R.C. 5162.01(B)(15).

<sup>17</sup> 42 C.F.R. 440.167.



## Specialized medical transportation services

An ODM rule provides for the MSP to cover specialized medical transportation services.<sup>18</sup> The bill permits a Medicaid recipient eligible for the MSP to receive specialized medical transportation covered by the MSP if both of the following requirements are met:

(1) Either school bus transportation to the school in which the Medicaid recipient is enrolled is not provided to the school's students who reside in the same area as the resident or the school bus used to transport such students does not have adaptations that the recipient needs to be able to be transported in the school bus.

(2) On the same day that the Medicaid recipient receives the specialized medical transportation services, the recipient also receives at least one other service covered by the MSP. The other service may be personal care services provided to the recipient while receiving the specialized medical transportation services.<sup>19</sup>

The bill requires that the specialized medical transportation services covered by the MSP be provided in a specially adapted vehicle that has been physically modified in a manner that enables the Medicaid recipient receiving the services to be transported in the vehicle. The bill specifies that the modifications may include the addition of a wheelchair lift, seatbelts, harnesses, child protective seats, air conditioning, and similar modifications. The use of a school bus monitor or other personnel who accompany students on a school bus does not qualify as a modification.<sup>20</sup>

An ODM rule provides that the MSP does not cover transportation provided from an individual's home to school or from an individual's school to home.<sup>21</sup> The bill negates this rule by permitting a Medicaid recipient eligible to receive specialized medical transportation services covered by the MSP to receive the services for any of the following one-way trips:

- (1) From the recipient's residence to the recipient's school;
- (2) From the recipient's school to the recipient's residence;

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<sup>18</sup> O.A.C. 5160-35-06(B)(1).

<sup>19</sup> R.C. 5162.368(B).

<sup>20</sup> R.C. 5162.368(C).

<sup>21</sup> O.A.C. 5160-35-06(B)(1)(d).



(3) From the recipient's residence or school to a location to receive a service covered by the MSP from a health care provider under contract with the qualified school provider;

(4) From such a location to the recipient's residence or school;

(5) From the recipient's school to another school operated by a qualified school provider;

(6) From another school operated by a qualified school provider to the recipient's school.<sup>22</sup>

The bill requires that a claim for specialized medical transportation services show a separate charge for each one-way trip a Medicaid recipient receives.<sup>23</sup>

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## HISTORY

ACTION	DATE
Introduced	02-26-15

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<sup>22</sup> R.C. 5162.368(D).

<sup>23</sup> R.C. 5162.368(E).

